BREVARD PUBLIC SCHOOLS 2010-2011

TITLE I - SUPPLEMENTAL EDUCATIONAL SERVICES (SES) PROVIDER/DISTRICT CONTRACT

THIS SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDER/DISTRICT CONTRACT ("Contract") is made and entered into on ____________________, 2010, between Brevard Public Schools (hereinafter referred to as "LEA" [local educational agency] or "District"), a public school district duly operating under the laws of the state and ___________________________________, the supplemental service provider (hereinafter referred to as "PROVIDER") for the purpose of providing supplemental services to eligible LEA students. "Eligible students" are those students identified by the District who meet specific requirements under Title I.

WHEREAS, the LEA is authorized to contract with and employ any persons for the furnishing of special services, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, the LEA is in need of such special services;

WHEREAS, PROVIDER is specially trained and experienced and competent to perform the special services required by the LEA, and such services are needed on a limited basis;

WHEREAS, the No Child Left Behind Act, 20 U.S.C. Section 6316(e) outlines the requirements for supplemental educational services;

WHEREAS, Section 6316(e)(3) contains the following requirements:

a. Requires the LEA to develop, in consultation with parents (and the provider chosen by parents), a statement of specific achievement goals for the student, how the student's progress will be measured and a timetable for improving achievement. In the case of a student with disabilities, the statement must be consistent with the student's IEP;

b. Requires a description of how the student's parents and teacher or teachers will be regularly informed of the student's progress;

c. Requires a provision for the termination of the agreement if the provider is unable to meet the goals and timetables required;

d. Requires provisions with respect to making payment to the provider by the LEA;

e. Prohibits the provider from disclosing to the public the identity of any student eligible for, or receiving supplemental services without the written permission of the parent of such student;

WHEREAS, PROVIDER has been approved by the State Department of Education and has met the qualifications to be certified as a supplemental service provider; and

WHEREAS, PROVIDER is willing to provide such services to LEA's eligible students if selected by the parents/guardians of eligible students.
THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, it is agreed between the parties as follows:

1. **Student Learning Plan (SLP)**

   A Student Learning Plan (SLP) shall be developed by the LEA in consultation with parents/guardians and PROVIDER for each eligible student whose parent/guardian elects to receive supplemental services from PROVIDER. It is the responsibility of the provider to schedule the SLP meeting, complete the SLP, and obtain required signatures. Changes in any student SLP may only be made with the written consent of LEA in consultation with parents/guardians. PROVIDER, LEA or the parents/guardians may request a review of a student's SLP.

   PROVIDER shall not unilaterally terminate any SLP. PROVIDER shall obtain written authorization from LEA before terminating any SLP.

   Parents/guardians shall not be charged for any services rendered under the SLP unless such services and charges are clearly identified in writing and agreed upon in advance in a writing signed by the parents/guardians. In no event shall the agreed upon charges obligate the LEA financially, nor shall the LEA incur any obligation or expense in excess of the state/federal reimbursement amount.

2. **Parents/Guardianship**

   For the purpose of the Contract, a parent is the natural or adoptive parent, legal guardian or a surrogate parent appointed by the Court.

3. **Student Records**

   All student records shall be kept in a secure location preventing access by unauthorized individuals. PROVIDER will maintain an access log delineating date, time, agency and identity of any individual accessing student records who is not in the direct employ of the PROVIDER. PROVIDER agrees to provide access to and copies of student records to LEA and/or the parents/guardians of LEA's student. PROVIDER shall not forward to any other person other than parents/guardians or LEA any student record without the written consent of the parent/guardian or LEA. When disposed of, student records must be shredded. No student records may be released or sold to another entity.

4. **Access by LEA**

   PROVIDER shall notify LEA of the location and/or any change in location at which it is providing services to LES’s eligible students. It shall allow access to its facilities for periodic monitoring of each student's instructional program by LEA and shall be invited to participate in the review of each student's progress by LEA. LEA representatives shall have access to observe each student at work, observe the instructional setting, interview PROVIDER and review each student's progress including the behavior intervention plan, if any.

5. **Fingerprints (if applicable, under state law)**

   In accordance with established district policies, PROVIDER shall require all staff members to complete a drug screen test and fingerprinting for a background check using the current district procedures. Fees for the screenings are the responsibility of the PROVIDER or staff. The LEA is not responsible for the payment of screening fees. Staff must
pass both screenings prior to having contact with students. PROVIDER shall be required to supply LEA with a list of employees and their social security numbers.

6. **Independent Contractor Status**

   This agreement is by and between two independent agents and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association. PROVIDER understands and agrees that it shall be responsible for providing its own salaries, payroll taxes, withholding, insurance, workers compensation coverage and all other benefits of any kind, as required by law for its own employees and assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this agreement.

7. **Conflict of Interest: (This section may be waived when not applicable.)**

   PROVIDER agrees to furnish to LEA (upon request) a valid copy of the most recently adopted partnership agreements or bylaws of the corporation and also a complete and accurate list of the Governing Board of Directors (or Trustees or Partners) and to timely update said information as changes in such governance occur. PROVIDER shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including, but not limited to, employment with LEA. Brevard Public School teachers employed by a PROVIDER may not provide supplemental educational services to students whom they teach during the current school year.

8. **Accident/Incident Report**

   PROVIDER agrees to submit a written accident report to LEA within three (3) days of an accident or incident when a pupil has suffered an injury, injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel.

9. **Discrimination**

   PROVIDER shall not discriminate on the basis of race, religion, sex, national origin, age, handicap, or sexual orientation in employment or operation of its programs. Where applicable, PROVIDER will provide multiple language materials to students and parents.

