

# EDFUND AGREEMENT

(REV. 7/18/08)

EDFUND CONTRACT NUMBER 9865-09-007	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NUMBER	

THIS AGREEMENT is entered into as of November 9, 2009, in the State of California, by and between **EdFund**, a California non-profit public benefit corporation ("EdFund"), and **Esperanza Ross** ("Contractor").

WITNESSETH: The parties, for and in consideration of the covenants, conditions, agreements, and stipulations hereinafter expressed, hereby agree as follows:

## 1. TERM

The term of this Agreement shall be from November 9, 2009 through August 8, 2010.

## 2. COST

The total cost of this Agreement shall not exceed Ninety Thousand Dollars and Zero Cents (\$90,000.00).

## 3. DEFINITIONS

"EdFund Documents" shall mean pages 1-6 of this Agreement.

## 4. SCOPE OF WORK

Contractor will provide consulting services with regards to the future of EdFund providing student and family support services in California. Contractor will guide conversation on the short-term and long-term impacts of SB89 and how the state of California can receive the maximum benefit in this uncertain economic environment.

## 5. PAYMENT

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof. Contractor will not be reimbursed for any travel or per diem.

Contractor agrees to invoice EdFund on a monthly basis. EdFund agrees to pay Contractor a monthly sum of Ten Thousand Dollars (\$10,000.00) within ten (10) business days of EdFund's receipt of Contractor's invoice. Such invoice shall contain full documentation, including the agreement number and Contractor's federal employer identification number, and mailed to:

EdFund Accounts Payable  
P.O. Box 419039  
Rancho Cordova, CA 95741-9039

## 6. CONTRACT MANAGER

Ann Shimasaki is designated as EdFund's Contract Manager. EdFund may change the Contract Manager at any time and may, if necessary, notify Contractor in writing of the new Contract Manager's name. Each deliverable provided under this Agreement shall be subject to approval by the Contract Manager.

## 7. INDEMNITY

Contractor agrees to and does hereby indemnify, save and hold EdFund, its parents, subsidiaries, affiliates and its respective officers, agents and employees harmless of and from any and all liability, demand, claim, loss, damage, recovery, settlement, cost or expense, including without limitation claims based in tort or for personal injury (including interest, penalties, legal costs, reasonable attorney's fees, accounting fees, and expert witness fees) arising out of or connected with any breach or alleged breach of this Agreement or any claim, demand, or action by a third party which is inconsistent with any of the warranties, representations or covenants made by Contractor in this Agreement. Contractor agrees to reimburse EdFund, on demand, for any payment made or incurred by EdFund at any time with respect to any liability or claim to which the foregoing indemnity applies.

## 8. AUDITS

Contractor may be audited and/or monitored for satisfactory performance of this Agreement on a periodic basis by EdFund, and/or an external auditing firm, and/or any State or Federal agency with a relevant interest.

Contractor shall maintain, for a minimum of three (3) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement and all books, records and supporting documents related to this Agreement shall be available for review and audit. Contractor agrees to cooperate fully with any audit conducted by EdFund and to provide full access to relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of EdFund for the recovery of any funds paid by EdFund under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

## 9. TIME OF THE ESSENCE

Time is of the essence in respect to all provisions of this Agreement in which a definite time for performance is specified.

## 10. TERMINATION

- a. Bankruptcy - In the event proceedings in bankruptcy are commenced against Contractor, Contractor is adjudged bankrupt or a receiver is appointed and qualifies, then EdFund may terminate this Agreement and all further rights and obligations hereunder, by giving five (5) days notice in writing. It is recognized by the parties that equipment purchased by Contractor or EdFund for this Agreement shall have lien rights held in the name of EdFund which shall retain lien rights until Contractor either returns said equipment to EdFund or purchases it.
- b. EdFund's Option - EdFund may at its sole and absolute discretion terminate this Agreement at any time upon giving thirty (30) days advance written notice to Contractor. Upon receiving such notice, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder and to provide EdFund with adequate documentation evidencing Contractor's services rendered and expenses incurred prior to termination, which with reasonable efforts by Contractor could not have been avoided ("Expenses"). EdFund agrees to pay Contractor for satisfactory services rendered and Expenses, but not in excess of the maximum payable under this Agreement. In such event, Contractor agrees that EdFund owns any equipment purchased for this project, and Contractor further agrees to relinquish possession of such equipment. Contractor may, with approval of EdFund, purchase said equipment from EdFund.

