

**A REQUIREMENTS AGREEMENT FOR SUPPLEMENTAL EDUCATIONAL SERVICES TO ELIGIBLE STUDENTS**, entered into as of the 1st day of September, 2007, by and between the **NEW YORK CITY BOARD OF EDUCATION** (hereinafter, referred to as the "Board" or "NYCDOE"), with principal offices at 52 Chambers Street, New York, New York 10007, on behalf of the **Office of the Deputy Chancellor for Teaching and Learning** (the "Deputy Chancellor"), and:

**Contractor's Legal Business Name:** \_\_\_\_\_  
\_\_\_\_\_ (hereinafter referred to as the "Contractor")

**D/B/A Name (If Applicable):** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
(as listed on New York City's W9 Form)

**Federal Identification Number:** \_\_\_\_\_

**Anticipated Service Site(s):**

Please indicate where you intend to provide the services contained herein by checking one (1) of the following:

- |  |                          |
|--|--------------------------|
| 1. NYCDOE SCHOOL FACILITY                      | <input type="checkbox"/> |
| 2. NON-NYCDOE SCHOOL FACILITY                  | <input type="checkbox"/> |
| 3. BOTH NYCDOE AND NON- NYCDOE SCHOOL FACILITY | <input type="checkbox"/> |

(If Contractor intends on using NYCDOE School Facilities, the Contractor must comply with the "Facility Requirements" section contained herein.)

**Estimated Annual Cost:**

Estimated No. of enrolled children Under this Agreement: \_\_\_\_\_

Cost per child per school year: \_\_\_\_\_ (\$ \_\_\_\_\_)

Estimated Annual Total Cost of Agreement: \_\_\_\_\_ (\$ \_\_\_\_\_)

**Transportation:**

Does Contractor plan on transporting students by vehicle at any point for any reason during the course of this contract? Please check the appropriate box:

YES

NO

(If Yes, then Contractor must comply with the "Transportation of Students" and the "Insurance" sections herein. Note: The Board is not responsible for paying for transportation of Students under this contract; Contractor's Estimated Cost per child stated above shall not incorporate or include any part of Contractor's transportation cost.)

**WITNESSETH**

**WHEREAS**, the Board has a need for supplemental educational services in mathematics, reading, and English language arts in order to meet the goals of the Federal No Child Left Behind (NCLB) Act of 2001, Title I (“Title I,” or the “Act”); and,

**WHEREAS**, in order for the Board and other school regions throughout New York State, to procure such supplemental educational services in mathematics, reading, and English language arts, pursuant to section 120 of the Regulations of the Commissioner of Education, the New York State Education Department (“NYSED”) issued a Request For Qualifications (the “RFQ”) to identify qualified providers; and,

**WHEREAS**, NYSED received responses setting forth proposals and, upon review, the proposal submitted by the Contractor herein was deemed by NYSED to be qualified and responsive to the RFQ, and NYSED named the Contractor an approved supplemental educational service provider (an “ASESP” or “Provider”); and,

**WHEREAS**, the Chancellor approved a request for authorization (the “Request for Authorization”), a copy of which Request for Authorization is annexed hereto, incorporated herein, and made a part hereof as **Attachment A**, authorizing the Board to enter into a requirements agreement (the “Agreement”) with the Contractor to provide the within described services for a period from September 1, 2007 until August 31, 2010, subject to compliance with all contract requirements and subject further to the continued availability of funds, chargeable to appropriate Title I budget codes as required, object code 685; and,

**WHEREAS**, the Contractor represents that it is ready, willing and able to perform the services as described herein;

**NOW, THEREFORE**, the Board and Contractor agree as follows:

**1. TERM OF THE AGREEMENT**

**A.** The term of this Agreement (the “Term”) shall commence as of September 1, 2007 and shall extend through and terminate on August 31, 2010, unless this Agreement is terminated earlier pursuant to the terms and conditions hereinafter referred to.

**B.** The Board shall have sole discretion to terminate this Agreement at any time for its convenience upon thirty (30) days prior written notice to the Contractor of the Board’s intention to terminate this Agreement. After termination, the Contractor must cease all work under this Agreement, unless otherwise directed in the notice. The Contractor will be entitled to payment for satisfactory Services performed up to the time of termination, provided that the Board first receives and approves an invoice. No claim for damages may be made or will be allowed to the Contractor because of such termination.

**C.** This Agreement shall terminate immediately upon notice from NYSED to the Board of the Contractor’s removal from the list of NYSED-approved supplemental education service providers (the “State Approved List”). The Board will provide notice to the Contractor that it has received notice from NYSED that the Contractor has been removed from the State Approved List. Upon removal from the State Approved List, the Contractor must immediately cease all

work under this Agreement. The Contractor will be entitled to payment for satisfactory Services performed up to the time of termination stated in such notice, provided that the Board first receives and approves an invoice. No claim for damages may be made or will be allowed to the Contractor because of such termination.

**D.** The Board shall have the sole discretion to terminate this Agreement if, in the Chancellor's opinion, the Contractor is unable to meet the academic achievement goals and timetables included in Contractor's individual student education plans.

## 2. SCOPE OF AGREEMENT

This is a requirements agreement for the procurement of such supplemental education services as may be required by a Parent/Guardian and an Approved Eligible Student. This Agreement shall be effective upon the issuance of an approved official purchase order from the Board for the Services described herein. The Board shall not be limited to the procurement of any minimum or maximum amount of Services.

## 3. SERVICES

**A.** "Services" shall describe collectively all of the supplemental educational services in English Language Arts/Reading and/or Mathematics, as well as any supplies, materials and facilities that the Contractor furnishes to, and for the benefit of, such Board students as the parents (the "Parents") and/or guardians (the "Guardians") of said Board students may request. The Contractor shall perform the Services in accordance with its State Technical Proposal as approved by the NYSED.

**B.** The Contractor shall provide the Services only to approved eligible students (individually, an "Approved Eligible Student" or "Student"). An eligible student is defined as a child from a low-income family, as determined by the Board for purposes of allocating funds to schools under Section 1113(c)(1) of the Act. An Approved Eligible Student is a child who has been assigned by the Board to the Contractor's program as selected by the Parent and/or Guardian as indicated on the "SES Enrollment Form".

**C.** (1) If Contractor is selected by a Parent/Guardian, Contractor shall provide all the Services described in the Contractor's work plan ("the "Work Plan"), which Work Plan is incorporated into and made a part of this Agreement as if it was fully stated herein. A copy of said Work Plan is annexed hereto as **Attachment B**. As contained herein and/or in the Work Plan (**Attachment B**), any words of aspiration (including, but not limited to, "ideally," "hoped" and/or "hopefully") and/or expectation (including, but not limited to, "expected," "anticipated" and/or "if available") are hereby deemed to be the Contractor's binding commitment.

