SAMPLE

Subgrant Agreement

**RECITALS:**

This Subgrant Agreement is entered into between the [DESE Grantee] (hereinafter referred to as “Grantor”) and the [insert Subgrantee name] (hereinafter referred to as “Subgrantee”).

This Subgrant Agreement is made pursuant to a grant award to the Pass through Agency, the Department of Elementary and Secondary Education ((hereinafter referred to as “DESE”).). The grant award is under the authority of Federal CFDA 84.425 - [American Rescue Plan – Elementary & Secondary Education Emergency Relief (ARP-ESSER)](https://www.doe.mass.edu/grants/federal/2022/7060-1000.pdf)

# DEFINITIONS:

As used in this document, the words and phrases set forth below shall have the following meanings:

1. “Grantor” means the [insert DESE Grantee name] [insert agency type, e.g., Non- Profit, State, LEA, College.].
2. “Subgrantee” means the [insert Subgrantee name].
3. “Financial assistance” means all cash, reimbursements, other payments, or allocations of funds provided by Grantor to Subgrantee. All requirements in this Agreement related to financial assistance also apply to any monies, including private monies and public money.
4. “Federal, state and local laws” include all state and federal statutes and regulations, appropriations by the Commonwealth of Massachusetts, the federal Office of Management and Budget (OMB) Uniform Grant Guidance 2 CFR 200 and DESE Grants Procedure Manuals. The term "federal, state and local laws" includes all federal, state and local laws as listed in this paragraph and existing on the effective date of this Agreement as well as those federal, state and local laws that are enacted, adopted, issued, effective, amended, repealed, or rescinded on or after the effective date of this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED IN THIS SUBGRANT AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

# ARTICLE I. PURPOSE OF THE SUBGRANT/SUBGRANT DUTIES

The purpose of the Subgrant and this Subgrant Agreement is to establish the terms, conditions, and requirements governing the administration and use of the financial assistance received by or used by Subgrantee pursuant to this Subgrant Agreement.

# ARTICLE II. RESPONSIBILITIES OF GRANTOR

Grantor agrees to:

1. Provide funding to Subgrantee in accordance with this Subgrant Agreement and Federal, state and local laws.
2. Monitor Subgrantee to ensure the Subgrant is used in accordance with all applicable conditions, requirements, and restrictions.
3. Provide information on current and any subsequent changes to the terms and conditions of the grant awards addressed by the funding in this agreement.
4. Provide technical assistance and training as requested to assist Subgrantee in fulfilling its obligations under this agreement.
5. Take action to recover funds that are not used in accordance with the conditions, requirements, or restrictions applicable to funds awarded.

# ARTICLE III. RESPONSIBILITIES OF SUBGRANTEE

Subgrantee agrees to:

1. Ensure the funds subject to this Subgrant Agreement are used in accordance with conditions, requirements and restrictions of federal, state and local laws, as well as the terms and conditions of the grant award.
2. See Assurances in RFP posting for financial reporting requirements necessary for the subgrantee to meet its operational needs and obligations to the Grantor and DESE
3. Promptly reimburse Grantor for any funds Grantor pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty for which Grantor is responsible.
4. Take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if Grantor, DESE, the Massachusetts State Auditor, any state agency, or other entity authorized by federal, state or local law to determine compliance with the conditions, requirements, and restrictions applicable to the federal program from which this Subgrant is awarded determines compliance has not been achieved.
5. Make records available to Grantor, DESE, the Auditor of the State, state agencies, and other authorized governmental agencies for review, audit and investigation.
6. Subgrantees are required to report to the Grantor on the use of Grant funds as prescribed in provided in a Grant Application or Grant terms.
7. The subgrantee must maintain a Grant or Subsidy file with complete records of expenditures or how the funds were disbursed in accordance with the Grant or Subsidy. Grant files should include any Grant Applications, or other disbursement documents, grantee documents and reporting back to the Grantor. The Grantee shall maintain records, books, files and other data as specified in a Grant and in such detail as shall properly substantiate claims for payment under a Grant, for a minimum retention period of seven years beginning on the first day after the final payment under a Grant, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Grant. The Department of Elementary and Secondary Education shall have access, as well as any parties identified in line E, during the Grantee's regular business hours and upon reasonable prior notice, to such records, including on-site reviews.

# ARTICLE IV. EFFECTIVE DATE OF THE SUBGRANT

1. This Subgrant Agreement will be in effect from [insert commencement date of agreement] through [insert termination date of agreement] unless this Subgrant Agreement is suspended or terminated pursuant to ARTICLE VII prior to the above termination date.
2. In addition to Section A above, it is expressly understood by both Grantor and Subgrantee that this Subgrant Agreement will not be valid and enforceable until both parties sign the document.

