



## **FY2014 CONTENT DEVELOPMENT, ACQUISITION, AND DISTRIBUTION FUNDING**

### **TERMS & CONDITIONS**

This Funding Agreement ("Agreement") is entered into by and between the **Broadcast Educational Media Commission ("BEMC")**, a government body established pursuant to §3353.02 of the Ohio Revised Code ("ORC"), with its principal address at 2470 North Star Rd, Columbus, OH 43221-3405 and **GRANTEE**, as identified in Section 27.0; with its principal address also identified in section 27.0.

In Consideration of the mutual promises, covenants and agreements set forth herein, the **BEMC** and **GRANTEE** (individually, a "party"; collectively, the "parties") hereto agree as follows:

**WHEREAS**, in accordance with the provisions of Amended Substitute House Bill 59 of the 130th General Assembly, funding is available to Ohio's licensed Educational Television Stations for the development, acquisition, and distribution of resources for educational use in the classroom and online; and

**WHEREAS**, funds are deposited into the Content Development, Acquisition, and Distribution of educational use in the classroom and online; and

**WHEREAS**, in fiscal year FY14, up to \$658,099 is to be allocated equally among Ohio's twelve (12) licensed Educational Television Stations (WBGU, WCET, WGTE, WNEO, WEAO, WOUC, WPBO, WOUB, WOUC, WPTD, WPTO, WVIZ).

**WHEREAS**, with the advice and approval of the Broadcast Educational Media Commission, and in consultation with the Ohio Department of Education; funds shall be used for the production of an interactive instructional programming series with priority given to resources aligned with Ohio's new learning standards.

**WHEREAS**, programming shall be targeted to the needs of the poorest two hundred school districts as determined by the district's adjusted valuation per pupil as defined in former section 3317.0213 of the Ohio Revised Code as that section existed prior to June 30, 2005;

#### **1.0 DURATION OF AGREEMENT**

This Agreement shall begin **upon execution of these terms and conditions** and end **September 30, 2014**, upon submission of project deliverables, or until the Agreement is terminated pursuant to the terms contained herein, whichever is sooner.

#### **2.0 MULTIMEDIA PRODUCTION PROJECT GRANT REQUIREMENTS**

- The applicant will choose one of the sixteen (16) themes that encompass careers in world languages, fine arts or financial literacy (See Appendix A.). Associated careers are provided for each theme.



- The applicant will choose at least three (3) careers listed under the selected theme, one (1) from world languages, one (1) from fine arts, and one (1) from financial literacy.
- If the applicant holds two (2) station licenses, the applicant will identify two (2) themes and at least three (3) careers for each theme for a total of six (6) careers.
- Prior to completing the formal application, each applicant must contact the Broadcast Educational Media Commission's grant officer to confirm the availability of their selected theme(s) and careers to avoid duplication.
- Upon selection approval, the applicant may proceed with the online application process.

### **3.0 APPLICATION AND FUNDING PROCESS**

GRANTEE agrees to fulfill any requirements within the Agreement funding period, including but not limited to:

Application:

- Contact grant officer to verify availability of career choices.
- Print, read, and sign FY14 Multimedia Production Project Terms and Conditions.
- Complete online application; an email will be sent to each affiliate containing a link to the application.

Funding:

- First, second, and third quarter funds will be disbursed upon completion and approval of the FY14 application, submission of the links/Internet location of FY13 deliverables, and completion of the FY13 reporting requirements.
- Fourth quarter funds will be disbursed on or around **April 1, 2014**.

### **4.0 FUNDING**

These Terms and Conditions shall remain in effect upon latter date of execution, **September 30, 2014**; however, funding will be for this agreement will be finalized prior to the State of Ohio's Fiscal Year 2014 which ends on **June 30, 2014**.

**Payments shall be made as follows:**

- First, second, and third quarter payments will be disbursed upon completion and approval of the FY14 application, submission of the FY13 deliverables links, and completion of the FY13 final reporting requirements.
- Fourth quarter payment will then be disbursed on or around **April 1, 2014**.



