



State Grant and Special Programs
1200 North Seventh Street, Harrisburg, PA 17102-1444

**REMOTE ACCESS, CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT
and
AUTHENTICATION**

THIS REMOTE ACCESS, CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT and AUTHENTICATION (this "Agreement") is made as of this _____ day of _____, 20_____, by and between the Pennsylvania Higher Education Assistance Agency, an agency of and on behalf of the Commonwealth of Pennsylvania, having an address at 1200 North 7th Street, Harrisburg, Pennsylvania 17102-1444 ("PHEAA"), and the organization identified below by name and principal address ("Organization").

NAME OF ORGANIZATION: _____

PRINCIPAL ADDRESS: _____

WITNESSETH:

WHEREAS, PHEAA was created by the Commonwealth of Pennsylvania by the Act of August 7, 1963, P.L. 549 (the "Act") for the purpose of improving the higher educational opportunities of persons who are residents of the Commonwealth of Pennsylvania by assisting them in meeting their expenses in higher education through, inter alia, grants, work study awards, and educational loans; and

WHEREAS, PHEAA has developed various services and programs which organizations may remotely access and which assist educational organizations in the management of their files, including but not limited to student financial aid, pertaining to its students by providing to them on-line automated capabilities (collectively, the "Remote Access Services Program"); and

WHEREAS, Organization has expressed a desire to participate in the Remote Access Services Program, and PHEAA desires to provide the Remote Access Services Program to Organization, pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings specified in this Section 1. Other terms defined in the text of this Agreement shall have the meanings there ascribed.

1.1 "Agreement" means this Remote Access, Confidentiality and Indemnification Agreement and Authentication, including any Schedule, Attachment, or Exhibit attached hereto and each amendment hereafter adopted.

1.2 "Authoritative Source" means the individual who is responsible for notifying PHEAA immediately when Organization approves, modifies, or deletes remote access to the PHEAA System for Organization. The Organization designates the Authoritative Source on the "Request for Authoritative Source Status," as defined in Section 1.10, executed by both the designated individual and his/her immediate supervisor.

1.3 “BPAMS” means the Business Partner Access Management System created, owned, utilized, and maintained by PHEAA to provide designated employees of Organization access to the Remote Access Services Program.

1.4 “Breach” means any unauthorized acquisition of, use of, or access to data that compromises the security, confidentiality, or integrity of Confidential Information maintained by or for a Recipient, which has the meaning assigned to it in Section 1.6.

1.5 “Business Day” means a day of the year other than a Saturday or Sunday, or other than a day on which PHEAA or Organization is required or authorized by law to remain closed, and on which either does remain closed.

1.6 “Confidential Information” shall include, but not be limited to, information disclosed by or through any party to this Agreement (“Disclosing Party”) to any other party hereto (“Recipient”), whether in writing, orally or by any other means, which is confidential and/or proprietary. Such information may include, without limitation: (a) Nonpublic Personal Information (“NPPI”), as defined in 12 CFR Part 40, as amended from time to time, concerning students and/or Organization’s students or parents/spouses of Organization’s students; (b) all forms and types of financial, business, technical, or economic information including oral presentations pertaining to services; marketing strategies; computer software, software designs, and services; business plans and logic; computer hardware used by PHEAA or Organization; targeting methods; and other information, documents, and materials that pertain to operation policies, procedures, and any other aspects of the business of PHEAA or Organization; (c) financial and pricing information of PHEAA or Organization involving student loans; (d) proprietary software developed by PHEAA. “Confidential Information” shall also include “Consumer Information” and “Customer Information” as defined in The Interagency Guidelines Establishing Standards for Information Security, 12 CFR Part 30 (Appendix B), as amended from time to time (“Guidelines”); and all training manuals and/or documentation.

1.7 “PageCenter” means the output management software, utilized and maintained by PHEAA which makes reports available for download through an Organization specific mailbox.

1.8 “PHEAA System,” means any computer and network system, including software applications, created, owned, leased, utilized or maintained by PHEAA.

1.9 “Remote Access Services Program” means the various services and programs developed by PHEAA for organizations, by which PHEAA will, pursuant to this Agreement, allow Organization view only access to various student information related to Organization. For purposes of this Agreement, the Remote Access Services Program includes the functionality described in Section 2.1 (i)-(iii).

1.10 “Request for Authoritative Source Status” means the document attached hereto as Attachment A which is incorporated into this Agreement by reference.

