

Terms and Conditions

Charitable Donation

1. Subject to the terms and conditions of this Agreement, and upon validating the Receiving Party's Project needs, Cummins will purchase and deliver to the Receiving Party the material, equipment, and products identified on Exhibit A hereto ("Products"), free and clear of any liens, claims, or encumbrances. Cummins grants the Receiving Party irrevocable ownership, rights, title, and interest in the Products, subject to Section 3, upon the terms and conditions set forth in this Agreement and without monetary payment to Cummins. The Products will be shipped and delivered to the Receiving Party's location, as provided to Cummins by the Receiving Party ("Delivery Point"), using Cummins' standard methods for packaging and shipping such Products. Title and risk of loss transfer to the Receiving Party upon delivery by Cummins to the Delivery Point. Cummins shall not be liable for any delays, loss, or damage in transit. The Receiving Party is responsible for all costs, loss, damage, and risks associated with transporting the Products from the Delivery Point.
2. Following the donation and transfer of ownership of the Products, and any related equipment and tools, by Cummins Inc. to the Receiving Party, Cummins shall have no further responsibility or liability with respect to the Products, and any such related equipment and tools. The Receiving Party shall take full responsibility for the Products, and any related equipment and tools, including any risks or liabilities associated with their use, operation, or condition after delivery to the Delivery Point.
3. The Products may contain information or material that is treated as confidential by Cummins, including but not limited to information or material related to Cummins' business operations, pricing, marketing, strategies, trade secrets, or technology ("Confidential Material"). Nothing herein will be construed as the transfer of Confidential Material to the Receiving Party and the Receiving Party shall not disclose any such Confidential Material to any third party. The entire right, title, and interest in any such Confidential Material will remain with Cummins. The Products may contain the intellectual property of Cummins or third parties ("Proprietary Material"). Nothing herein will be construed as the transfer of Proprietary Material to the Receiving Party. The Receiving Party shall not remove any copyright notices or other legends from any such Proprietary Material or any accompanying documentation. Except as may arise by operation of law, the donation of the Products does not convey to the Receiving Party either expressly, by implication, or by way of estoppel, any intellectual property rights of Cummins, including but not limited to any rights under any patent, trademark, copyright, or trade secret. Neither the donation of the Products nor any provision of this Agreement will be construed to grant the Receiving Party, either expressly, by implication, or by way of estoppel, any license under any patent or other intellectual property rights of Cummins covering or relating to any other product or invention or any combination of the Products with any other product.
4. Subject to the terms and conditions of this Agreement, Cummins, in Cummins' sole discretion, may provide the Receiving Party with any of the following support from time to time, without any continuing obligation:
 - o Instruction by a qualified instructor with the technical training needed to effectively deliver Education for Employment ("EfE") curriculum, such as technical train-the-trainer modules, safety, operating procedures, and security awareness and promotion training
 - o Access to Cummins Quick Serve online.
5. [Subject to the terms and conditions of this Agreement, Cummins will also provide the Receiving Party [amount] dollars (amount above)] to be paid by Cummins in one lump sum via check or wire (instructions to be provided by the Receiving Party) to the Receiving Party ("Additional Support") as soon as practicable after receipt by Cummins of a duly executed copy of this Agreement.]
6. The Receiving Party shall use the Contribution solely for the Project and consistent with the terms of this Agreement. Any changes in the purposes for which the Contribution is used must be approved in writing by Cummins before the Contribution is so used by the Receiving Party for such changed purposes.
7. The Receiving Party must only use and expend the Contribution for charitable, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Receiving Party shall not use any portion of the Contribution to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with Section 501(c)(3) of the Code. The Receiving Party shall not use any portion of the Contribution in furtherance of religious programs or sectarian programs for religious purposes, or to violate any law.
8. For a period of three calendar years after the Effective Date, the Receiving Party shall provide a report to Cummins on the Project on or before each successive one-year anniversary of the Effective Date. This report shall be in a form reasonably acceptable to Cummins, shall be signed by an officer, director, or trustee of the Receiving Party with the authority to make such certification, and shall include at a minimum detail on expenditures and use of the Contribution, a description of the Receiving Party's activities related to the Project, learning outcomes attained from the use of the Products; the number of students who participated in and, as applicable, graduated from the Project; the number of students who received any recognized certification (ex: ASE certification) as a result of participation in the Project, and the number of students who obtained jobs or continued with further education related to the Project.
9. The Receiving Party hereby represents and warrants to, and covenants with, Cummins, with the knowledge that Cummins is relying upon the same in contributing the Contribution to the Receiving Party, the following:
 - a. The signatory executing this Agreement on behalf of the Receiving Party is authorized by the Receiving Party to submit this Agreement;
 - b. The Receiving Party is a non-profit corporation currently qualified as a Section 501(c)(3) tax-exempt organization under Section 509(a) of the Code with valid corporate existence and good standing under the laws of its state of incorporation, a state or local government instrumentality, or a state or local government political subdivision or agency. The Receiving Party is in compliance with all applicable laws, including but not limited to those relating to charitable solicitation and acknowledgement of charitable contributions. The IRS has neither revoked the Receiving Party's tax-exempt status, nor has it made any inquiry of the Receiving Party as to such status;[2]
 - c. The Receiving Party will notify Cummins immediately if the conditions of Section 9(b) above are no longer true, or in the event the IRS makes an inquiry as to the Receiving Party's tax-exempt status;
 - d. Upon a reasonable request by Cummins, the Receiving Party shall make all books, ledgers, accounts, files, computer records, and personnel involved in performing functions under this Agreement available to Cummins or its designated representatives, auditors, or legal counsel to determine compliance with the terms of this Agreement and applicable law. The Receiving Party shall further accommodate Cummins in any other oversight deemed reasonably necessary by Cummins, including but not limited to site visits and shall maintain records of expenditures and use of the Contribution for a minimum time period of five (5) years from the final expenditure of the Contribution or such longer period required by the Receiving Party's records retention policy;
 - e. The Receiving Party does not and shall not discriminate based on race, gender, color, disability, national origin, age, religion, union affiliation, sexual orientation, veteran status, citizenship, gender identity and/or expression, or other status protected by law; programs and projects using the Contribution will also follow these non-discrimination guidelines both in terms of serving clients and using volunteers; and
 - f. Subject to any applicable legal limitations, the Receiving Party is actively committed to maintaining a workforce that is diverse and equitable in terms of gender, race, ethnicity, LGBTQ status, and disability status.
10. In addition, as a condition of accepting the Contribution, the Receiving Party agrees that, While the Receiving Party uses, possesses, or retains any part of the Contribution, the Receiving Party will:
 - a. Ensure there is a safe learning environment for students;
 - b. Identify and select qualified students to participate in EfE;
 - c. Promote opportunities for underrepresented groups, such as females and minorities;
 - d. Require all Project participants, including, but not limited to students (and, if under age, their parent or guardian) and the Receiving Party's personnel, to complete the waiver, release, and indemnification agreement attached hereto as Exhibit B ("Waiver, Release, and Indemnification Agreement") as condition of participation in the Project. The Receiving Party shall maintain completed Waiver, Release, and Indemnification Agreements for each participant for a period of at least seven (7) years;
 - e. Provide appropriate classroom and instructional lab space; and
 - f. Provide appropriate curriculum and instructional resources.
11. Further, as a condition of accepting the Contribution, the Receiving Party agrees as follows:
 - a. The Receiving Party shall not sell, transfer, barter, or trade the Products to any person that is not a non-profit corporation currently qualified as a Section 501(c)(3) tax-exempt organization under Section 509(a) of the Code with valid corporate existence and good standing under the laws of its state of incorporation, a state or local government instrumentality, or a state or local government political subdivision or agency; provided, however, that the Receiving Party may dispose of the Products in compliance with applicable law at the end of the Products' service life, as reasonably determined by the Receiving Party;
 - b. The Receiving Party shall not export the Products or otherwise introduce the Products into international trade;
 - c. [The Additional Support is to be expended within [three (3) years] of receipt unless otherwise approved in writing by Cummins;][3] and