(2) If a Parent/Guardian selects the Contractor as an ASESP for his/her Student, the Board will issue an approved official purchase order to the Contractor. The Contractor shall not provide any Services to any Student unless and until the Board issues an approved official purchase order to the Contractor for the Contractor's provision of Services to said specific Student. Any Services provided by the Contractor to a Student without an approved official purchase order from the Board shall be provided at the Contractor's sole risk.

(3) If a Parent/Guardian selects the Contractor as an ASEP for his/her Student and the Board has issued an approved official purchase order to the Contractor, Contractor must begin providing services to said Student within 30 calendar days unless Contractor has reached full capacity and informed the Board consistent with Section 3(J) herein.

**D.** The Contractor agrees that if it hires any Parent/Guardian of any child attending a school in which the Contractor provides or has applied to provide SES services, that Parent/Guardian shall have no involvement on behalf of the Contractor in any matter concerning the Contractor's provision of services to children in that school. The Parent/Guardian shall have no contact on behalf of the Contractor with any employee of the school and/or any Parent/Guardian of a child attending the school and/or any child attending the school. Nothing in this paragraph prevents a Parent/Guardian working for the Contractor from using the Contractor to provide services to his or her child. Nor does it prevent a Parent/Guardian working for the Contractor from representing Contractor at other schools where Contractor's services are being offered provided that no children of that Parent/Guardian are attending said school.

**E.** The provider is prohibited from making any offer or advertisement of rewards, gifts, incentives, gratuities, payments, or compensation of any kind to parents, students, the Board, the Board's staff and/or school staff for purposes of, or tending to have the effect of, soliciting enrollment, encouraging parents to switch providers once students are enrolled, and/or attempting to influence parents, students, the Board, the Board's staff and/or school staff; provided that nothing herein shall be deemed to prohibit the use, as part of the instructional program, of nominal rewards or incentives as defined in 8 NYCRR section 120.4(f)(8)(xvii). A nominal reward or incentive is defined as an award or incentive that:

- (1) does not exceed a total value of \$ 25 per student per year;
- (2) is directly linked to documented meaningful attendance benchmarks and/or completion of assessment and program objectives; and
- (3) is approved by the commissioner as part of the provider's instructional program.

The Contractor shall not offer any rewards, gifts, and/or incentives to Students for any reason whatsoever pertaining to services rendered under this Agreement unless said rewards, gifts and/or incentives is part of Contractor's State approved program. Contractor will remain obligated to (1) submit a written description to the Board before implementing any rewards program; (2) update the Board if said program is changed for any reason; and (3) comply with the State law and/or rule/regulation and/or policy. Contractor's failure to submit written description and/or update will result in the withholding of payment and/or termination of this Agreement.

**F.** Contractor shall not offer rewards, gifts and/or incentives to Parents or Guardians of Students under any circumstances.

**G.** Contractor or its subcontractors and/or agents shall not directly solicit students for enrollment in their program. Violation of this provision will result in the withholding of payment or termination of this Agreement or both.

**H.** The obtaining of students' confidential information from school employees and/or any Parents/Guardians (unless Parent/Guardian provides information about his/her own child only)

for the purpose of soliciting students, parents and/or guardians for enrollment is strictly prohibited and will result in the withholding of payment and/or termination of this Agreement or both.

**I.** Contractor shall provide written notice to the Board when it has reached full capacity at a given site and no additional child will be enrolled in its program at that site. The Contractor may not reject any Student whose Parent signs up the Student for the Contractor's Services and for whom an official purchase order has been issued by the Board unless Contractor's program is at full capacity. In the performance of the Services and, in particular, in its relations with the Board, Parents and Students, the Contractor shall provide equal opportunity to all qualified persons, and shall not discriminate because of race, creed, color, sex, age, national origin, disability, sexual orientation, marital status, religion, or political beliefs or affiliations.

**J.** The Contractor shall not impose any additional criteria on the admission of eligible Students to its program and its Services herein.

**K.** The Contractor shall not require any minimum number of students to participate and/or attend classes.

**L.** The Contractor shall ensure that the instruction it provides and the content it uses are consistent with those of the Board and NYSED and are aligned with New York State learning standards in the areas of English language arts (including reading) and/or mathematics.

**M.** All Services that the Contractor provides under this Agreement must be for secular, non-partisan, neutral and non-ideological purposes.

**N.** For each Student who registers for Contractor's Services, Contractor shall provide the following information:

- (1) a detailed statement of the Student's achievement goals based upon such Student's specific education needs;
- (2) a description of how the Student's progress will be measured;
- (3) a timetable for improving the Student's achievement;
- (4) for eligible students with disabilities under IDEA and eligible students who are individuals with disabilities covered by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794), the Contractor shall set the goals, method of measurement and a timetable consistent with such student's individualized education program pursuant to the Individuals with Disabilities Education Act or the student's section 504 plan, where applicable;
- (5) the initiation date, frequency and duration of Services to be provided to the Student;
- (6) the location where Services will be provided to the Student;

- (7) a description of how each Student's Parents, teacher(s) and the Board will be regularly informed, no less frequently than on a quarterly basis, of the Student's progress;
- (8) a description of the program to be used; and
- (9) a method for tracking the attendance of each Student in the Contractor's program.

**O.** Contractor shall provide Services only during non-school hours. The Contractor shall *not* provide Services to any Student during the regular school day. Contractor acknowledges that the Board, at its sole discretion, may change the definition of the regular school day at any time during the Term. In the event of any change, the Contractor shall adjust the hours that it offers its Services in order to avoid any conflict with the regular school day.

**P.** The Services provided by the Contractor to any Student must be in addition to any and all educational services provided to said Student, including, but not limited to, mandated after school or summer school activities, and may not supplant any such educational services to be provided to said Students.

**Q.** The Contractor shall perform any and all Services in a competent, professional and timely manner to the reasonable satisfaction of the Chancellor or his/her designee(s). The Chancellor reserves the right to make all final determinations on any issue regarding the administration of this program.

**R.** The Contractor shall cooperate with the Board in the Board's administration and evaluation of the Services that the Contractor provides, as well as the Board's administration and evaluation of the overall program. Such cooperation shall require the Contractor to make available all requested data related to the Contractor's implementation of the program and outcomes related to the Contractor's success in meeting the Contractor's program goals, including, without limitation, an attendance roster of participating Students for each month the Contractor provides Services under this Agreement. The Contractor shall allow the Chancellor and/or his designee(s) to visit and observe sessions, to interview the Students and Parents on-site, and to distribute on-site such questionnaires and other materials as the Chancellor or his designee(s) shall determine are necessary and/or advisable for the administration and evaluation of the Contractor's Services and overall program.