- c. Secretary's Option - As required under 20 U.S.C.A. §1072(g)(2)(A), this Agreement is terminable by the U. S. Secretary of Education upon thirty (30) days notice to Contractor if the Secretary determines that this Agreement includes an impermissible transfer of the reserve fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the Higher Education Act.
- d. Gratuities - EdFund may, by written notice to Contractor, terminate the rights of Contractor to proceed under this Agreement if it is found, after notice and hearing by the President of EdFund or his/her authorized representative, that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of EdFund with a view toward securing this Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of this Agreement.

In the event this Agreement is terminated under this subparagraph, EdFund shall be entitled to (1) pursue the same remedies against Contractor as it could pursue in the event of a breach of this Agreement by Contractor, and (2) exemplary damages in an amount which shall be not less than three (3) nor more than ten (10) times the cost incurred by Contractor in providing any such gratuities to any such officer or employee, as a penalty in addition to any other damages to which it may be entitled by law.

The rights and remedies of EdFund provided in this subparagraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- e. Failure to Perform Covenant - EdFund may terminate this Agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination EdFund may proceed with the work in any manner deemed proper by EdFund. The cost to EdFund shall be deducted from any sum due Contractor under this Agreement, and the balance, if any, shall be paid Contractor upon demand.

#### 11. WORKER'S COMPENSATION INSURANCE

Contractor hereby warrants that it carries Worker's Compensation Insurance, if required by law, for all of its employees who will be engaged in the performance of this Agreement and agrees to furnish to EdFund satisfactory evidence thereof at any time EdFund may request.

#### 12. INDEPENDENT CONTRACTOR

The relationship of EdFund and Contractor established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, or (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking. Neither party nor its agents or employees is the representative of the other party for any purpose except as expressly set forth in this Agreement, and has no power or authority as agent, employee or in any other capacity to represent, act for, bind, or otherwise create or assume an obligation on behalf of the other for any purpose whatsoever. All financial obligations associated with Contractor's business are the sole responsibility of Contractor.

#### 13. CONFIDENTIALITY

All financial, statistical, personal, technical, customer information, and other data or information relating to EdFund's operation which is considered confidential as defined by law or is designated as confidential by EdFund (hereinafter "Confidential Information"), and made available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use, disclosure or destruction through the observance of all Federal and California state information security, confidentiality, and privacy laws,

regulations, and procedural requirements. In no event shall Contractor use less than reasonable care to protect Confidential Information.

#### 14. PROPERTY RIGHTS

Contractor assigns all rights, title and interest, including any intellectual property rights, to any data, materials or works developed, created, or produced as a result of this Agreement to EdFund and agrees not to disclose these items to any third parties without the prior written consent of the Contract Manager.

#### 15. GENERAL PROVISIONS

- a. **FORCE MAJEURE.** Except for defaults by subcontractors, neither party shall lose any rights hereunder or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure is the result of an Act of God (e.g., fire, flood, inclement weather, epidemic, or earthquake); war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, embargo; governmental acts, orders, or restrictions; failure of suppliers or third persons; or any other reason where failure to perform is beyond the reasonable control of the defaulting party, is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure. The defaulting party must provide written notice of the force majeure event to the remaining parties within two (2) business days of such event.
- b. **WAIVER.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of EdFund to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, therefore, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of EdFund to thereafter enforce each and every such provision.
- c. **CAPTIONS.** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they appertain.
- d. **INTEGRATION / PAROL EVIDENCE.** This Agreement and the documents set forth in paragraph 3 above are intended by the parties hereto as a final expression of their agreement and understanding with respect to the subject matter hereof, and as the final, complete, and exclusive statement of the terms of this Agreement and supersedes all prior and contemporaneous understandings or agreements, oral or written, purchase or work orders and/or similar documents, and any terms and conditions listed on any website owned or controlled by Contractor, including without limitation any clickwrap license agreement or URL referenced in any documents incorporated into this Agreement herein, of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representations or warranty not contained herein.