d. Cummins has no obligation under this Agreement to make future contributions or donations to the Receiving Party and may discontinue participation in the Project or further support of the Project in Cummins' sole discretion.

12. The Receiving Party acknowledges that Cummins has not earmarked the use of the Contribution for any other organization or individual, and that Cummins will not direct or control the selection of any subgrantee or subcontractor or the use of the Contribution by any subgrantee or subcontractor.
13. The Parties may make public announcements and communicate with news media regarding this Agreement and the Contribution with the prior consent of and notice to the other Party, and the Parties shall cooperate as to the timing and contents of any such announcement.
14. Cummins participates in school programs like the Project to help students and the communities where Cummins operates. From time to time during the Project, Cummins and/or the Receiving Party may engage in activities that involve photographing or recording the experiences or testimonials of students, teachers or other administrators involved in the Project and how the Project has impacted their school or benefitted the students. A consent form is attached hereto as Exhibit C ("Consent Form"). The Receiving Party shall cause the Consent Form to be completed by each student (and, if under age, their parent or guardian) and the Receiving Party's personnel participating in the Project prior to any photographing or collecting experiences or testimonials by either Cummins or the Receiving Party. The Receiving Party shall maintain completed Consent Forms for each participant for a period of at least seven (7) years. Cummins confirms that the photos and any surrounding recordings or testimonials associated with them will only be used as described in the Consent Form.