**S.** During the Term of this Agreement, the Contractor shall provide the direct, personal Services of those individuals named and/or described in its proposal to NYSED and in the Work Plan (**Attachment B**) and of such managerial and staff employees as are necessary to fulfill all the terms, conditions and specifications of this Agreement. The Contractor alone shall be responsible for the work of its personnel, as well as for their direction, discipline, compensation and benefits.

**T.** The Contractor does hereby stipulate and agree that the instructional Services it provides under this Agreement shall be provided under the general supervision of a New York State certified teacher pursuant to section 120.4(d)(2)(iii) of the Regulations of the Commissioner of Education. If the services are provided by Board employee(s), such services must be provided pursuant to the conditions contained in the waiver(s) issued by the Conflicts of Interest Board.

U. The Contractor shall not increase the ratio of instructors to New York State certified teachers from the ratio stated in the Work Plan (**Attachment B**).

V. During the Term of this Agreement, the Contractor shall not increase the ratio of Students to instructors from the ratio stated in the Work Plan (**Attachment B**).

W. In addition, Contractor agrees to comply with the following provisions:

- 1) Contractor may not directly offer gifts or funds to any NYCDOE schools or its staff, faculty or leadership for any reason unless approved by the Chancellor and/or his designee(s). Any donations to the Board are to be made to the Fund for Public Schools;
- 2) Contractor must inform parents they can only register with one ASESF;
- 3) Contractor shall hire a compliance officer or identify/designate an employee to ensure that the program is in compliance with all applicable federal, state and local regulations, policies and procedures, and adheres to the terms and conditions of this Agreement;
- 4) **(a) Contractor must report to the Office of the Special Commissioner of Investigations (“SCI”) any violation of this Agreement or violation of any Board and/or NYSED policies or regulations**  
**(b) Contractor must report to the Board’s NCLB-SES Implementation Director if Contractor or any of its employees witness or become aware of any impropriety conducted by any Board employee;**  
**(c) If Contractor is the subject of any SCI investigation, Contractor shall not request any documentation from the Board without fully apprising the Board of SCI’s investigation,**  
**(d) Contractor shall not mislead, delay, interfere or otherwise hinder an ongoing investigation by SCI, the Board, the Comptroller of the City of New York (the “Comptroller”), the Comptroller of the State of New York (the “State Comptroller”), and any designee of the Board or the Comptroller or the State Comptroller.**

5) Contractor shall use NYCDOE attendance sheets:

- a. Attendance sheets must be signed by students at the start and conclusion of each session;
  - b. Attendance sheets must be signed by instructors and countersigned by supervisors (Providers who deliver services in student homes must secure parent signature);
- 6) Contractor agrees that all non-Board employees must sign in and sign out of NYCDOE school buildings and wear visible ID badges. If Contractor provides

services on non-NYCDOE property, Contractor agrees that all Staff shall wear visible ID badges identifying themselves as Contractor's Staff;

- 7) Contractor shall not use any parent coordinator, school principal, assistant principal, teacher, guidance counselor, and/or any student to promote its program;
- 8) Contractor agrees to comply with the code of ethics (the "Code of Ethics"), which is attached hereto and made a part hereof as **Attachment E**.
- 9) If the Contractor provides Services over the Internet, through use of a web site, the Contractor shall comply with the Board's Internet Acceptable Use Policy, which policy is incorporated by reference, and made a part hereof, as if fully attached hereto (available at <http://www.nycenet.edu/Administration/Offices/FinanceandAdministration/DIIT/W ebServices/iaup/default.htm>).

#### 4. REPORTS

- A. Contractor is required to retain all records relevant to the provision of supplemental educational services for a period of no less than six (6) years following termination of the agreement.
- B. Contractor shall provide the Board, the Student's school, and the Parent/Guardian of each Student enrolled in its program with a progress report (the "Progress Report") no fewer than four (4) times per year for each year of the Term of this Agreement. In each Progress Report for each Student, the Contractor shall provide information regarding the Student's attendance, a description of how the supplemental education Services were delivered to such Student, and a description of the progress of each such Student. The Progress Report shall be in a format and, to the extent practicable, in a language or other mode of communication that the Parents can readily understand. Reports are to be maintained at the service sites(s) during the years of service and thereafter retained by Contractor for six (6) years from termination of the Agreement. Reports are subject to review by city, state, and federal monitors.
- C. Contractor shall provide the Board with a final written report (the "Final Report") no later than August 31st - or any other "Final Report Due Date" established by the Board - of each year of the Term of this Agreement, in a format prescribed by NYSED, which format will be provided to the Contractor. In the Final Report, the Contractor shall summarize the progress of all Students for whom the Contractor has provided Services during the relevant year of the Term of this Agreement.

#### 5. DISCIPLINE OF STUDENTS

- A. Corporal Punishment of students is strictly prohibited.
- B. Contractor must comply with the Chancellors Regulations A-412, A-414, A-420, A-421, and A-432. A copy of said Regulations are incorporated into this Agreement as if fully attached hereto and made a part of this Agreement (available at <http://www.nycenet.edu/Administration/ChancellorsRegulations/default.htm>).

C. In the event a child is the subject of an alleged corporal punishment incident or is otherwise injured at the facility, Contractor shall immediately inform the student's family and the NCLB/SES Director by telephone. Contractor must submit a written report to NCLB/SES Director within one (1) school day of the alleged incident or injury. Contractor shall fully cooperate in connection with any inquiry pertaining to the alleged incident and/or injury.

## 6. COST OF THE SERVICES; PAYMENT

A. If the Contractor provides the Services and Reports as described in this Agreement and in the Work Plan (**Attachment B**) in compliance with the terms, conditions and specifications of this Agreement, the Board will pay the Contractor such per-Student unit rates for the services provided as the Contractor has specified in the budget detail, which Budget Detail is hereby incorporated into this Agreement as if fully stated herein. A copy of said Budget Detail is annexed hereto and made a part hereof as **Attachment C**. Additionally, Contractor must honestly and truthfully complete the "Proposed Cost Detail Workbook, as made available by the Board in the 2007 Application to Enter into Contract for ASEP. Contractor must keep a copy of the Proposed Cost Detail Workbook on file for the duration of this Agreement. Contractor has a continuing obligation to inform the Board at the beginning of each school year if costs decrease so as to allow Contractor to offer services to the Board at a lower hourly rate in accordance with Section 6(H)(2) herein.

B. The cost to the entire Board shall be in the estimated amount as indicated on the front page of this Agreement for each full year of this Agreement, or part thereof, chargeable to appropriate Title I budget codes, object code 685, contingent on evidence of satisfactory delivery of Services and subject further to the continued availability of funds.