Should a reduction in the appropriation budgeted to **BEMC** occurs; a uniform reduction will be made to the funds allocated under the terms of this Agreement. Both parties agree that should a reduction occur **BEMC** will inform Grantee in writing of the percentage and amount of reduction before the reduction occurs, if possible.

Grantee shall submit a formal statement to **BEMC** indicating how the reduction in funds allocated under this Agreement will cause a corresponding reduction in services to schools.

#### **5.0 PERMISSIBLE USE OF SUBSIDY FUNDS**

Permissible uses of funds obtained through the PTV Multimedia Production Project Grant are intended to be used specifically for the production and distribution associated with approved multimedia projects:

- Development of resources supporting careers associated with Ohio's new learning standards in Fine Arts, World Language, and Financial Literacy video/audio production.
- Equipment necessary and directly related to the use of the multimedia project.
- Travel expenses and reasonable miscellaneous expenses.
- Salaries and benefits (up to the 25% limit).
- Supplies, such as DVDs.

#### **6.0 PROHIBITED USE OF SUBSIDY FUNDS**

- Equipment and capital expenditures not directly related to the grant project, such as office furniture, office equipment, building leases, general maintenance, repair, and utilities.
- Food and drink

Please contact the Broadcast Educational Media Commission's grant officer with any questions regarding the permissible use of these funds.

#### **7.0 AVAILABILITY OF FUNDS**

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party until all of the following conditions have been met: (i) all Ohio statutory provisions of the Ohio Revised Code have been complied with, including ORC §126.07; (ii) all necessary funds are available or encumbered by the appropriate state agencies; (iii) if required, approval of expenditure of funds is given by the Controlling Board of the State of Ohio; (iv) if the **BEMC** is relying on federal or third-party funds for this Agreement, that such funds have been made available, and (v) this Agreement has been fully executed.

#### **8.0 INTELLECTUAL PROPERTY: RIGHTS IN DATA, PATENTS AND COPYRIGHT**

The GRANTEE warrants that the services provided pursuant to this AGREEMENT will not infringe upon any United States or foreign letters, patents, trademarks, copyrights or other proprietary rights, and the GRANTEE agrees to defend, protect and hold harmless **BEMC**, its employees, agents, successors, assigns, customers and users of such items, against any and all causes of action and from all damages and expenses including attorneys' fees resulting from claims and demands for actual or



alleged infringements of any patent, trademark, copyright or any right by reason of the sale or use of the material covered hereby. **BEMC** reserves the right to participate in any such action brought against **BEMC** at GRANTEE's expense.

GRANTEE agrees to return to **BEMC** within thirty (30) days of the effective date of termination of this SUBSIDY any information set forth in reports, documents, lists, or other materials given to, prepared or assembled by GRANTEE under this Agreement.

## **9.0 TERMINATION**

This SUBSIDY may be terminated only as follows:

- By **the BEMC** or GRANTEE without cause upon a thirty (30) day written notice to either party; or
- By mutual written consent of all parties.

Should this Agreement terminate prior to the end of its term, GRANTEE shall immediately return any unused monies to BEMC.

If the Ohio General Assembly fails at any time to continue funding for the payments and other obligations set forth herein, the **BEMC** obligations under this Agreement are terminated as of the date the funding expires and the **BEMC** shall have no further obligations hereunder. If the **BEMC** discovers or is notified of the discontinuation of funding for this Agreement, then the **BEMC** agrees to notify Grant Recipient of said discontinuation as soon as is practicable. The Grant Recipient shall not perform any work under the Agreement after such notice is received.

## **10.0 AVAILABILITY AND FORMATTING OF DELIVERABLES**

- All deliverables must be submitted to the grant officer by September 30, 2014 for posting on a State of Ohio website.
- Components of the project must also be made available to K-12 schools on DVD *upon request*. Stations may post on other sites including, but not limited to: station's website, Ohio on iTunes U, iLearn Ohio, PBS Learning Media, station's YouTube page, and/or as directed by the station's communications plan.
- All deliverables produced and/or distributed as a result of this funding shall be owned by the State of Ohio in perpetuity and made available statewide and such ownership rights shall in no way be limited by this application or guidelines.
- All deliverables shall be free of any copyright restrictions or limitations and have unlimited rights for distribution.
- All deliverables generated by the PTV Multimedia Production Projects must have The State of Ohio recognized as the project funding source.