2. OBLIGATIONS OF PHEAA.

2.1 PHEAA agrees to provide, or cause to be provided, to Organization the Remote Access Services Program, including a temporary, nontransferable, nonexclusive, license to read-only access to the PHEAA System with respect to Organization’s students only, subject to the terms and limitations set forth in this Agreement, until such time as the earliest of the following occurs: (a) PHEAA requests that Organization cease using the Remote Access Services Program or (b) this Agreement is terminated. Organization’s view-only access to the Remote Access Services Program includes only the services identified below:

(i) Access to an online screen on the PHEAA System which will provide information regarding the Organization’s recipients of Certificates of Merit, list of the names and addresses of the Organization’s student(s) and their Free Application for Federal Student Aid (FAFSA) filing status, and the Organization’s demographic and contact information that is currently on file with PHEAA.

(ii) Access to reports in PageCenter mailbox specific to Organization.

(iii) Ability to print an exact copy of any remote terminal display.

2.2 From time to time, PHEAA may unilaterally update, amend, change, or discontinue the Remote Access Services Program.

2.3 Pursuant to the request of Organization and subject to PHEAA’s system and policy constraints, PHEAA agrees to provide employees of Organization, as authorized by Organization’s Authoritative Source pursuant to Section 4.1 hereof, with read-only access to certain screens and selected records containing information, including Confidential Information, related to Organization’s students and/or parents of Organization’s students. Upon completion of required documents and after the approval of a user profile, each

authorized user will receive a unique user ID and password for access to the PHEAA System. When a request for access is approved by the Authoritative Source, the user ID will be emailed to the Authoritative Source, and the user's temporary password will be emailed to the user.

2.4 PHEAA agrees to provide designated employees of Organization with reasonable instruction and training on the proper use and care of the Remote Access Services Program.

2.5 If PHEAA is called upon to investigate and research problems with respect to the Remote Access Services Program beyond PHEAA's normal maintenance activities, and it is determined that the problem was created by or in part caused by Organization's equipment, software or employee, representative, and/or agent, PHEAA may invoice Organization. Organization agrees to pay for services at a rate of Seventy Five Dollars (\$75.00) per hour or fraction thereof. Organization also agrees to pay additional charges presented to or incurred by PHEAA (for example, by an outside vendor) as a result of a problem created by or in part caused by Organization's equipment, software or employee, representative, and/or agent.

2.6 PHEAA may, at its sole discretion, charge additional fees for the Remote Access Services Program or any other services related to the Remote Access Service Program that are requested by Organization. PHEAA shall notify Organization in writing prior to its initial assessment of any such additional fees. Upon receipt of PHEAA's written notice of a fee (other than the IT servicing fee set forth in Section 2.5) or increase in fee, Organization shall have thirty (30) days to give written notice to PHEAA that Organization wishes to terminate this Agreement.

2.7 PHEAA DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE REMOTE ACCESS SERVICES PROGRAM, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This Section 2.7 applies only to the Remote Access Services Program and is not intended to disclaim any warranty, either express or implied, provided under any other agreement between Organization and PHEAA.

3. OBLIGATIONS OF ORGANIZATION.

3.1 Organization agrees that it has been and shall continue to be responsible for directing PHEAA on, and for setting parameters for, the information, including any Confidential Information, to be provided to designated employees of Organization under this Agreement. Such direction shall be provided to PHEAA in writing, and shall in all cases be subject to final review and approval by PHEAA (which review and approval shall not be unreasonably withheld).

3.2 Organization must notify PHEAA immediately if Organization wishes to terminate or modify the access provided by PHEAA pursuant to the Remote Access Services Program so that PHEAA may terminate the designated employee's access to the Remote Access Services Program. Such notification shall be provided by the Authoritative Source via BPAMS with respect to authorized users. If the individual identified as the Authoritative Source is no longer functioning as the Authoritative Source, Organization must follow the steps in 4.2 (iii). Organization agrees to protect, defend, indemnify and hold PHEAA, its officers, directors, employees and affiliates, successors, or assigns, harmless, in accordance with Section 5 below, from any liability that may result in any failure or delay by Organization to notify PHEAA of its intent to any such termination of access to the Remote Access Services Program.

3.3 Organization and its authorized users shall use the Remote Access Services Program only for the purposes contemplated herein; any unauthorized use may, at PHEAA's sole discretion, result in immediate termination of Organization's access to the Remote Access Services Program. Organization is responsible for safeguarding all mechanisms, passwords, and security devices used to access the Remote Access Services Program. Organization agrees not to provide or otherwise make available the Remote Access Services Program in any form to any person other than Organization's authorized employees, agents, or representatives, without PHEAA's prior written consent. Organization acquires no ownership in the Remote Access Services Program under this Agreement.

