

**CONTRACT #8**  
**RFS # 317.01-01005**  
**FA # 10-31217**

**Finance & Administration**

**VENDOR:**  
**Education First Consulting,**  
**LLC**



**STATE OF TENNESSEE**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**OFFICE FOR INFORMATION RESOURCES**  
**312 EIGHTH AVENUE NORTH**  
**SUITE 1600, TENNESSEE TOWER**  
**NASHVILLE, TENNESSEE 37243-0288**  
**(615) 741-3700**  
**FAX (615) 532-0471**

**RECEIVED**

SEP 02 2010

**FISCAL REVIEW**

September 1, 2010

Mr. James W. White  
Executive Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN

Dear Mr. White:

Please find attached, for the Fiscal Review Committee's consideration, documentation of a Non-Competitive Amendment request pertaining to the State's contract with Education First Consulting LLC for facilitation services of the Teacher Evaluation Advisory Committee (TEAC) created under the Tennessee First to the Top Act of 2010. The Department of Finance and Administration respectfully requests to be placed on the agenda to present this request at the next Fiscal Review Committee meeting.

The purpose of the amendment is to increase the maximum liability on the contract from 1,000 hours to 3,390 as the cutting edge work on the contract has required more hours than initially anticipated. Tennessee is among the first several states to be undertaking an effort to create a multiple measure evaluation system based in part on student achievement measures. As such, there is little precedence for the work, and the project has required much more preparation, coordination of research, and project management than originally anticipated. At the same time, the Tennessee Department of Education and Governor's Office of State Planning and Policy staff have been engaged in full time implementation of the Race to the Top grant requiring more external assistance than anticipated.

The original estimate for hours on the contract was created based upon an assumption of 8 hours of preparation time for facilitation of each meeting of TEAC. In practice, each meeting of TEAC has taken at least four times that amount of preparation and meetings take place bi-weekly. In addition, the original estimate contemplated the successful contractor would also engage in overall project management or coordination at around 8 hours per week. In practice, this project management and coordination has taken at least three times as many hours. Staffs from both the Department of Education and the Governor's Office of State Planning and Policy have been otherwise engaged on Race to the Top, and therefore the State has not been able to distribute the additional work across these internal resources. The request for increase in the maximum liability of the contract reflects these realities in moving to about 3.4 times the current liability.

September 1, 2010

Thank you for your consideration of this request. We look forward to appearing before the Committee at its next scheduled meeting.

Sincerely,

A handwritten signature in black ink, appearing to be "EO", written in a cursive style.

Erin O'Hara

Director, Governor's Office of State Planning and Policy



STATE OF TENNESSEE  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
312 EIGHTH AVENUE NORTH  
SUITE 2100 TENNESSEE TOWER  
NASHVILLE, TENNESSEE 37243  
(615) 741-0300  
FAX (615) 532-8532

DAVE GOETZ  
COMMISSIONER

MIKE MORROW  
DEPUTY COMMISSIONER  
FOR OPERATIONS

**MEMORANDUM**

**TO:** Robert Barlow  
**FROM:** Mike Morrow  
**SUBJECT:** Waiver of 60-Day Lead-Time for a Non-Competitive Amendment  
**DATE:** August 12, 2010

Chaptered Act No. 2 of 2010 requires an ambitious timeline for the newly created committee on teacher and principal evaluation of which the first target is an August 2010 first reading of the proposed new evaluation tool. It is necessary to have a pilot of the evaluation tool in place for the Spring 2011 school year.

The State was able to procure the services of Education First Consulting, LLC through a competitive process to facilitate the teacher and principal evaluation work. The contractor's responsibilities include facilitation of the evaluation committee, assistance planning each committee meeting and preparing summary materials and research briefings for it. The contract started April 19, 2010.

In order to meet the ambitious goals of the Tennessee First to the Top Act, the work has exceeded the estimated number of hours for meeting and planning that were included in the original contract. As of the invoice for July 2010 work, 830 of the 1,000 billable hours meant to last from April 2010 to June 2011 have been spent, leaving a possibility the contract will run out of money in August or September.