- All deliverables submitted to the Broadcast Educational Media Commission must utilize a common project title and logo, to be displayed on all print and video components of the project.
- The common project title and logo will be provided to the stations by the Broadcast Educational Media Commission's grant officer.
- Station identification should be placed at the end of the each video.

#### **11.0 VIDEO FORMATTING REQUIREMENTS**

- Video files (MPEG-4 with H.264 compression) with appropriate file extensions (.mp4, m4v, .mov).
- For best results with Apple products, Apple recommends using MPEG-4 with H.264 compression with the following specifications:
  - Video Format: MPEG-4 with H.264
  - Data Rate: Up to 1.5 Mbps
  - Image Size: 640 x 480 pixels
  - Frame Rate: 30 frames per second
  - Key Frame: Every 24 frames
  - Audio Tracks: Baseline Low-Complexity Profile with AAC-LC audio up to 160 Kbps

#### **12.0 REPRESENTATIONS AND WARRANTIES**

The **BEMC** represents and warrants that it has full power and authority to enter into this Agreement.

Each party that has executed this Agreement through its undersigned authorized representative, and each representative so executing, hereby warrants and represents to the other party that the undersigned representative has full authority to execute this Agreement on behalf of the party for whom said authorized representative purports to act.

The GRANTEE, any subcontractor or person acting on behalf of the GRANTEE in the execution of duties and obligations hereunder, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

#### **13.0 NON DISCRIMINATION**

The **BEMC** does not discriminate on the basis of race, color, national origin, sex, religion, age, military status, ancestry, or disability in employment or in the providing of services.



The GRANTEE agrees that its self, any subcontractors, and any person acting on its or such subcontractor's behalf, shall not discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement, on the basis of race, color, national origin, sex, religion, age, ancestry, military status, or disability.

**14.0 DRUG FREE WORK PLACE**

The GRANTEE agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work purchase, transfer, and use of or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

**15.0 OHIO ETHICS LAW AND CONFLICTS OF INTEREST**

The GRANTEE; represents, warrants and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. The GRANTEE further represents, warrants, and certifies that neither the GRANTEE nor any of its employees will do any act that is inconsistent with such laws.

No personnel of the GRANTEE who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the work shall, prior to the completion of the work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the work. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the **BEMC** in writing. Thereafter, he or she shall not participate in any action affecting the work, unless the **BEMC** shall determine in its sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

**16.0 INDEPENDENT CONTRACTOR STATUS**

It is understood and agreed by the parties that the GRANTEE shall perform all duties hereunder as an independent contractor and neither the GRANTEE nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the **BEMC** or the State of Ohio. Neither party shall have the right to bind or obligate the other party in any manner without the prior written consent of the other party, except as expressly provided herein. The GRANTEE will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this agreement. It is further understood and agreed that neither the GRANTEE nor its personnel shall be eligible for state employee benefits, including worker's compensation coverage.



The GRANTEE shall be responsible for all of the GRANTEE'S business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

**17.0 FINDINGS FOR RECOVERY AND DEBARMENT**

The GRANTEE affirmatively represents and warrants to the **BEMC** that it is not subject to any unresolved finding for recovery under ORC Section §9.24.

The GRANTEE agrees that if this representation and warranty is deemed to be false, this Agreement shall be void ab initio as between the parties, and any funds paid by the **BEMC** hereunder shall be immediately repaid to the **BEMC**, or an action for recovery may be immediately commenced by the **BEMC** for recovery of said funds.

The GRANTEE further represents and warrants that they are not debarred from consideration for contract awards by the Director of the Department of Administrative Services.

**18.0 LIABILITY**

The GRANTEE agrees to fully indemnify and hold harmless the **BEMC** from any all liability, losses, claims, damages, and expenses arising out of the GRANTEE'S performance (or nonperformance) of its obligations hereunder. In no event shall **the BEMC** or the State of Ohio be liable to the GRANTEE for indirect, consequential, incidental, special, or punitive damages, or lost profits.

Notwithstanding any language to the contrary, the GRANTEE shall be liable for any personal injury or damage to real property or tangible personal property, caused by its fault or negligence.