C. Billing for Services shall be in the form of detailed itemized invoices submitted by the Contractor on a monthly basis using the web-based electronic system. In addition, the Contractor certifies that any provision in this Agreement notwithstanding, the Board shall only make payment for Services actually provided to Students by the Contractor, for the number of hours of Services actually provided to Students by the Contractor, and only upon the submission of substantiated invoices in a form satisfactory to the Board. The invoices submitted for payment must bear the certification of the Chancellor or his designee(s) that all of the Services for which payment is demanded have been performed in a satisfactory manner. The maximum amount payable on any invoice shall be limited to the numbers of Students to whom Service is provided by the Contractor to the Board multiplied by the per-Student rate stated in the Budget Detail (**Attachment C**). The Board will not approve any invoice that includes students deemed ineligible or not approved pursuant to the procedures established by the Board and for hours that exceed the maximum allowable as per this Agreement.

D. The Contractor shall maintain an accurate running total(s) of the dollar amount(s) of any and all orders for Services and materials furnished under this Agreement. On the last day of each month during the School Year, the Contractor shall provide written notification to the Board of the total dollar amount(s) owed to Contractor for services rendered during that School Year .

E. This Agreement and all consideration hereunder are subject to pre-audit and post-audit by the Board, the Comptroller of the City of New York (the "Comptroller"), the Comptroller of the State of New York (the "State Comptroller"), or any other public agency with authority to conduct such audit, and any designee of the Board or the Comptroller or the State Comptroller.

No audit by the Board shall be binding upon the Comptroller. In the event that an audit shall find violations of contract, Contractor shall be liable for all costs related to the audit(s).

**F. No Fee Charging.** The Contractor shall not charge fees to, nor seek any payment and/or compensation of any kind whatsoever from, the Students or their Parents for the Services that the Contractor provides to the Students under this Agreement.

**G.** Please note that if there is any discrepancy between the Contractor's Work Plan (**Attachment B**) and the Contractor's Technical Proposal approved by NYSED or the Contractor's Budget Detail (**Attachment C**) and the Contractor's Technical Proposal approved by NYSED, the Contractor's Technical Proposal will govern in both cases. Said Technical Proposal is incorporated by reference and made a part of this Agreement as if fully attached hereto.

**H. (1)** Billing of all charges shall be in accordance with the price quotations expressly specified in the Work Plan (**Attachment B**) and in the Budget Detail (**Attachment C**). The Contractor shall not increase any price(s) for any of the Services during the Term of this Agreement unless Contractor applies for an Amendment Application and substantiates the basis for a rate increase.

**(2)** If at any time during the Term of this Agreement, the price(s) of any one or more aspects of the Services shall be reduced to a level below the price(s) specified herein, the Board shall be entitled to such reduced price(s) as of the effective date(s) of each such reduction or series of reductions. The Contractor shall provide the Board with written notification of such reduction(s) and, upon receipt of such notice(s), this Agreement (specifically the Work Plan (**Attachment B**) and the Budget Detail (**Attachment C**) shall be deemed amended to reflect such price reduction(s) retroactively to the effective date(s) of the reduction(s). The Board and the Contractor agree that any such amendment of this Agreement for purposes of price reduction(s) shall be deemed to have occurred automatically without the necessity of any further action by either or both of the parties upon receipt by the Board of the Contractor's written notice(s) to such effect, all else in the Attachments (except **Attachment A**) to the contrary notwithstanding.

**(3)** If for any reason the Board shall pay for any aspect(s) of the Services at previously higher price(s) after the effective date(s) of price reduction(s), the Board shall be entitled to a refund from the Contractor of the difference(s) between the previously higher price(s) and the reduced price(s). Whether discovered by the Board or the Contractor, the Contractor shall promptly return and/or refund to the Board the said difference(s). Whereupon if the Contractor discovers any such difference(s), the Contractor shall give prompt written notice to the Board. At its option, the Board may choose to recover the said difference(s) via deduction(s) from any other payment(s) that are or may become due to the Contractor under this Agreement. The Contractor's obligation to return and/or refund any such difference(s) shall be and remain an obligation of the Contractor and its heirs, executors, administrators, trustees, successors and/or assigns, jointly and/or severally, which obligation shall survive the termination of this Agreement.

**(4)** The Contractor's failure and/or refusal to provide any notice and/or to perform any of the terms and conditions as specified in this **Paragraph H**, shall be deemed to be a material breach of this Agreement.

## 7. FACILITY REQUIREMENTS

A. The Contractor may provide the Services to Students either on NYCDOE school premises or on non-NYCDOE school premises.

B. If the Contractor intends to provide Services on NYCDOE school premises:

(1) Contractor acknowledges that this Contract does not guarantee the use of space in any of the Board's eligible schools. Contractor must separately apply to the respective building principal for use of classroom space. Authorization to utilize NYCDOE school space shall only be granted by the School Principal pursuant to the Extended Use Form (the "Permit").

(2) Contractor will comply with all the rules and regulations of Permit holders. Contractor must pay in advance all applicable permit fees (the "Permit Fee(s)"), including, but not limited to, associated costs for additional security. Failure to comply with all NYCDOE rules and regulations may result in the revocation of the permit.

(3) For all services conducted in NYCDOE classroom space, Contractor agrees to discount its invoice(s) for services per child by nine percent (9%) (the "Facility Usage Discount"). The Board, at its sole discretion, may change the Facility Usage Discount before the beginning of any school year during the term of this Agreement. The Board will apply only one rate during any single School Year. In the event that the Board changes the Facility Usage Discount, Contractor must discount its invoice(s) by the rate then in existence.

(4) The Contractor shall restrict its use of NYCDOE premises, including, but not limited to, space, facilities, personnel, services, equipment, and materials, to its performance of the Services under this Agreement. The Contractor shall not cause or allow the conduct of any other business, except for the Services and other matters connected with this Agreement, on NYCDOE property or with NYCDOE facilities, personnel, services, equipment, materials and so forth.

C. If the Contractor provides Services to Students on non-NYCDOE school premises:

(1) The Contractor shall provide to the Board a certificate of occupancy issued by the Buildings Department of the City of New York, or the Contractor's local county equivalent, that clearly demonstrates that the Contractor's Facility is appropriate for the instructional purposes the Contractor seeks to provide.

(2) All buildings, premises, equipment and furnishings used for the Program shall be safe, durable and suitable for the comfort and care of the students. They shall comply with all applicable requirements of the Americans with Disabilities Act and shall be provided and maintained in a state of good repair and sanitation.

(3) Contractor shall, during the entire Term of this Agreement, disclose to the Board all building and fire code violations issued with respect to the space used for program operations including all common areas of the building utilized by students within three days of issuance. Contractor must immediately commence corrections of violations.

Contractor's program will be suspended until said corrections cure the violation(s).

