

AGREEMENT

I. Purpose

THIS Agreement is entered into by and between the State of Florida, Department of Education, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Department"), and The National Center for the Improvement of Educational Assessment, Inc(hereinafter referred to as the "Contractor") .

II. Authority

- A. The Contractor represents that it is fully qualified and eligible to receive these funds to provide the services identified herein; and
- B. The Department has authority pursuant to Florida law to disburse the funds under this Agreement.
- C. Both parties shall be governed by applicable State and Federal laws, rules and regulations.

The specific terms and conditions of this Agreement are as follows:

III. Effective Dates

This Agreement shall begin on the date on which the last party has signed it, and shall end on August 31, 2010.

IV. Scope of Work

The Center's senior staff will review processes and outcomes for test design, scaling, and equating with a particular focus on grades 3, 4, and 5 reading and mathematics for 2007 through 2010. They will provide additional statistical analyses focused on test characteristics, student achievement, and longitudinal trends.

V: Payment Terms and Schedule

The Contractor shall be paid an amount not to exceed \$21,300.00. Payment will be made upon completion and acceptance of service and receipt of itemized invoice.

VI: Audits

The Contractor shall be responsible for responding to applicable audit inquiries and/or audit findings identifying receipts or expenditures by the Contractor of any funds transferred pursuant to this Agreement. The Contractor shall be responsible for any repayments of funds appropriated due to disallowance and any penalties assessed.

VII: Agreement Management

The parties have identified the following individuals as the Agreement Managers. These individuals are responsible for enforcing performance of the Agreement terms and conditions and shall serve as liaison/contact regarding issues arising out of this Agreement.

DEPARTMENT OF EDUCATION

Martha Asbury
Director of Administrative Services
324 West Gaines Street
316 Turlington Building
Tallahassee, FL 32399-0400
850/245-
martha.asbury@fldoe.org

Vendor Name

The National Center for the Improvement of Educational Assessment, Inc.
Richard Hill, Chair of the Board of Trustees
One Washington Street
One Washington Center, Suite 234
Dover, New Hampshire 03820
Phone: 603-516-7900 / 603-343-5421
Fax: 603-516-7910
E-mail: rhill@nciea.org

VIII: Modification

Modifications to the provisions of this Agreement shall be valid only through execution of a formal written amendment.

IX: Disputes

Any dispute concerning performance of the terms of this Agreement shall be resolved informally by the Agreement Managers. Any dispute that cannot be resolved informally shall be reduced to writing and delivered to the Department's Commissioner or his/her designee. The Commissioner or his/her designee shall decide the dispute, reduce the decision to writing, and deliver a copy to the parties.

X: Choice of Law

This Agreement will be interpreted under the laws of Florida and any dispute not resolved above can only be enforced in the appropriate forum in Tallahassee, Florida.

XI. Standard Terms and Conditions

Pursuant to Section 287.058(1), Florida Statutes (s. 287.058, F.S.):

- A. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
 - B. Travel expenses will be reimbursed only if expressly authorized by the terms of the Agreement. Bills for any travel expenses shall be submitted in accordance with s. 112.061, F.S.
 - C. The Department may unilaterally cancel this Agreement if the Contractor refuses to allow access by members of the public to all documents, papers, letters and materials made or received in conjunction with the Agreement that are subject to Chapter 119, F.S., and are not exempt from public inspection by s. 119.071, F.S., or by other provisions of general or special law.
 - D. The Deliverables specified in the Agreement must be received and accepted in writing by the Department's Contract Manager before the Contractor is entitled to payment.
 - E. To complete this Agreement, all services must be performed and/or goods received on or before the date(s) specified in the Agreement.
 - F. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.
- XII. Termination Based on Breach: The Department may terminate the Agreement if the Contractor fails to 1) deliver the product within the time specified in the Agreement or any extension, 2) maintain adequate progress, thus endangering performance of the Agreement, 3) honor any term of the Agreement, or 4) abide by any statutory, regulatory, or licensing requirement. The Contractor shall continue work on any work not terminated. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Agreement.
- XIII. Termination Based on Convenience: The Department, by written notice to the Contractor, may terminate the Agreement in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Agreement, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- XIV. Other Termination: The employment of unauthorized aliens by any contractor is considered a violation for § 274A(e) of the Immigration and Nationality Act. If the

Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Agreement.

XV. Access to Records: The Contractor shall grant access to all records pertaining to the Agreement to the Department's Inspector General, General Counsel and other agency representatives, the State Auditor General, the Office of Program Policy and Government Accountability, and the Chief Financial Officer.

XVI. Retention:

- a) Record copies will be retained five (5) fiscal years after completion or termination of the contract/lease/agreement, provided applicable audits have been released.
- b) Duplicate copies will be retained until obsolete, superseded, or administrative value is lost.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by and between them:

**STATE OF FLORIDA
DEPARTMENT OF EDUCATION**

By: 

Printed Name: Dr. Eric J. Smith

Title: Commissioner

Date: 7/15/10

**Approval by Department's Office of General Counsel
as to form and legality:**

By: 

Printed Name: Steven Ferst

Title: Deputy General Counsel

Date: 7/15/10

The National Center for the Improvement of
Educational Assessment, Inc.

By: Richard Hill

Printed Name: RICHARD HILL

Title: CHAIR, BOARD OF TRUSTEES

Date: July 15, 2010