3.4 Organization shall not make use of any other party's Confidential Information for any purpose other than to perform the services contemplated under this Agreement. Without limiting the foregoing, Organization agrees that it shall not store data accessed through the Remote Access Services Program beyond its intended use pursuant to this Agreement. Organization shall not disclose, transfer, use, copy, or allow any employee, agent or any third party access to Confidential Information of any other party hereto, except for those who have a need to know such Confidential Information in order for Organization to utilize the information

identified in Section 2.1 (i)-(iii). If disclosed to any third party, the third party must be individually bound by contractual obligations of confidentiality and limitation of use sufficient to give effect to this Section 3.

3.5 Organization shall counsel and instruct its employees, representatives and agents that they may not disclose to unauthorized persons any Confidential Information to which such employees, representatives and agents have access as a result of their work with the records and systems of PHEAA under the Remote Access Services Program. Organization shall require its employees, representatives and agents to clear monitor screens when unattended and assure that records reflected on monitor screens are not subject to viewing or reproduction by unauthorized personnel.

3.6 In addition to the other obligations set forth herein, Organization agrees to comply with all applicable federal and state laws, and rules and regulations of applicable regulatory agencies, protecting the Confidential Information and privacy rights of Disclosing Party and its customers, including, without limitation, Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. §§6801-19 et seq.) and the federal Economic Espionage Act (18 U.S.C. Section 1831 et seq.), as well as any other applicable federal or state laws, rules or regulations applicable to the services contemplated under this Agreement.

3.7 Organization shall implement and maintain an appropriate security program to protect the confidentiality of Confidential Information in accordance with the requirements of this Agreement and applicable federal and state law. Organization agrees to provide PHEAA, upon request, with a copy of its security program and any updates or amendments thereto. Organization agrees that, upon reasonable notice and at Organization's convenience, PHEAA may audit such security program.

3.8 In the event that Organization knows, or reasonably believes, that there has been a Breach under this Agreement, Organization shall take the following actions at no cost to PHEAA:

- (i) Immediately notify PHEAA of such Breach;
- (ii) Identify to PHEAA what specific data, by customer and account number has or may have been Breached;
- (iii) Monitor any affected accounts for any unusual activity (if appropriate);
- (iv) Take measures to contain and control the incident to prevent further unauthorized access;
- (v) Remedy the circumstances that permitted such Breach to occur; and
- (vi) Cooperate with PHEAA to facilitate PHEAA's compliance with any applicable federal or state law regarding unauthorized access of consumer information.

For the purposes of this Section, in addition to any information considered NPPI under Section 509(4) of the Gramm-Leach-Bliley Act of 1999, NPPI shall include any two of the following: a person's name, address, social security number, telephone number, driver's license or state ID number, account number, credit/debit card account number, access code, password, identification number, or security code. Organization shall fully reimburse PHEAA for the actual costs incurred by PHEAA in remedying or controlling any Breach (including but not limited to costs relating to credit monitoring or mailing notices to individuals whose data has or may have been Breached) where such Breach is the direct result, in whole or in part, of Organization's breach of this Agreement, failure to conform to applicable law, negligence, or from unauthorized access to Organization's computer systems or networks.

3.9 Organization agrees not to charge Organization's students or their parents a fee to defray the cost of any of the services or activities provided by the Remote Access Services Program.

4. OBLIGATIONS OF ORGANIZATION AND AUTHORITATIVE SOURCE.

4.1 The Authoritative Source is responsible for the addition, modification, and deletion of access to the Remote Access Services Program by designated employees of Organization through BPAMS.

4.2 The Authoritative Source, on behalf of Organization, must provide a fully executed Request for Authoritative Source Status for Organization. The Request for Authoritative Source Status is attached hereto as Attachment A and incorporated into this Agreement by reference.

(i) If Organization needs to utilize more than one Authoritative Source due to its having responsibility for multiple locations or campuses, the delegation of responsibilities per Authoritative Source must be provided using the form attached to this Agreement as Exhibit 1.

(ii) Organization will require the immediate supervisor of the Authoritative Source to execute the Request for Authoritative Source Status.

(iii) Organization shall notify PHEAA within one (1) Business Day if there are any changes to the Authoritative Source and shall promptly submit a new Request for Authoritative Source Status.