No modification of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. For purposes of clarification, an acceptance of delivery form, packing slip, or similar document signed by EdFund to confirm proper delivery does not constitute a modification to this Agreement.

e. NOTICE.

- (1) All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:
- (i) *Personal delivery.* When personally delivered to the recipient, notice is effective on delivery.
  - (ii) *First-class mail.* When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
  - (iii) *Certified Mail.* When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.
  - (iv) *Overnight delivery.* When delivered by overnight delivery, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

*Addresses for purpose of giving notice are as follows:*

*EdFund  
Legal Division  
P.O. Box 419045  
Rancho Cordova, CA 95741-9045*

*Esperanza Ross  
1700 L Street  
Sacramento, CA 95811*

- (2) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.
  - (3) Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.
- f. ASSIGNMENTS AND SUBCONTRACTS. This Agreement is not assignable by either party either in whole or in part without the prior written consent of the other party. Notwithstanding the foregoing, EdFund may assign this Agreement to any entity that acquires all or substantially all of EdFund's assets through merger, acquisition or sale.


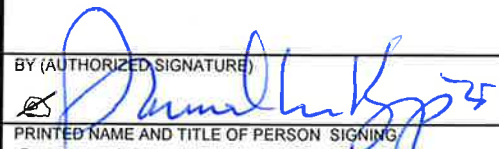
Contractor shall submit any proposed subcontracts, not originally identified in Contractor's proposal (if submitted), or any substitution of subcontractors, to EdFund for its approval prior to entering into it. Upon the termination of any subcontractor, EdFund shall be notified immediately. All subcontracts entered in to pursuant to this Agreement shall be subject to examination and audit by EdFund auditors, or other auditors authorized by EdFund for a period of three (3) years after final payment under this Agreement.

Each subcontract to which EdFund has consented shall contain a provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of EdFund.

- g. **DISPUTE RESOLUTION.** Any controversy or claim arising from or relating to this Agreement or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and the judgment rendered by the arbitrator(s) shall be binding on the parties hereto and may be entered in any court having jurisdiction thereof. The forum for any arbitration under this Agreement shall be in Sacramento County, California.
- h. **LAW GOVERNING.** This Agreement shall be governed by the laws of the State of California both as to interpretation and performance.
- i. **AUXILIARY STATEMENT.** EdFund, as an auxiliary of the California Student Aid Commission (CSAC), cannot accept any term or condition that: (1) indemnifies Contractor or any subcontractor or third party; or (2) requires the payment of attorney's fees by EdFund, CSAC, or the State of California in the event of litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement. This subparagraph supersedes any provision to the contrary in this Agreement or in any document incorporated into this Agreement by reference.
- j. **SURVIVING COMPLETION / TERMINATION.** This subsection and the following Sections shall survive the termination of this Agreement: Section 8, Audits and Section 13, Confidentiality.
- k. **SEVERABILITY.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent possible consistent with applicable law and the remaining provisions of this Agreement shall remain in full force and effect.

**THIS AGREEMENT CONSISTS OF 6 PAGES, EACH BEARING THE NAME OF CONTRACTOR AND CONTRACT NUMBER.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

<b>CONTRACTOR</b>			<b>EDFUND</b>	
CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.) Esperanza Ross				
BY (AUTHORIZED SIGNATURE) 			BY (AUTHORIZED SIGNATURE) 	
PRINTED NAME AND TITLE OF PERSON SIGNING			PRINTED NAME AND TITLE OF PERSON SIGNING Samuel M. Kipp, President	
Address 1700 L Street Sacramento, CA 95811				
AMOUNT ENCUMBERED BY THIS DOCUMENT \$90,000.00	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$-0-	TOTAL AMOUNT ENCUMBERED TO DATE \$90,000.00	BUDGET CODE 5202-00-580	FISCAL YEAR(S) 2009/2010
			DEPARTMENT Public Affairs	