# ARTICLE V. AMOUNT OF GRANT/PAYMENTS

1. This grant is in the total amount of [insert subgrant amount] dollars ($ .00).
2. Payment will be made to Subgrantee on a cost-reimbursement basis. The total estimated cost shall be in accordance with the budget attached (Part II – budget template in RFP posting) nd shall not exceed the amount provided in Article V-A, above. Subgrantee may bill Grantor monthly for reimbursement of disbursements for actual costs incurred in the performance of this Subgrant Agreement. Invoices shall be numbered, dated, reference this Subgrant Agreement, show the cost incurred by budget category (i.e., salaries, fringe benefits, equipment, travel, supplies, etc.) for the billing period and in cumulative amount to date. All invoices must be submitted to [insert address].

Grantor will make payment on all invoices submitted in accordance with the terms of this Subgrant Agreement. The final invoice clearly marked “Final,” must be submitted within XX days of the expiration date of this Subgrant Agreement. The final invoice shall include certification to the effect that “Payment of this invoice constitutes complete satisfaction of all of Grantor’s obligations under the reference Subgrant Agreement. Subgrantee releases and discharges Grantor from all further claims and obligations under this Subgrant Agreement upon payment of this final invoice.”

1. Subgrantee understands that availability of funds is contingent on appropriations made by the Commonwealth of Massachusetts General Assembly and DESE. If, at anytime, the Grantor Director determines that federal, state or local funds are insufficient to sustain existing or anticipated spending levels, the Grantor Director may reduce, suspend, or terminate any cash, reimbursements, other payments, or allocations of funds provided by Grantor to Subgrantee, or other form of financial assistance as the Grantor Director determines appropriate. If the Commonwealth of Massachusetts General Assembly, or DESE, fails at any time to continue funding Grantor for the payments due under this Subgrant Agreement, this Subgrant Agreement will be terminated as of the date funding expires without further obligation of Grantor or DESE.
2. As a subrecipient of federal funds, SUBGRANTEE hereby specifically acknowledges its obligations relative to the funds provided under this Subgrant Agreement pursuant to Uniform Grant Guidance 2 CFR 200, as applicable under federal, state and local laws, as applicable to Subgrantee under federal, state and local laws, including, but not limited to:
	1. Standards for financial management systems: SUBGRANTEE and its subgrantee(s) will comply with the requirements of Uniform Grant Guidance 2 CFR Part 200, including, but not limited to:
		1. Fiscal and accounting procedures;
		2. Accounting records;
		3. Internal control over cash, real and personal property, and other assets;
		4. Budgetary control to compare actual expenditures or outlays to budgeted amounts;
		5. Source documentation; and
		6. Cash management.
	2. Period of Availability of Funds: Pursuant to 34 CFR 76.708 , as applicable, SUBGRANTEE and its subgrantee(s) may charge to the award only costs resulting from obligations incurred during the funding period of the federal and state awards noted in the Recitals to this Subgrant Agreement and for the term specified in Article IV of this Subgrant Agreement, unless carryover of these balances is permitted. All obligations incurred under the award must be liquidated no later than ninety (60) days after the end of the funding period, pursuant to federal and state law.
	3. Program Income: Program income must be used and accounted for as specified in 2 CFR 200.307

# ARTICLE VI. RECORDS

1. Subgrantee must maintain documentation conforming to all requirements prescribed by DESE or by federal, state and local laws. Subgrantee must prepare and maintain documentation to support all transactions and to permit the reconstruction of all transactions and the proper completion of all reports required by federal, state and local laws, and which substantiates compliance with all applicable federal, state and local laws.
2. Records must include sufficient detail to disclose:
	1. Services provided to program participants;
	2. Administrative cost of services provided to program participants;
	3. Charges made and payments received for items identified in paragraphs (B) (1) and (2) of this Article; and
	4. Cost of operating the organizations, agencies, programs, activities, and functions.
3. Subgrantee and its subgrantee(s) must maintain all records relevant to the administration of this subgrant for a period of seven years.

# ARTICLE VII. AUDITS OF SUBGRANTEE

1. Subgrantee must ensure that it has an audit.
2. Subgrantee will take prompt action to correct problems identified in an audit.