Therefore, F&A requests a waiver of the normal 60-day lead-time for processing the Contract Amendment Request.

**Supplemental Documentation Required for  
Fiscal Review Committee**

|  |  |                                    |               |
|--|--|------------------------------------|---------------|
| *Contact Name:   | Tim Roberto  | *Contact Phone:                    | 615-253-8853  |
| *Original Contract Number:   | FA1031217  | *Original RFS Number:              | 31701-01005   |
| Edison Contract Number: (if applicable)  | 20061  | Edison RFS Number: (if applicable) |               |
| *Original Contract Begin Date:   | April 19, 2010   | *Current End Date:                 | June 30, 2011 |
| Current Request Amendment Number: (if applicable)  | 1  |                                    |               |
| Proposed Amendment Effective Date: (if applicable)   | September, 15, 2010  |                                    |               |
| *Department Submitting:  | Finance & Administration   |                                    |               |
| *Division:   | Planning and Policy  |                                    |               |
| *Date Submitted:   | September 3, 2010  |                                    |               |
| *Submitted Within Sixty (60) days:   | No   |                                    |               |
| <i>If not, explain:</i>  | Work on contract will exceed the maximum liability of the contract within 60 days  |                                    |               |
| *Contract Vendor Name:   | Education First Consulting, LLC  |                                    |               |
| *Current Maximum Liability:  | 221,180.00   |                                    |               |
| <b>*Current Contract Allocation by Fiscal Year:<br/>(as Shown on Most Current Fully Executed Contract Summary Sheet)</b>                       |  |                                    |               |
| FY: 2010   | FY:2011  | FY:                                | FY:           |
| \$73,727   | \$147,453  | \$                                 | \$            |
| <b>*Current Total Expenditures by Fiscal Year of Contract:<br/>(attach backup documentation from STARS or FDAS report)</b>                     |  |                                    |               |
| FY:  | FY:  | FY:                                | FY:           |
| \$135,068  | \$   | \$                                 | \$            |
| <b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | N/A  |                                    |               |
| <b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:          | N/A  |                                    |               |
| <b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: | The maximum contract liability has NOT been overspent. In order to meet the ambitious goals of the Tennessee First to the Top Act, more meetings were required |                                    |               |

**Supplemental Documentation Required for  
Fiscal Review Committee**

|  |        |           |  |     |
|--|--------|-----------|--|-----|
|  |        |           | than anticipated and more assistance was required from the contractor in planning for the meetings as the content of the meetings is very complex. The added meeting and meeting-preparation time has led to faster draw down on the contract. |     |
| *Contract Funding Source/Amount:   | State: | \$221,180 | Federal:   | \$0 |
| Interdepartmental:   |        |           | Other:   |     |
| If "other" please define:  |        |           |  |     |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>                                      |        |           | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>   |     |
| None   |        |           |  |     |
|  |        |           |  |     |
| Method of Original Award: <i>(if applicable)</i>   |        |           | Competitive  |     |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? |        |           | \$249,999  |     |

Supplemental Documentation Required for  
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.**

| Deliverable description:                               | FY: 2010  | FY: 2011  | FY: | FY: | FY: |
|--|-----------|-----------|-----|-----|-----|
| Consulting Services – evaluation committee facilitator | \$135,068 | \$614,733 |     |     |     |
|  |           |           |     |     |     |
|  |           |           |     |     |     |

**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

Deliverable description:

There are no savings in the amendment. However, the added expense is necessary to complete the ambitious goals of the Tennessee First to the Top Act of 2010. To continue the progress of the Teacher Evaluation Advisory Committee, it is important to continue with the same contractor meeting facilitator that has experience with the committee and knowledge of committee progress.

**Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.**

| Proposed Vendor Cost: (name of vendor) | FY: | FY: | FY: | FY: | FY: |
|--|-----|-----|-----|-----|-----|
|  |     |     |     |     |     |

The experience of the contractor with the Teacher Evaluation Advisory Committee is unique and it would not be feasible to obtain these services from a different source.

|           |            |                                |            |       |          |            |          |                   |        |
|-----------|------------|--------------------------------|------------|-------|----------|------------|----------|-------------------|--------|
| 000008887 | 0000124447 | Education First Consulting LLC | 3172300001 | 11000 | 70803000 | 0000015969 | 00024220 | 51,534.95         | Posted |
| 000009500 | 0000124447 | Education First Consulting LLC | 3172300001 | 11000 | 70803000 | 0000017066 | 00025745 | 71,551.75         | Posted |
| 000009503 | 0000124447 | Education First Consulting LLC | 3172300001 | 11000 | 70803000 | 0000017063 | 00025743 | 11,981.22         | Posted |
|           |            |                                |            |       |          |            |          | <u>135,067.92</u> |        |

**NON-COMPETITIVE AMENDMENT REQUEST:**

APPROVED

Commissioner of Finance &amp; Administration

|  |   |  |
|--|---|--|
| 1) RFS #   | 31701-01005   |  |
| 2) Procuring Agency :  | Finance & Administration  |  |
| <b>EXISTING CONTRACT INFORMATION</b>   |   |  |
| 3) Service Caption :   | First to the Top Teacher Evaluation Consultant  |  |
| 4) Contractor :  | Education First, LLC  |  |
| 5) Contract #  | FA-10-31217   |  |
| 6) Contract Start Date :   | April 19, 2010  |  |
| 7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)   | June 30, 2011   |  |
| 8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)  | \$ 221,180  |  |
| <b>PROPOSED AMENDMENT INFORMATION</b>  |   |  |
| 9) Amendment #   | 1   |  |
| 10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)  | Sept. 15, 2010  |  |
| 11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)   | June 30, 2011   |  |
| 12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)  | \$ 749,801.00   |  |
| 13) Approval Criteria :<br>(select one)  | <input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state |  |
|  | <input type="checkbox"/> only one uniquely qualified service provider able to provide the service           |  |
| 14) Description of the Proposed Amendment Effects & Any Additional Service :   |   |  |
| Increase billable hours from 1,000 to 3,390 to allow for more frequent planning meetings in preparation for Teacher Evaluation Advisory Committee meetings and to specifically increase hours for the development of academic growth measures comparable to Tennessee Value-Added and other measures of student achievement in non-tested subjects per the original contract.  |   |  |
| 15) Explanation of Need for the Proposed Amendment :   |   |  |
| Tennessee is one of the first states to revamp their evaluation system to include multiple measures including student achievement and lacked the benefit of a body of work to draw upon in writing the contract leading to longer preparation time as well as longer meetings than contemplated in the contract, including extra calls per week and all-day retreats. The complex development of a measure comparable to Tennessee Value-Added will also require more hours of assistance and expertise provided by the contractor than originally anticipated |   |  |
| 16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)  |   |  |
| Susan Bodary<br>P.O. Box 22871<br>Seattle, WA 98122-0871   |   |  |

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ...  Not Applicable to this Request  Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ...  Not Applicable to this Request  Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ...  Not Applicable to this Request  Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

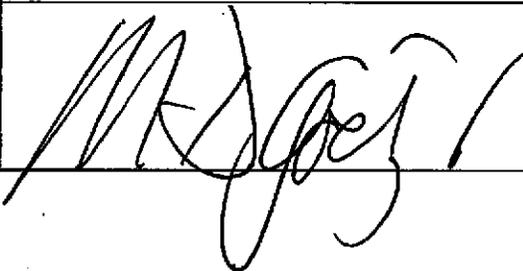
Competitive process was used to identify reasonable alternatives in the original contract. This request is for additional hours added to the contract terms and no new services.

21) Justification for the Proposed Non-Competitive Amendment :

Contractor has been the facilitator of the Teacher Evaluation Advisory Committee and continued work by Contractor is necessary for the completion of the committee work under the deadlines created by the Tennessee First to the Top Act of 2010. This request is for additional hours added to the contract terms and no new services.

**AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

 9/2/10



# C O N T R A C T   A M E N D M E N T

|   |                           |                                  |                         |
|---|---------------------------|----------------------------------|-------------------------|
| <b>Agency Tracking #</b><br>31701-01005 | <b>Edison ID</b><br>20061 | <b>Contract #</b><br>FA-10-31217 | <b>Amendment #</b><br>1 |
|---|---------------------------|----------------------------------|-------------------------|

|  |  |
|--|--|
| <b>Contractor</b><br>Education First Consulting, LLC | <b>Contractor Federal Employer Identification or Social Security #</b><br><input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 26-0634492 |
|--|--|

**Amendment Purpose/ Effects**  
First to the Top teacher evaluation consultant.

|  |   |   |                  |
|--|---|---|------------------|
| <b>Contract Begin Date</b><br>April 19, 2010 | <b>Contract End Date</b><br>June 30, 2011 | <b>Subrecipient or Vendor</b><br><input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | <b>CFDA #(s)</b> |
|--|---|---|------------------|

| FY            | State             | Federal | Interdepartmental | Other | TOTAL Contract Amount |
|---------------|-------------------|---------|-------------------|-------|-----------------------|
| 2010          | \$135,068.00      |         |                   |       | 135,068.00            |
| 2011          | \$614,733.00      |         |                   |       | 614,733.00            |
|               |                   |         |                   |       |                       |
|               |                   |         |                   |       |                       |
| <b>TOTAL:</b> | <b>749,801.00</b> |         |                   |       | <b>749,801.00</b>     |

American Recovery and Reinvestment Act (ARRA) Funding -  YES  NO \* NOTE: all funds above were entered under the State column; however, it is anticipated that some funding for this endeavor will be Federal ARRA funds.

|  |   |                            |   |                                 |
|--|---|----------------------------|---|---------------------------------|
| <b>— COMPLETE FOR AMENDMENTS —</b>   |   |                            | <b>Agency Contact &amp; Telephone #</b><br>Tim Roberto, 615-253-8853  |                                 |
| <b>END DATE AMENDED?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |   |                            | <b>Agency Budget Officer Approval</b> (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) |                                 |
| <b>FY</b>  | <b>Base Contract &amp; Prior Amendments</b> | <b>THIS Amendment ONLY</b> |   |                                 |
| 2010   | 73,727.00                                   | 61,341.00                  |   |                                 |
| 2011   | 147,453.00                                  | 467,280.00                 |   |                                 |
|  |   |                            |   |                                 |
| <b>TOTAL:</b>  | <b>221,180.00</b>                           | <b>528,621.00</b>          | <b>Speed Code</b><br>FA00000076   | <b>Account Code</b><br>70899000 |

|                    |  |
|--------------------|--|
| <p>— OCR USE —</p> | <p><b>Procurement Process Summary</b> (non-competitive, FA- or ED-type only)</p> <p>To derive the total dollar amount required for the amendment, the program area estimated the number of additional hours required to complete the project and multiplied this number times the Contractor's current hourly rate for consultants. The Contractor's hourly rate remains unchanged from the rate in the original contract.</p> |
|--------------------|--|

**AMENDMENT ONE  
TO FA-10-31217 / EDISON # 20061**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and Education First Consulting, LLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:
- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred Forty-Nine Thousand, Eight Hundred and One Dollars (\$749,801.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective on the date of final approval by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**EDUCATION FIRST CONSULTING, LLC:**

---

**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

---

**M. D. GOETZ, JR., COMMISSIONER**

**DATE**



# CONTRACT

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

|                                  |                    |
|----------------------------------|--------------------|
| Agency Tracking #<br>31701-01005 | Edison ID<br>20061 |
|----------------------------------|--------------------|

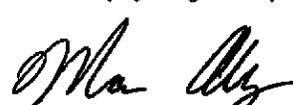
|   |   |
|---|---|
| Contractor<br>Education First Consulting, LLC | Contractor Federal Employer Identification or Social Security #<br><input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 26-0634492 |
|---|---|

**Service**  
Contractor-facilitator with expertise in the field of teacher and principal evaluation to focus the newly created teacher evaluation committee.