(4) The Contractor represents that the facility where the students are located is in compliance with all applicable federal, state and local laws or regulations regarding the inspection for, containment and removal of friable asbestos containing materials located on the premises of the Contractor and the premises contains no contaminants and other environmental health risks. Contractor is obligated to report all environmental health risks in writing to the Board's NCLB-SES Implementation Director within twenty-four (24) hours.

(5) The Board may terminate the Agreement upon one (1) day notice if said violations create a hazardous condition to the students. In the event of said termination the Board shall be obligated for payment for Services rendered through the termination date and thereafter shall have no further obligation to Contractor.

(6) Contractor shall ensure that the facility complies with the New York City Childhood Lead Poisoning Prevention Act of 2003.

**D.** If the Contractor provides Services over the Internet, through use of a web site, the Contractor shall comply with the Board's Internet Acceptable Use Policy, which policy is incorporated by reference, and made a part hereof, as if fully attached hereto (available at <http://www.nycenet.edu/Administration/Offices/FinanceandAdministration/DIIT/WebServices/iaup/default.htm>).

## 8. TRANSPORTION OF STUDENTS

**A.** If Contractor transports Students at any time during the term of this agreement, Contractor must use an NYCDOE contracted bus vendor, if one is available (See <http://www.opt-osfns.org/opt/>). If no NYCDOE contracted coach bus vendor is available, Contractor must maintain and attach hereto a Certificate of Insurance that demonstrates that Contractor has Commercial Motor Vehicle Liability Insurance in accordance with the provisions set forth in Section 9 of this Agreement, that insures the vendor, the vendor's agents, the Board of Education and the City of New York during the performance of work under this contract against all present and future claims for bodily injury, sickness, disease, death and property damages which may arise because of a motor vehicle accident. The limit of liability shall be at least **\$5,000,000.00** for all injuries sustained in any one occurrence. The limit of liability required for property damage shall be at least **\$100,000.00** for one claimant and at least **\$200,000.00** for two or more claimants in any one accident. Such damages shall include all injury to, or destruction of, property of such claimant as well as the loss of use occasioned by the accident. Should the Contractor retain a Subcontractor to perform any of the services mentioned in this paragraph, it is the Contractor's responsibility to insure that Subcontractor maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

**B.** Contractor hereby warrants and agrees to indemnify and hold NYCDOE and the City of New York harmless from all claims, damages, judgments, losses, liabilities, costs, expenses, attorney fees and compensation, whether in contract or tort, arising out of personal injury, including death or property damage, sustained or alleged to have been sustained in whole or in part by any or all persons whatsoever as a result of or arising out of any act or omission of the Contractor, its agents or employees, or caused or resulting from any deleterious substance in any

of the products supplied or while the equipment, supplies, etc., are being delivered or the service-work is being performed under this contract, whichever instance is applicable.

C. Vehicles must be no more than 10 years old. All services must be in conformance with New York State Department of Transportation (NYSDOT) and United States Department of Transportation (USDOT) regulations, in addition to the requirements of this contract. All vehicle operators must be 19-A certified as per the NYS Department of Motor Vehicles Bus Driver Certification Unit. Drivers must carry all licenses and certifications with them at all times while transporting students.

## 9. INSURANCE

A. The Contractor shall obtain all required insurance coverage from insurers licensed by the New York State Superintendent of Insurance to do business in New York State. Not later than thirty- (30) days after the date of execution of this Agreement and before the start of any of the Services under this Agreement, the Contractor shall submit to the Board evidence of the insurance specified herein together with all supporting documentation reasonably deemed necessary by the Chancellor or his/her designee(s). The Contractor shall arrange with its carrier(s) to have the Board and the City of New York appear as additional insured parties on every policy and certificate of insurance for all required coverage. The Contractor shall not obtain or use any insurance policy(ies) or contract(s) for purposes of this Agreement that contains any endorsement exclusions relating to an additional insured's negligence, relating to the maintenance, use and operation of an additional insured's realty or personalty, or relating to any other activities by an additional insured that arise from, or in the context of, this Agreement. The Contractor shall transmit one (1) copy each of all insurance policies and certificates of insurance to the Board of Education of the City of New York, to the name and address provided herein for the giving of notices. The Board's receipt of such certificates shall be a condition precedent to any payment by the Board to the Contractor under this Agreement. Furthermore, the Contractor shall transmit an informational copy of this Agreement to its insurance carrier(s) together with a cover letter(s); the cover letter(s) shall identify the Contractor's insurance policy(ies) and/or account number(s) that alerts and informs the carrier(s) of the existence of this Agreement and the particular insurance provisions contained herein. The Contractor shall maintain the hereinafter-prescribed levels of insurance coverage throughout the Term.

B. The Contractor shall maintain the following types of insurance coverage for the duration of this Agreement:

(1) Workers' Compensation Insurance, including Employer's Liability Insurance, as prescribed by the laws of New York State or of the state of the Contractor's domicile.

(2) Comprehensive general liability insurance shall insure the Contractor and its agents, employees, officers, directors, owners, partners, subcontractors or any other representatives (the Contractor's "employees"), and the Board and the City of New York as additional insured, during the operation of this Agreement, against claims for bodily injury, including death, disease and property damage as shall arise because of any services performed by the Contractor, or its employees, either directly or indirectly, or because of any negligent act of the Contractor or its employees. The limit of liability under this comprehensive general liability coverage shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury, and in an

amount not less than One Hundred Thousand Dollars (\$100,000.00) for one (1) claimant in any one (1) occurrence but not more than Two Hundred Thousand Dollars (\$200,000.00) for two (2) or more claimants for property damage sustained, as well as the loss of use, if any, occasioned by the occurrence.

(3) If Contractor provides transportation to students, as indicated on the front page of this Agreement, Contractor must maintain and attach hereto a Certificate of Insurance that demonstrates that Contractor has Commercial Motor Vehicle Liability Insurance in accordance with the provisions set forth in Section 9 of this Agreement. that insures the vendor, the vendor's agents, the Board of Education and the City of New York during the performance of work under this contract against all present and future claims for bodily injury, sickness, disease, death and property damages which may arise because of a motor vehicle accident. The limit of liability shall be at least **\$5,000,000.00** for all injuries sustained in any one occurrence. The limit of liability required for property damage shall be at least **\$100,000.00** for one claimant and at least **\$200,000.00** for two or more claimants in any one accident. Such damages shall include all injury to, or destruction of, property of such claimant as well as the loss of use occasioned by the accident..