# ARTICLE VIII. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

1. This Subgrant Agreement may be terminated in accordance with any of the following:
	1. The parties may mutually agree to a termination by entering into a written termination agreement that is signed by the Grantor’s Director and an authorized officer or employee of Subgrantee. An agreement to terminate is effective on the later of the date stated in the agreement to terminate or the date it is signed by all parties.
	2. Either party may terminate after giving ninety (90) days written notice of termination to the other party by registered United States mail, return receipt requested. The effective date is the later of the termination date specified in the termination notice or the 91st day following the receipt of the notice by the other party.
	3. Grantor may immediately terminate this Subgrant Agreement if there is a loss of federal or state funds, a disapproval of the Subgrant Agreement by DESE, or illegal conduct by Grantee affecting the operation of the Subgrant Agreement.
2. Notwithstanding the provisions of ARTICLE VII, Section A, DESE or the Grantor may suspend or terminate this Subgrant Agreement immediately upon delivery of a written notice to Subgrantee, if Grantor loses funding or discovers any illegal conduct on the part of Subgrantee.
3. If Subgrantee materially fails to comply with any term of an award, a federal, state and local laws, an assurance, a State plan or application, a notice of award, this Subgrant Agreement, or any other applicable rule, DESE or the Grantor may take any or all of the following actions it deems appropriate in the circumstances:
	1. Temporarily withhold cash payments pending correction of the deficiency by the Subgrantee or its subgrantee(s) or more severe enforcement action;
	2. Disallow all or part of the cost of the Subgrant activity or action not in compliance;
	3. Wholly or partly suspend or terminate the current award for the Subgrantee or its subgrantee(s)’ Subgrant activity;
	4. Withhold further awards for the Subgrant activity; or
	5. Take any other remedies that may be legally available, including any additional remedies listed elsewhere in this Subgrant Agreement.
4. Subgrantee, upon receipt of a notice of suspension or termination, will do all of the following:
	1. Cease the performance of the suspended or terminated Subgrant activities under this Subgrant Agreement;
	2. Take all necessary steps to limit disbursements and minimize costs that include, but are not limited to, the suspension or termination of all grants and subgrants correlated to the suspended or terminated Subgrant activities;
	3. Prepare and furnish a report to Grantor, as of the date Subgrantee received the notice of termination or suspension, that describes the status of all Subgrant activities and includes details of all Subgrant activities performed and the results of those activities; and
	4. Perform any other tasks that Grantor requires.
5. Upon breach or default by Subgrantee of any of the provisions, obligations, or duties embodied in this Subgrant Agreement, DESE or Grantor will retain the right to exercise any administrative, grantual, equitable, or legal remedies available, without limitation. A waiver by Grantor of any occurrence of breach or default is not a waiver of subsequent occurrences. If Grantor or Grantee fails to perform any obligation under this Subgrant Agreement and the failure is subsequently waived by the other party, the waiver will be limited to that particular occurrence of a failure and will not be deemed to waive failures that may subsequently occur.

# ARTICLE IX. NOTICES

1. Notices to Grantor from Subgrantee that concern termination, suspension, breach, default, or other formal notices regarding this Subgrant Agreement will be sent to the Director of Grantor at [insert address]. Notices to Grantor from Subgrantee that concern this award will be sent to the Director of Grantor at [insert address].
2. Notices to the Subgrantee from Grantor concerning any and all matters regarding this Subgrant Agreement will be sent to [insert address].
3. All notices in accordance with section A of this Article VIII will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (*e.g.*, certified mail).

# ARTICLE X. AMENDMENT

This document constitutes the entire agreement between Grantor and Subgrantee with respect to all matters herein. Except as provided in Article X, below, only a document signed by both parties may amend this Subgrant Agreement. Both Grantor and Subgrantee agree that any amendments to laws or regulations cited herein will result in the correlative modification of this Subgrant Agreement without the necessity for executing written amendments. Any written amendment to this Subgrant Agreement will be prospective in nature.

# ARTICLE XI. ADDENDUM

Grantor may elect to provide information concerning this Subgrant Agreement in an addendum hereto. Any addenda to this Subgrant Agreement will not need to be signed. Any claim on or draw of monies following the receipt of the addendum will constitute acceptance of the terms and conditions contained in the addendum. Subsequently, Grantor may modify any addendum by mailing a modified version to Subgrantee. Any claim on or draw of the modified addendum will constitute acceptance of the terms and conditions contained in the modified addendum.

# ARTICLE XII. SUBGRANTS

1. Subgrantee must perform all duties contemplated by this Subgrant Agreement. None of Subgrantee’s duties or actions pursuant to this Subgrant Agreement may be subgranted, nor shall this Subgrant Agreement be assigned, or any subawards made by Subgrantee, without the prior express written authorization of DESE.

# ARTICLE XIII. MISCELLANEOUS PROVISIONS

1. **Limitation of Liability**: To the extent permitted by law, Grantor agrees to be responsible for any liability directly relating to any and all acts of negligence by Grantor. To the extent permitted by law, Subgrantee agrees to be responsible for any liability directly related to any and all acts of negligence by Subgrantee. In no event shall either party be liable for any indirect or consequential damages, even if Grantor or Subgrantee knew or should have known of the possibility of such damages.
2. This Subgrant Agreement will be governed, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts. Should any portion of this Subgrant Agreement be found unenforceable by operation of statute or by administrative or judicial decision, the remaining portions of this Subgrant Agreement will not be affected as long as the absence of the illegal or unenforceable provision does not render the performance of the remainder of the Subgrant Agreement impossible.
3. Nothing in this Subgrant Agreement is to be construed as providing an obligation for any amount or level of funding, resources, or other commitment by Grantor to Subgrantee that is not specifically set forth in state and federal law. Nothing in this Subgrant Agreement is to be construed as providing a cause of action in any state or federal court or in an administrative forum against the Commonwealth of Massachusetts, DESE, Grantor, or any of the officers or employees of the Commonwealth of Massachusetts, DESE or Grantor.