|                                       |                                    |  |           |
|---------------------------------------|------------------------------------|--|-----------|
| Contract Begin Date<br>April 19, 2010 | Contract End Date<br>June 30, 2011 | Subrecipient or Vendor<br><input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | CFDA #(s) |
|---------------------------------------|------------------------------------|--|-----------|

| FY            | State                 | Federal | Interdepartmental | Other | TOTAL Contract Amount |
|---------------|-----------------------|---------|-------------------|-------|-----------------------|
| 2010          | \$73,727.00 *         |         |                   |       | \$73,727.00           |
| 2011          | \$147,453.00 *        |         |                   |       | \$147,453.00          |
|               |                       |         |                   |       |                       |
|               |                       |         |                   |       |                       |
| <b>TOTAL:</b> | <b>\$221,180.00 *</b> |         |                   |       | <b>\$221,180.00</b>   |

American Recovery and Reinvestment Act (ARRA) Funding -  YES  NO \* NOTE: all funds above were entered under the State column; however, it is anticipated that some funding for this endeavor will be Federal ARRA funds.

|   |  |
|---|--|
| OCR USE<br>FA<br><br><br><b>F&amp;A Secured Document</b><br># <u>FA1031217</u> | Agency Contact & Telephone #<br>Tim Roberto, 615-253-8853  |
|   | Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)<br><br> |
|   | Speed Code<br>FA00000076   |

**Contractor Ownership/Control**

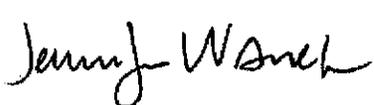
African American   
  Person w/ Disability   
  Hispanic   
  Small Business   
  Government  
 Asian   
  Female   
  Native American   
 NOT Minority/Disadvantaged   
 Other

**Contractor Selection Method**

RFP   
 Competitive Negotiation \*   
 Alternative Competitive Method \*  
 Non-Competitive Negotiation \*   
 Other \*

**\*Procurement Process Summary**

The program area developed a solicitation document, which was then distributed to twelve potential offerors. Interviews were conducted with five vendors that indicated an interest in providing the service. This process, along with the vendor's responses to the Statement of Certifications and Assurances, resulted in three vendors that were minimally qualified to provide the service. The solicitation also provided for an additional selection process that would limit the vendors to those that exhibited desired experience, that is experience beyond the minimal qualification level. Two vendors exhibited the desired experience and proceeded to the Cost Offer evaluation stage. The State then awarded the contract to the vendor with the lowest cost.

| <b>FA CONTRACT INFORMATION SUPPLEMENT</b><br>FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B   |   |
|---|---|
| <b>Contract RFS #</b>   | 31701-01005   |
| <b>Contractor:</b>  | Education First Consulting, LLC   |
| <b>SECTION A—<br/>CONTRACTOR IS AN INDIVIDUAL</b>   | <b>SECTION B—<br/>CONTRACTOR IS A COMPANY</b><br><i>(e.g., sole proprietorship, partnership, or corporation)</i>  |
| <b>Is or has the contractor been a state employee?</b><br><br><input type="checkbox"/> <b>NO</b> <i>(no additional information required)</i><br><input type="checkbox"/> <b>YES</b>   | <b>Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?</b><br><br><input checked="" type="checkbox"/> <b>NO</b> <i>(no additional information required)</i><br><input type="checkbox"/> <b>YES</b>  |
| <b>Was such employment within the past six months?</b><br><br><input type="checkbox"/> <b>NO</b><br><input type="checkbox"/> <b>YES</b> <i>(an approved rule exception permitting a contract within six months of employment is also required)</i>  | <b>Was such employment within the past six months?</b><br><br><input type="checkbox"/> <b>NO</b><br><input type="checkbox"/> <b>YES</b> <i>(an approved rule exception permitting a contract within six months of employment is also required)</i>  |
| <b>Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b><br><br><input type="checkbox"/> <b>NO</b><br><input type="checkbox"/> <b>YES</b> <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i> | <b>Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b><br><br><input type="checkbox"/> <b>NO</b><br><input type="checkbox"/> <b>YES</b> <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i> |
| <b>CONTRACTOR SIGNATURE</b>   |   |
|    |   |
| <b>CONTRACTOR:</b> Jennifer Vranek, Founding Partner, Education First Consulting  | <b>DATE:</b> April 15, 2010   |

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE & ADMINISTRATION  
AND  
EDUCATION FIRST CONSULTING, LLC**

This Contract, by and between the State of Tennessee, Department of Finance & Administration, hereinafter referred to as the "State" and Education First Consulting, LLC, hereinafter referred to as the "Contractor," is for the provision of the services of a contractor-facilitator with expertise in the field of teacher and principal evaluation for the purpose of focusing the newly created teacher evaluation committee until completion of the committee's objective as specified under Tennessee Public Chapter No. 2 of 2010, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Liability Company.