4.3 The Authoritative Source will serve as the sole source for authorization of access to the PHEAA System and has been designated the authority by Organization to approve remote users. Organization understands and agrees the Authoritative Source is responsible for notifying PHEAA immediately for approvals, additions, modifications, and deletions for remote access to the PHEAA System for the appropriate users of Organization. Organization further acknowledges and agrees that if the Authoritative Source approves an individual for access, PHEAA may rely on this approval in concluding that such individual has sufficient authority to have such access to the PHEAA System for legitimate business purpose. Organization agrees to protect, defend, indemnify and hold PHEAA, its officers, directors, employees and affiliates, successors, or assigns, harmless, in accordance with Section 5 below, from any liability that may result in PHEAA's reliance of such approval for access.

4.4 The Authoritative Source is responsible to complete a review of all user access through BPAMS upon request by PHEAA. Failure to complete the access review as requested will result in the all user access being suspended.

5. LIABILITY AND INDEMNIFICATION.

5.1 Organization agrees to protect, defend, indemnify and hold harmless PHEAA, its officers, directors, employees and affiliates, successors, or assigns, from and against any and all claims, actions, causes of action, damages, demands, losses, liabilities, obligations or costs (including, without limitation, attorneys' fees and costs) (collectively "Costs") arising from, related to or connected with any manner whatsoever to:

(i) PHEAA's provision of access to information to Organization in accordance with the terms of this Agreement; or

(ii) Acts or omissions of Organization, or any officer, director, employee, affiliate, agent, contractor, successor or assign of Organization, including, but not limited to the performance or failure to perform under this Agreement, unauthorized access to the PHEAA's systems or databases, the PHEAA System, and/or violation of any applicable state or federal law or regulation by any such party arising from, related to, or connected in any manner to this Agreement.

5.2 Organization agrees that PHEAA may, in good faith and on reasonable terms, settle any such Costs and that PHEAA's right to indemnification shall extend to any such settlement, provided PHEAA has given notice of such Costs and its intent to settle. PHEAA's right to indemnification is in addition to, and may be exercised independently of, any other remedy held by PHEAA under this Agreement at law or in equity. The indemnification obligations under this Section shall survive the termination or expiration of this Agreement.

5.3 Notwithstanding the foregoing, Organization expressly agrees that PHEAA shall not be liable for any Cost resulting from an act or omission of PHEAA if such act or omission occurred as a result of PHEAA's reliance on information or instruction provided by Organization, or by any officer, director, employee, affiliate, agent, contractor, successor or assign of Organization, or due to any commercially reasonable unavailability of the Remote Access Services Program.

5.4 This Section 5 shall not be read, interpreted, or construed as a waiver of the Sovereign Immunity of the Commonwealth of Pennsylvania.

6. TERM.

6.1 This Agreement shall commence on the date first written above and shall continue for a period of two (2) years with automatic renewals of one (1) year periods unless terminated or until such date as PHEAA or Organization provides to the other party hereto thirty (30) days prior written notice of termination of the Agreement or upon the occurrence of any of the events set forth in Section 2.1 hereof. Notwithstanding the foregoing, PHEAA may unilaterally terminate this Agreement immediately in the event of: (i) a material breach of any of the warranties or obligations of Organization under this Agreement; (ii) a material change to the applicable federal or state laws or regulations thereunder which materially alters the legality or economics of the non-breaching party's obligations under this Agreement; or (iii) PHEAA's discontinuing the Remote Access Services Program.

6.2 The obligations of the parties under this Agreement with respect to Confidential Information shall survive the termination of this Agreement. Notwithstanding the foregoing, Organization acknowledges that: (i) its obligation under this Agreement with respect to Confidential Information disclosed by PHEAA shall remain in effect for as long as such information shall remain Confidential Information under applicable law and (ii) its obligation under this Agreement with respect to PHEAA's trade secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law.

6.3 Upon the written demand of a Disclosing Party or upon termination of this Agreement, subject to applicable laws, each Recipient shall destroy Disclosing Party's Confidential Information (including the removal of any copies of such Confidential Information in any form whatsoever on Recipient's computer and information storage systems). Recipient shall also provide to Disclosing Party a written certification of destruction, signed by an officer of Recipient duly authorized to legally bind Recipient, such certificate shall address the destruction of the Confidential information from Recipient's systems (including the removal of any copies of such Confidential Information in any form whatsoever on Recipient's computer and information storage systems). If the Confidential Information is on Recipient's back-up or retention system, Recipient shall identify the Confidential Information, and report to Disclosing Party what Confidential Information they will be maintaining, and when and how such records are to be destroyed.