C. All policies of insurance must be written on an occurrence basis, except for Workers' Compensation Insurance, including Employer's Liability Insurance, and must be issued by companies licensed and admitted, or authorized to do business, in the State of New York, having a rating of at least "A-" (Excellent) and a financial rating of "X," as rated by the most recent Best's Insurance Rating Guide. The Contractor's general Liability policy must be endorsed:

- (1) to name the Board and the City of New York as additional insured;
- (2) to allow severability of interests and rights of cross-claim; and
- (3) to provide that the policy must not be canceled, or its coverage reduced, without at least thirty (30) days prior written notice to the Board.

D. Insurance coverage in the amounts provided for herein shall not constitute a limit of the Contractor's liability and shall not relieve the Contractor for any liability that might exceed such amounts, nor shall the Board be precluded from taking such other actions as are available to the Board under any other provisions of this Agreement or otherwise.

E. The Contractor shall transmit prompt notice of each coverable accident or occurrence to the Contractor's appropriate insurer(s) with such transmittal to occur not later than required under the Contractor's insurance policy(ies) or contract(s). The Contractor shall transmit notice of each coverable accident or occurrence to the Chancellor's designee(s) within five (5) school calendar days of the affected accident or occurrence.

F. Policies shall not be invalidated by reason of violation of any of its terms or any of the terms of any other policy issued by the insurance company to the Contractor.

## 10. CONFIDENTIALITY

A. "Confidential Information" means: (i) any personally identifiable information related to Board students, student families or guardians, teachers, staff, agents and/or volunteers obtained by or furnished to the Contractor; (ii) any information marked "confidential" or any other information that a reasonable person under similar circumstances would consider to be confidential or proprietary at the time of disclosure, notwithstanding a failure to make it or identify it as such; and (iii) all derived information, findings, analysis, data (personally identifiable and aggregate data), reports or other information learned or developed and based thereon; whether in oral, written, graphic, or machine-readable form. Confidential Information includes, but is not limited to, names, addresses, contact information, school, school district, grades or other reviews, scores, analysis or evaluations, records, correspondence, activities or associations, financial information, social security numbers or other identifying numbers or codes, date of birth or age, gender, religion, sexual preference, national origin, socioeconomic status (including free/reduced lunch status), race, ethnicity, special education status, or English Language Learner status.

B. Contractor agrees to:

(i) Hold the Confidential Information of the Board in strict confidence and not to disclose Confidential Information of the Board to any third parties nor make use of such Confidential Information for its own benefit or for the benefit of another, or for any use other than the purpose of this Agreement.

(ii) Only disclose the Confidential Information of the Board to its employees or agents who need to know the Confidential information of the Board, and in those instances, only to the extent justifiable by that need, and ensure that all such entities and personnel comply with the terms of this Agreement.

(iii) Adhere in every respect to the law, Board policy and the Chancellor's regulations concerning confidentiality of personally identifiable pupil records, including Chancellor's Regulation A-820.

(iv) Hold all individually identifiable information obtained, learned or developed by Contractor confidential pursuant to applicable provisions of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and any applicable regulations promulgated thereunder. Contractor understands that the release of confidential information to persons or agencies not authorized to receive such information is a violation of US federal law.

(v) Whenever required by Board and upon termination of this Agreement, Contractor shall promptly surrender (or destroy if surrender is not practicable) all Confidential Information of the Board and all media containing same to the Board and certify, in writing, that all of the foregoing materials have been surrendered or destroyed in accordance with this Agreement.

C. Unauthorized disclosure of Confidential Information by the Contractor, its subcontractors, consultants and agents may result in civil and/or criminal penalties under New York State and Federal laws. Moreover, in addition to all other remedies that Board may have, the Board shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of confidentiality.

## **11. SECURITY CLEARANCE LANGUAGE FOR NCLB CONTRACTS**

### **A. Definitions.**

1. **Designated Security Clearance Office** shall mean the Board's Office of Personnel Investigations or any other division/office/unit designated by the Chancellor or his designees to carry out, in whole or in part, the Board's Security Clearance Procedures.
2. **Personnel Eligibility Tracking System (PETS)** shall mean the Board's online database available at <https://schools.nyc.gov/offices/dhr/pets> that allows the Contractor to enter Staff information into an electronic roster (the "Roster") in order to monitor the fingerprinting status of each Staff member.
3. **Security Clearance Procedures** includes, but is not limited to, the Board's fingerprinting procedures, criminal background checks, criminal history reviews, Contractor's compliance with and the Board's monitoring of PETS, and any other procedures identified by the Board's Designated Security Clearance Office and as may be revised as necessary to ensure the safety and well-being of Students.
4. **Staff** shall include any and all of Contractor's, or its subcontractors' (if any), employees, officers, directors, members, partners, agents, tutors, or consultants who, at any time during the Term of this Agreement, (i) have direct contact with Students; or (ii) work in or visit a location during times that Students are present unless such contact is only on an incidental and supervised basis; or (iii) provide online services to Students and have contact with Students via telephone, email or internet; or (iv) have regular access to Students' confidential information. Contractor's Staff shall also include any Staff who become affiliated with Contractor or its Subcontractors after execution of this Agreement.
5. **Students** shall mean any student enrolled in any New York City Public School or placed into a program that is the subject of this Agreement.

### **B. Procedures.**

1. The Contractor shall comply with all rules and directions regarding Security Clearance Procedures that may be issued by the Board during the Term. The Contractor must contact the Board's Designated Security Clearance Office within five business days of signing this Agreement to commence fingerprinting of Staff. The Board shall provide Contractor with a PETS user name and password. Contractor shall input the required information for all of Contractor's Staff, including each Staff member's full name, Social Security number/Tax Identification Number, title or functional description, work address and telephone number and such other relevant information as the Board may reasonably require. PETS will provide notification to Contractor if a Staff member is ineligible or becomes ineligible to render services to the Board due to security reasons. PETS notifications do not relieve Contractor from its obligation to comply with the Board's Security Clearance Procedures.