Contractor Federal Employer Identification or Social Security Number: 26-0634492

Contractor Place of Incorporation or Organization: Seattle, WA

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. Project Intent. The intent is for the Contractor to facilitate the meetings of the evaluation committee created under Tennessee Public Chapter No. 2 of 2010.
- A.3. Description of Contracted Work.
- a. Contractor shall provide a "Facilitator" to lead the meetings of the evaluation committee in collaboration with the Governor's Office of State Planning and Policy (GOSPP) and Tennessee Department of Education (TDOE).
  - b. Contractor Facilitator shall use his or her expertise to focus the meetings of the evaluation committee to achieve the objectives of the committee under Tennessee Public Chapter No. 2 of 2010 at a time commensurate with the piloting of the new teacher and principal evaluation system for the Fall school semester of 2010 or the Spring school semester of 2011. Said objectives of the committee include the development and recommendation to the State Board of Education, guidelines and criteria for the annual evaluation of all teachers and principals employed by Local Education Agencies (LEAs), including a local-level evaluation grievance procedure providing a means for evaluated teachers and principals to challenge only the accuracy of the data used in the evaluation and the adherence to the evaluation policies. Fifty percent of the evaluation criteria shall be comprised of student achievement data in which thirty-five percent of the evaluation criteria shall be student achievement data based on student growth as represented by TVAAS or some other comparable measure of student growth when Tennessee Value-Added Assessment System (TVAAS) data is not available. This measure comparable to TVAAS will be developed by the evaluation committee with assistance, expertise, and facilitation provided by the Contractor. Fifteen percent of the evaluation shall be based on other measures of student achievement selected by a list of such measures developed by the committee with assistance, and facilitation provided by the Contractor.
  - c. Contractor will facilitate meetings of The Teacher Evaluation Advisory Committee (TEAC) in three phases: Discovery, Recommendation, and Implementation phases. During the Discovery Phase, the estimated workload is 144 hours including working with the GOSPP and TDOE to coordinate and prepare agendas and trajectories for meetings, facilitation of an estimated 4 full committee meetings and facilitation of an estimated 4 subcommittee

meetings. Contractor may have responsibility for facilitation of one subcommittee while other subcommittees will be facilitated by state staff and state partners. During the Recommendations Phase, the estimated workload is 140 hours including working with the GOSPP and TDOE to coordinate and prepare agendas and trajectories for meetings, facilitation of an estimated 5 full committee meetings and ongoing review of the project's progress. During the Implementation Phase, the estimated workload is 576 hours including working with the GOSPP and TDOE to coordinate and prepare agendas and trajectories for meetings, facilitation of an estimated 13 full committee meetings, facilitation of an estimated 13 subcommittee meetings, and ongoing review of the project's progress. Another 140 hours are reserved for unanticipated needs, for a maximum total of 1,000 hours billable hours. The role of the contractor in each phase is to facilitate all full committee meetings. At times, it may be necessary for the contractor to facilitate subcommittee meetings of the TEAC group. At a minimum the contractor will need to gain a working familiarity with the subcommittee products. The anticipated schedule of TEAC meetings includes bi-weekly full or subcommittee meetings from March 2010 until May 2010 during the discovery phase, bi-weekly full committee meetings with *ad hoc* subcommittee meetings from June 2010 until August 2010 during the recommendation phases, and monthly full committee meetings with *ad hoc* subcommittee meetings from August 2010 until July 2011 during the implementation phase.