7. OWNERSHIP. PHEAA shall retain any and all rights of ownership, including intellectual property rights, in or related to the Remote Access Services Program and/or in any product, service or data provided to Organization under this Agreement. All products, services, or work product of any kind, tangible or intangible, developed or contributed by PHEAA (including subcontractors) in connection with the Agreement, and all related patents, copyrights, and other intellectual property rights (collectively, "Work Product") shall be the exclusive property of PHEAA. Work Product may include, but is not limited to, training manuals, computer programs, multi-media content, and records of any sort as well as developments, improvements, and information. Organization acknowledges and agrees that as between Organization and PHEAA, all right, title and interest in the Work Product and any part thereof shall at all times remain solely within the ownership of PHEAA; however, that to the extent such Work Product contains Organization's Confidential Information or intellectual property, Organization shall retain all right, title, and interest in such Confidential Information and intellectual property.

8. NOTICES. Any notice or other communication required or that may be given under this Agreement shall be in writing and delivered to the addresses set forth above. Notice shall be sent via overnight courier or registered or certified mail, return receipt requested, postage and express charges prepaid, and shall be considered delivered and effective three (3) days after mailing.

If to PHEAA:	Attention:	VP, State Grant and Special Programs
		and
	Attention:	General Counsel
If to Organization:	Attention:	_____

The designation of the person to be so notified or the address of such person for the purposes of such notice may be changed from time to time by notice hereunder.

9. PARTIES IN INTEREST; ASSIGNMENT. This Agreement is and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, but shall not be assigned by any party without the written consent of the other party hereto (which consent may be withheld in the sole discretion of such other party).

10. ENTIRE AGREEMENT; AMENDMENT. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter hereof, and supersedes all previous agreements, discussions and correspondence with respect thereto, and no representations, warranties or agreements, express or implied, of any kind with respect to such subject matter have been made by either party to the other, except as expressly set forth herein. This Agreement may not be amended, modified, superseded, or rescinded, except by a written instrument or document signed by PHEAA and Organization.

11. SEVERABILITY. Any term, condition, or provision of this Agreement that is invalid, illegal, or unenforceable for any reason shall be ineffective only to the extent of such invalidity, illegality, or

unenforceability, without affecting in any way the remaining terms, conditions, or provisions hereof or rendering any other term, condition, or provision of this Agreement invalid, illegal, or unenforceable.

12. CHOICE OF LAW. This Agreement and the respective rights and obligations of the parties shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.

13. AUTHORITY. Each of the undersigned represent that he or she has the authority to execute this Agreement and legally bind the respective party.

14. NETWORK ACCESS. PHEAA controls access to its network, including the Remote Access Services Program, through the utilization of security measures to detect malicious activity, unsafe network activity or abuse. Organization agrees it will not attempt to or actually bypass PHEAA's network and/or computer security controls. Any transfer of Confidential Information to or from PHEAA electronically must be accomplished using a secured, encrypted transmission.

15. WAIVER. A failure or delay of any party to enforce any of the provisions hereof may in no way be construed to be a waiver of such provisions of this Agreement. No rights or duties in this Agreement may be waived except in a written instrument or document signed by the parties charged with such waiver.

16. HEADINGS. The headings of the various sections, subsections and clauses are solely for the convenience of the parties hereto and shall not control or affect the meaning or construction of this Agreement.

17. RIGHT TO KNOW. Organization acknowledges, understands, and agrees that any information provided by Organization to PHEAA which qualifies as a "public record" under Pennsylvania's Right-to-Know Law, 65 PS. §§67.101 *et seq.*, as amended, and as may be further amended in the future, may be subject to disclosure. Organization accordingly waives and releases PHEAA from any actions at law or in equity from compliance with any such disclosure. Organization further acknowledges, understands, and agrees that any such disclosure does not constitute breach of any confidentiality provision otherwise provided for in this Agreement. In the event PHEAA is required to make such disclosure, PHEAA shall make reasonable effort to notify Organization in writing in advance of such disclosure.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

**PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY**

By: _____

By: _____

Name: Nathaniel Hench

Name: _____

Title: Vice President Public Affairs

Title: _____

Federal Tax Identification Number

Approved as to form and legality

This Agreement has been pre-approved by the Office of the Attorney General.

PHEAA General Counsel

Doc No. _____

EXHIBIT 1

**AUTHORITATIVE SOURCE AND RESPONSIBILITIES
PER LOCATION OR CAMPUS**

(include School Code, Name, and Address for each)

Campus/Location Name	Campus/Location School Code	Campus/Location Address	Campus/Location Authoritative Source Name