2. All Staff is required to undergo the Board's Security Clearance Procedures and be cleared to work with Students by the Designated Security Clearance Office prior to commencing services with direct contact with Students or access to confidential student information. This obligation applies regardless of whether an individual has been fingerprinted by another agency, (e.g., NYC Department of Investigations or a private security firm). If a Staff member has been fingerprinted by the Board after July 1, 1990, pursuant to any Agreement with the Board, the Staff member does not have to be reprinted. However, the Contractor must add such Staff member to the Roster and ensure that the Staff member has been cleared prior to providing any services in accordance with this Section.
3. Contractor has a continuing obligation to review and maintain its Roster throughout the Term of this Agreement:
- (a) Contractor must contemporaneously update information upon hiring new Staff, removing Staff, and/or identifying new PETS contact information.
  - (b) Contractor must respond within twenty-four hours to any notification and/or request for more information generated by PETS.
  - (c) Contractor shall certify on a monthly basis that the Roster is accurate and complete.
4. Contractor shall grant the Board access to all Staff members' personnel records upon request, unless otherwise prohibited by law, for the purpose of conducting a background check and monitoring compliance with Security Clearance Procedures.
5. In the event a volunteer is utilized in the provision of services, the Contractor must ensure such volunteer is chaperoned at all times by a Staff member who has been fingerprinted and cleared by the Designated Security Clearance Office. The Contractor shall submit a list of volunteers' names and social security numbers to the Board contract manager prior to their commencement of services.
6. The Executive Director of the Division of Human Resources ("DHR") for the Board or his/her designees shall determine, on an ongoing basis, whether and to what extent any Staff shall be ineligible to provide services under this Agreement for security reasons. The Board shall have the right to require the removal of any Staff who is the subject of an investigation by DHR pending a final determination. In the event the Executive Director or his/her designees determine that Staff is ineligible, the Contractor does hereby consent and agree to abide by the following:
- (a) The Board will notify the Contractor and the individual of the specific grounds for the decision and will afford the individual and/or Contractor an opportunity to present information on his/her/its own behalf; and,
  - (b) Immediately upon notification, the Contractor shall remove and bar the affected individual and/or entity from providing any services in furtherance of this Agreement, unless and until the decision is reversed or modified; and,
  - (c) Immediately upon notification, the Contractor shall assign another Staff member to fulfill the duties and responsibilities of the removed individual and/or entity in

VOID-2007-NCLB/SES SAMPLE CONTRACT

connection with the performance of this Agreement, unless and until the decision is reversed or modified.

(d) Contractor shall make no demand for, nor be entitled to receive, any additional compensation for costs arising from the debarment of any one or more of its Staff.

7. The Contractor agrees not to hire or retain any person as a Staff member for purposes of this Agreement who is required to undergo Security Clearance Procedures and who refuses to grant authorization for fingerprinting or criminal record review; who has not completely and truthfully reported information concerning his/her criminal convictions; or who has a criminal conviction record, subject to and consistent with Article 21-A of the New York State Correction Law.
8. Contractor is required to advise its Staff to notify Contractor in the event that any Staff is arrested and charged with a felony, misdemeanor or violation in any jurisdiction. Thereafter, Contractor shall:
  - (a) notify the Designated Security Clearance Office in writing or by hand delivery to 65 Court Street, Brooklyn, New York 11201 or by facsimile within twenty-four hours of discovering such arrest; and
  - (b) submit a copy of (a) the criminal complaint, (b) a court order or disposition resolving the case and (c) any other documents deemed necessary by the Designated Security Clearance Office.
9. Contractor shall be responsible to pay for all fingerprinting costs at the time of fingerprinting.
10. Any waiver of the Security Clearance Procedures set forth herein or approval required hereunder shall not be effective unless in writing by the Chancellor or his designee.

**C. Compliance.**

1. The Contractor understands and acknowledges that payment for services under this Agreement is conditioned, in part, upon the Contractor's compliance with this "Security Clearance" Section and that in accepting payment, the Contractor represents that the Contractor is in full compliance. The Contractor shall not be paid for services performed by any individual who was not fingerprinted and cleared in PETS as required by the Board.
2. Contractor's failure to comply with any provision under this "Security Clearance" Section may result in the withholding of payment and/or termination of this Agreement at the discretion of the Board. Additionally, in the event that Provider fails to comply with any provision in this "Security Clearance" Section, the Board shall have the right to impose liquidated damages in the amount of Two Hundred Dollars (\$200.00) per day and set-off such amount from any monies due and owing to the Contractor until Contractor complies with the applicable provision.

## 12. OWNERSHIP OR RELATIONAL CHANGES

Subsequent to execution of this Agreement, the Contractor shall be obligated to notify the Chancellor or his designee(s) in writing within ten (10) calendar days in the event of a change(s) in any of the following: (A) beneficial owners (including, without limitation, parent and over-parent entities), limited or general partners, silent or apparent partners, major shareholders (more than five percent stock ownership), elected or appointed officials, officers and/or directors of the Contractor; (B) subsidiary and/or affiliated entities that are directly or indirectly involved in the performance of this Agreement; (C) transfer payees or payment assignees; and (D) any relationship that might involve or create a conflict of interest.

## 13. CHANCELLOR'S AUTHORITY

The supervisory and disciplinary authority of the Chancellor, regional superintendents, principals and other Board managerial employees over the staff, pupils and facilities of the City School Region of the City of New York shall not be diminished in any manner, not to any extent whatsoever by this Agreement.

## 14. CHANCELLOR'S APPROVAL

The Contractor does hereby consent, acknowledge, stipulate and agree that any and all exhibitions, performances, instructional services, materials and/or resources to be utilized in the performance of this Agreement not referenced in the Work Plan (**Attachment C**) and/or in the Budget Detail (**Attachment D**) shall be subject to the prior approval of the Chancellor or his designee(s).

## 15. CHANCELLOR'S DESIGNEE(S)

For all general and particular intents and purposes wherever mentioned in this Agreement, the Chancellor's designee shall be the Director of NCLB/SES Implementation and/or the Executive Director of the Division of Contracts and Purchasing and/or such other person(s) whom the Chancellor shall designate from time to time with written notice to the Contractor.

## 16. NON-LIABILITY OF THE BOARD

A. The relationship of the Contractor to the Board shall be that of independent contractor. The Contractor and its employees, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself in accordance with such status, that it will neither hold itself out as nor claim to be an officer or employee of the Board or City of New York, that it will not make any claim, demand or applications to or for any right or privilege applicable to an officer or employee of the Board or City of New York including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credits.

B. All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Board or the City of New York for the acts, omissions, liabilities, or obligations of the Contractor or any person, firm, company,

agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature, including, but not limited to, unemployment insurance, worker's compensation, disability benefits, social security, or, except as specifically provided in this Agreement, to any person, firm or corporation. Without limiting the foregoing, neither the Board nor the City of New York shall be liable for any payment made or any obligation incurred in connection with the discharge of any employee by the Contractor.

C. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person, or damage to any property sustained during its operations and work on the project under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants or independent contractors.

## 17. SUBCONTRACTING

A. The Contractor agrees not to enter into any subcontracts for the performance of obligations, in whole or in part, under this Agreement. In the event that Contractor uses a subcontractor or consultant for services indirectly related to the supplemental education services contemplated in this agreement, Contractor shall notify the Board immediately. Two copies of each such proposed subcontract shall be submitted to the Chancellor's designee with the Contractor's written request for approval.

B. All such subcontracts shall contain provisions specifying:

- (i) that the work performed by the subcontractor must be in accordance with the terms of this Agreement.
- (ii) that nothing contained in such contract shall impair the rights of the Board; and
- (iii) that nothing contained therein, or under this Agreement create any contractual relationship between the subcontractor and the Board.