Warranty Disclaimer

15. THE PRODUCTS ARE DONATED "AS IS" WITH ALL FAULTS. CUMMINS MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY OF CONDITION, QUALITY, OR SUITABILITY, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

Indemnification

16. The Receiving Party shall indemnify and defend Cummins and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party, arising out of or related to any third-party claim alleging:

- a. breach or non-fulfillment of any provision of this Agreement by the Receiving Party or the Receiving Party's officers, directors, affiliates, employees, independent contractors, volunteers, or agents ("Personnel");
- b. any negligent or more culpable act or omission of the Receiving Party or its Personnel (including any reckless or willful misconduct) in connection with the Products;
- c. any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of the Receiving Party or its Personnel (including any reckless or willful misconduct); or
- d. any failure by the Receiving Party or its Personnel to comply with any applicable federal, state, or local laws, regulations, or codes.

Waiver and Release

17. The Receiving Party itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Cummins and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, successors, and permitted assigns of and from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations, damages, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity arising out of or in connection with this Agreement or the Products whether arising out of the negligence of Cummins or the Receiving Party or otherwise, except for any claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement and any liabilities that cannot be released or waived under federal, state, or local law.

Limitation of Liability

18. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE PRODUCTS, THE DONATION OF THE PRODUCTS, OR ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Miscellaneous

19. Each Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.
20. Beyond the rights and obligations specifically stated herein, Cummins disclaims any legal right to control or otherwise influence the Receiving Party's use of the Contribution provided pursuant to this Agreement. It is expressly understood that by making this Contribution, Cummins has no obligation to provide additional funding, additional products, or continued support to The Receiving Party.
21. FERPA COMPLIANCE AND DE-IDENTIFIED / AGGREGATED INFORMATION. The Receiving Party and Cummins commit to comply with the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. §1232g; 34 CFR Part 99), as well as applicable state laws relating to student privacy and parental rights. Cummins also confirms that to the extent that it engages any third-party partners in relation to this Project, those partners will also be required to confirm that they will also uphold the FERPA and any applicable state law obligations in relation to their assistance and access to any information or materials entrusted to them. Cummins and any third-party partners also confirm that they will not attempt to re-identify any de-identified or aggregated student information derived from the Project. The Receiving Party and Cummins confirm that no identifiable student data (personally identifiable information) will be collected, processed or stored by Cummins or any Cummins partners who assist with the Project on Cummins' behalf, in connection with the program. Any incidental identifiable data that may be obtained indirectly, such as: the use of visitor badges for students who participate in field trips to Cummins' locations, will not be combined with any of the Project materials entrusted to or maintained by Cummins or its partners. To the extent that any future employers of the Project participants receive personally identifiable information in connection with recruitment and hiring of those participants, such information collected by such employers will not be combined with the Project materials. Upon reasonable request by Cummins, the Receiving Party shall provide Cummins statistical/aggregated (i.e., anonymized/de-identified) information about the placement of Project participants in order to measure the effectiveness of the Project and identify areas of improvement.
22. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without regard to any conflict of laws rules or principles.
23. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

24. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

25. This Agreement shall supersede any prior oral or written understandings or communications between the Parties and constitutes with entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in writing signed by both Parties hereto.

26. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery, the day delivered by email (with confirmation of transmission), or upon the expiration of the second day after the date of deposit in the United States mail as registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties current address if notice of such change of address has been given pursuant to this Section.

Strategic Executive Leader Signature

Danette Howard

I am the official representative authorized to sign on behalf of the organization in this agreement.*

True

This Agreement shall become effective on the date it is signed by the authorized representative of the eligible organization.

First and last name of authorized signer*

William Kovach

Email of authorized signer:*

wkovach@central9.k12.in.us

Phone number of authorized signor*

3178884401

Exhibit B

This document is provided solely for reference purposes in connection with the agreement. Official PDF copies of Exhibit B will be provided to the organization separately.