**19.0 AVAILABILITY OF BOOKS AND RECORDS**

The GRANTEE agrees that the **BEMC** shall have the right to review all the GRANTEE'S books and records pertaining to this Agreement for a period of at least three (3) years after the expiration of this Agreement and shall make such records available to the **BEMC**. Such records shall be supported by agreements, invoices, vouchers, and other data as appropriate.

**20.0 PUBLIC RECORDS AND CONFIDENTIALITY**

The GRANTEE shall maintain any and all records associated with the subject of this Agreement in accordance with any applicable state and federal laws, including but not limited to the Ohio Revised Code, and the Family Educational Rights and Privacy Act of 1974, as amended.



It is expressly understood by the parties that **the BEMC** is subject to the Ohio Public Records Act, ORC §149.43, *et seq.*, and that any record kept by the **BEMC** that is deemed a public record is subject to release if a proper request is made.

In the event of an asserted trade secret, GRANTEE must indemnify and hold the **BEMC** harmless and defend against all actions or proceedings that may ensue (including attorneys' fees), which seek to order the **BEMC** to disclose or to not disclose the information.

**21.0 BINDING EFFECT, AMENDMENTS OR MODIFICATION**

This Agreement shall bind the parties hereto, their respective assigns, successors, receivers, and representatives of any type whatsoever, and shall not be amended or modified unless done so in writing signed by both parties.

If the **BEMC**'s governing Ohio statutes shall subject it to new or differing statutory requirements affecting contracts, this Agreement shall be subject to and conditioned upon compliance with such requirements, unless otherwise provided by Ohio law.

**22.0 ENTIRE AGREEMENT; NO WAIVER**

The Agreement constitutes the entire understanding between the parties hereto with reference to the matters contained herein, there being no conditions, warranties or representations other than those contained herein. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties. The failure of any party to exercise or enforce, in any respect, any right or provision provided for in this Agreement shall not be deemed a continuing waiver of any such right or provision.

**23.0 GOVERNING LAW**

This Agreement shall be construed under and in accordance with the laws of the State of Ohio and venue for any dispute will be in the appropriate court in Franklin County, Ohio.

**24.0 GRANTEE'S PROHIBITIONS REGARDING DANGEROUS ORDNANCES**

The GRANTEE and its agents are prohibited from possessing or having under their control, a "deadly" weapon or "dangerous ordnance" (each as defined in Ohio Revised Code Section 2923.11), while conducting business related to this SUBSIDY or while conducting business in or on state-owned or leased property.

The GRANTEE and its agents shall not carry or store a weapon or dangerous ordnance in a building or portion of a building owned or leased by the **BEMC**. This includes but is not limited to state-owned or leased vehicles, state-owned and/or controlled parking facilities, garages or surface lots. Prohibited items shall not be stored in personal vehicles parked on state-owned and/or leased property.



The GRANTEE or the GRANTEE'S agent who has been issued a Permit to carry a concealed weapon in the State of Ohio is not exempt from the above provisions. Those who carry or possess a weapon MUST store said weapon, in accordance with the law, prior to entering such areas in which a weapon is prohibited.

**25.0 SEVERABILITY**

The provisions of this Agreement are severable and independent, and if any such provision of this Agreement shall be determined to be invalid, illegal, or unenforceable, in any respect, said provision shall be severed. The remaining provisions and any partially enforceable provisions shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

**26.0 HEADINGS**

The headings herein are for reference only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, interpretation, or effect of any of the provisions of this Agreement.



27.0 AGREEMENT

By signing below, I and anyone that I am representing have a clear understanding of the purpose and content of this Agreement. I understand that I am taking full responsibility as myself and the entity I represent to adhere to this Agreement and all parties involved understand that the foregoing appropriation item 935410 shall be used solely to support the operations of GRANTEE and agree to this as the formal Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the last day and year set aside their respective signatures.

GRANTEE (Station): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

\_\_\_\_\_  
General Manager Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Please Print Full Name]

\_\_\_\_\_  
Project Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Please Print Full Name]

BEMC

\_\_\_\_\_  
Richard May  
Executive Director

\_\_\_\_\_  
Date