C. The Contractor agrees that it is fully responsible to the Board for the performances of the Services under this agreement and any acts and/or omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

## 18. INCORPORATION OF ADDITIONAL TERMS AND CONDITIONS

For all general and particular intents and purposes, the following is hereby incorporated by this reference into this Agreement as if set forth herein in its entirety: the Board's standard "Terms and Conditions," which document is hereto annexed as **Attachment D**. In the event of a conflict between the body of this Agreement and the terms and conditions, the body of this Agreement shall prevail.

**19. INCORPORATION OF ATTACHMENTS;  
ORDER OF GOVERNANCE**

A. The following Attachments are annexed to this Agreement, incorporated herein, and made a part of this Agreement.

<u>Attachment</u>	<u>Attachment Name</u>
A	REQUEST FOR AUTHORIZATION TO ENTER INTO REQUIREMENTS AGREEMENT(S) WITH APPROVED SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDERS FOR THE PROVISION OF SUPPLEMENTAL EDUCATIONS SERVICES THROUGHOUT THE SCHOOL SYSTEM
B	CONTRACTOR'S WORK PLAN
C	CONTRACTOR'S BUDGET DETAIL
D	BOARD'S TERMS AND CONDITIONS
E	CODE OF ETHICS

B. In the event of conflict between any Attachments incorporated herein by reference and this document, the following order of governance shall apply: first, **Attachment A**; second, this document; third, **Attachment D**; fourth, **Attachment E**; fifth, **Attachment C**; and, last, **Attachment B**.

**20. ENTIRE UNDERSTANDING OF THE PARTIES; AMENDMENT**

A. This Agreement represents the entire understanding between the parties, and no other prior or contemporaneous agreement(s), made orally or in writing, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties, or to vary any of the terms contained herein.

B. This Agreement shall not be modified or amended, except in writing, signed by the parties, in conformance with terms and conditions, attached hereto and made a part hereof as **Attachment D**.

**21. SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDER  
CERTIFICATION**

A. By signing the foregoing agreement Contractor certifies that any ensuing program and activity resulting from this Agreement, will be conducted in accordance with the technical proposal submitted by the Contractor to the New York State Education Department, and all applicable federal and state laws and regulations. Among them specifically, to provide appropriate accommodations and supports to students with disabilities to ensure such students benefit from supplemental educational services.

**B.** The Contractor further certifies that all documentation submitted pursuant to this Agreement contains truthful and accurate information.

**C.** The aggregate of all approved official purchase orders for all NCLB-SES contracted providers in any given year during the Term of this Agreement shall not be issued in excess of the appropriations then available therefore, and if issued through inadvertence or otherwise, shall be deemed null and void and utterly invalid. The Board shall have no liability for payment of same.

## 22. NOTICES

Any notices or communications between the parties, that are required to be provided, or that the parties desire to provide, relating to the performance of this Agreement, shall be given in writing and shall be made by postage prepaid, registered or certified mail, return receipt requested, or by overnight delivery by Federal Express or by other reputable courier service, to the addresses set forth below.

Board: Office of the Deputy Chancellor for Teaching and Learning  
52 Chambers Street, Room 205  
New York, New York 10007  
Attention: Director of NCLB/SES Implementation

Contractor: Address indicated on front page of the Agreement.

## 23. AFFIRMATION OF RESPONSIBILITY AND PAID TAXES

The Contractor, whose taxpayer identification number is stated on the signature page herein, affirms and declares that said Contractor is not in arrears to the City of New York upon any debt, contract or taxes and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, and there is no proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts except as stated in the affirmation pertaining to the foregoing which has been furnished to the Board.

## 24. DISPUTE RESOLUTION

**A.** In the event the Contractor and the Board are unable to resolve their differences concerning a determination by the Board, the Contractor may initiate a dispute in accordance with the procedure set forth in this Dispute Resolution Section. Exhaustion of these dispute resolution procedures shall be a precondition to any lawsuit permitted hereunder.

**B.** The parties to this Agreement authorize the Disputes Resolution Officer (“DRO”) selected by the Executive Director of the Division of Contracts and Purchasing to decide all questions of any nature whatsoever arising out of, under or in connection with, or in any way related to or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to contract award) and the DRO’s decision

shall be conclusive, final and binding on the parties. The DRO's decision may be based on such assistance as he or she may find desirable, including the advice of experts. The effect of the DRO's decision shall not be impaired or waived by any negotiations or settlement offers in connection therewith, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement. All such disputes shall be submitted in writing by either party to the DRO, together with all evidence and other pertinent information with regard to such questions, in order that a fair and impartial decision may be made. The DRO shall render his or her decision in writing and deliver a copy of same to the parties within forty-five (45) days of the conclusion of submission of all materials and information, or such longer time as may be agreed to by the parties. In an unusually complex case, the DRO may render his or her decision in a longer period of time, not to exceed ninety (90) days or such longer time as may be agreed to by the parties, and shall so advise the parties at the commencement of this period. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice. The DRO's decision shall be deemed a final agency action.

C. The DRO may formally decline to hear the Contractor's dispute; in such instance, the Board's Contract Manager's decision shall be deemed final agency action.

D. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the terms of this Agreement shall remain in full force and effect and the Contractor shall continue to provide Services in accordance with this Agreement. Failure of the Contractor to continue to provide Services shall constitute a material breach of contract.

E. If the Contractor protests the determination of the DRO, or of the Contract Manager if such determination is deemed the final agency action, the Contractor may commence a lawsuit in Supreme Court, New York County under Article 78 of the New York Civil Practice Law and Rules. Such review by the Court shall be limited to the question of whether or not the DRO's decision or the decision of the Contract Manager, as applicable, was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such an action or proceeding that has not been presented to the DRO or the Contract Manager, as applicable, prior to the making of his or her decision.

**NO FURTHER TEXT ON THIS PAGE.**

VOID - 2007 NCLB-SES SAMPLE CONTRACT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written on the first page of the Agreement.

**NEW YORK CITY BOARD  
OF EDUCATION**

\_\_\_\_\_  
("Contractor")

By: \_\_\_\_\_  
Photeine Anagnostopoulos  
Chief Operating Officer

By: \_\_\_\_\_  
Signature of Authorized Person

Approved as to description of Services,  
Budget and as to Availability of Funds:

\_\_\_\_\_  
Print Name of Authorized Person

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Print Title of Authorized Person

\_\_\_\_\_  
Taxpayer ID Number (**REQUIRED**)

Approved as to Legal Sufficiency:

By: \_\_\_\_\_  
Neil S. Axelrod, Esq.  
Division of Contracts and Purchasing

VOID - 2007 NCLB-SES SAMPLE CONTRACT