- d. GOSPP and TDOE will be responsible for meeting planning and the distribution of invitations, agendas, and meeting materials in collaboration with the contractor. During the discovery phase the largest share of research and technical assistance will be born by GOSPP, the Tennessee Department of Education (TDOE), and State partners. GOSPP, TDOE, and partners will be responsible for communication strategies but may seek feedback from the contractor. GOSPP, at its expense, will likely engage outside experts in the development of the teacher and principal evaluation instruments.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on April 19, 2010 and ending on June 30, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Twenty-One Thousand, One Hundred Eighty Dollars (\$221,180.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description              | Amount<br>(per compensable increment) |
|----------------------------------|---------------------------------------|
| Evaluation Committee Facilitator | \$ 221.18 per Hour                    |

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tim Roberto  
 Governor's Office of State Planning and Policy  
 Suite 1300  
 312 Rosa L. Parks Ave  
 Nashville, TN 37243-1102  
 P: (615) 253-8853  
 F: (615) 253-8965

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Finance and Administration, Governor's Office of State Planning and Policy;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
    - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
    - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
    - iv. Amount Due by Service; and
    - v. Total Amount Due for the invoice period.
  - c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
    - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
    - (2) not include any future work but will only be submitted for completed service; and
    - (3) not include sales tax or shipping charges.
  - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
  - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. **Termination for Convenience.** The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. **Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. **Conflicts of Interest.** The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. **Prohibition of Illegal Immigrants.** The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an

illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. **Prevailing Wage Rates.** All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.11. **Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. **Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. **Independent Contractor.** The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. **State Liability.** The State shall have no liability except as specifically provided in this Contract.
- D.16. **Force Majeure.** The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. **Completeness.** This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Tim Roberto  
Governor's Office of State Planning and Policy,  
Suite 1300  
312 Rosa L. Parks Ave  
Nashville, TN 37243-1102

Telephone: (615) 253-8853  
Fax: (615) 253-8965

The Contractor:

Susan R. Bodary, Principal  
Education First Consulting  
P.O. Box 22871  
Seattle, WA 98122-0871  
Telephone: (937) 657-3453  
Fax: (866) 243-0308

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. **Tennessee Consolidated Retirement System.** The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. **Voluntary Buyout Program.** The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
  - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

**E.6. Insurance.** The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

**E.7. Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

**E.8. State Ownership of Work Products.** The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.9. **Prohibited Advertising.** The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.10. **Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

E.11. **Limitation of Liability.** The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1.

and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

- E.12. **Federal Economic Stimulus Funding.** This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).
- d. The Recovery Act, including but not limited to the following sections of that Act:
  - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - (2) Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
  - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
    - i. gross mismanagement,
    - ii. gross waste,
    - iii. substantial and specific danger to public health or safety,
    - iv. abuse of authority, or
    - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

**Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:** Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

**Requirement to Post Notice of Rights and Remedies:** The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The Contractor shall provide that the Comptroller General and his representatives are authorized:
- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
  - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) **Section 1514 – Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) **Section 1515 – Access of Offices of Inspector General to Certain Records and Employers.** With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
  - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) **Section 1606 – Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.
- For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.
- (8) **Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods.** None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

- e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.12, "Federal Economic Stimulus Funding."

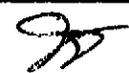
**IN WITNESS WHEREOF,**

**EDUCATION FIRST CONSULTING, LLC:**

  
\_\_\_\_\_  
CONTRACTOR SIGNATURE April 15, 2010  
DATE

Jennifer L. Vranek, Founding Partner  
\_\_\_\_\_  
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

  
\_\_\_\_\_  
M. D. GOETZ, JR., COMMISSIONER MOA  4-19-10  
DATE

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

|  |                                 |
|--|---------------------------------|
| SUBJECT CONTRACT NUMBER:   |                                 |
| CONTRACTOR LEGAL ENTITY NAME:  | Education First Consulting, LLC |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER:<br>(or Social Security Number) | 26-0634492                      |

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

 \_\_\_\_\_  
**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

*Jennifer L. Vranek, Founding Partner*  
 \_\_\_\_\_  
**PRINTED NAME AND TITLE OF SIGNATORY**

*April 15, 2010*  
 \_\_\_\_\_  
**DATE OF ATTESTATION**