10. **Child Abuse Reporting**

    PROVIDER assures LEA that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures as required by state law. PROVIDER agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. PROVIDER agrees that all staff members will abide by such laws in a timely manner.

    PROVIDER shall submit immediately by facsimile and mail, within twenty-four (24) hours an accident or / incident report to LEA when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, missing children under PROVIDER’S supervision.

11. **Supplies, Equipment and Facilities**

    PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment and facilities for a pupil as required in his/her SLP. PROVIDER who desires to use the District’s facilities must make a separate application
for use of facilities through the school principal and Director of Risk Management. The PROVIDER shall pay the
applicable hourly rate for such use as determined by the LEA’s current facility use charge requirement. All providers
will be assigned to a large space such as the media center or multipurpose room and allow for the provision of a
safety monitor hired by the district.

12. Inspections and Audit

PROVIDER shall provide access to records or reports, or other matter relating to the Contract, upon request by LEA.
Fiscal records shall be maintained by PROVIDER for five (5) years and shall be available for audit.

13. Indemnification

PROVIDER shall defend, hold harmless, and indemnify the LEA and its governing board, officers, agents, servants
and employees; from any and all liability for any accident, injury, sickness, death, damage, theft, criminal or
intentional acts of its employees, volunteers or others associated with the PROVIDER’s operations which occurs on
any property or in any facility made available to the PROVIDER by the LEA pursuant to this agreement and which
occurs during or associated with the course of any program or activity sponsored by the PROVIDER. This agreement
to indemnify and hold harmless includes an obligation to indemnify and hold the LEA harmless for liability for any
negligence on the part of the LEA and its governing board, officers, agents, servants and employees. The
PROVIDER’s promise to indemnify and hold harmless also includes an obligation to assume full responsibility and
expense of investigation, attorney fees, litigation, judgment, and/or settlement of any complaint, claim or legal action.
It is understood and agreed that such indemnity shall survive the termination of this agreement.

14. Insurance

During the entire term of this agreement and any extension or modification thereof, PROVIDER shall keep in effect a
policy or policies for: school leader’s errors and omissions, workers’ compensation for it’s employees, general and
auto liability insurance, including coverage of owned and non-owned vehicles used in relation to the performance of
service(s) by PROVIDER, of at least one million dollars ($1,000,000.00) for each person and two million dollars
($2,000,000.00) for all accidents or occurrences for all damages arising out of accidents, injury, intentional acts,
death, bodily injury, sickness or disease from any one accident or occurrence, and one million dollars ($1,000,000.00)
for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. No later
than the effective date of this agreement, PROVIDER shall provide LEA with a Certificate of Insurance, naming LEA
as a certificate holder, and additional insured to the PROVIDER’S general and auto liability insurance policy. The
Certificate(s) of Insurance shall list the name and policy numbers for the PROVIDER’S general and auto liability,
workers’ compensation and school leader’s errors and omissions insurances. Should the PROVIDER’S insurance
policies terminate or be subject to modification during the term of this agreement, the LEA shall receive written notice
from the PROVIDER immediately. The PROVIDER’S services shall be suspended until a new policy or modification
is in place. A new Certificate of Insurance that complies with the above requirements shall be submitted to the LEA
within twenty (20) calendar days of policy commencement or modification. LEA reserves the right to revise the
requirements of this provision at any time. If LEA determines that additional insurance coverage is necessary, LEA
will reopen negotiations with PROVIDER to modify the terms of this agreement.

15. Monthly Invoices

PROVIDER shall submit to LEA monthly invoices, created by the Cayen System, with students listed alphabetically,
the actual number of hours for which services were provided and an amount due. For each monthly invoice,
PROVIDER shall submit: the original Cayen monthly attendance roster showing sign-in/sign-out times and
parent or student signatures. If the PROVIDER is computer based, a form generated from the program being used
by the student showing the dates and times the student was logged into the system.
Invoices are due the twenty-eighth (28) day of the month following services rendered. All invoices must be submitted to the Title I Resource Teacher, Dan Keane, at 2700 Judge Fran Jamieson Way, Viera, Florida 32940-6601. PROVIDER is paid only for students who have an active Student Learning Plan with said PROVIDER, that was signed by the parent(s) prior to tutoring beginning. PROVIDERS have 30 days to correct and submit any denied attendance. Dates invoiced beyond this sixty (60) day window will NOT be approved. LEA shall process payments to PROVIDER within forty-five (45) calendar days of receipt of such invoices. LEA will only pay for services that are provided in compliance with the PROVIDER’S state approved application. Any services provided that are not in compliance with the PROVIDER’S state approved application will not be paid.

16. Incentives

PROVIDER must limit student incentives as follows:

a) Must not exceed a total of fifty dollars ($50.00) per student for all incentives;

b) Incentives must be earned by achievement or attendance;

c) PROVIDER may not use the availability of achievement or attendance incentives in its marketing efforts prior to student sign-up. Only students signed-up with a PROVIDER may be informed of achievement or attendance incentives.

PROVIDER shall not provide parent incentives.

PROVIDERS are prohibited from offering and school staff from accepting gifts that could be perceived as incentives for a particular PROVIDER.

17. Staffing

Brevard Public School employees working for PROVIDERS shall sign a dual employment form to ensure no conflict of interest and compliance with district school board policies. It is the responsibility of the PROVIDER to ensure the dual employment form is signed and on file in the Office of Title I prior to the employee’s work with the tutoring company. The Office of Title I will provide a copy of the form to the principal or department head of the employee’s job site. District employees hired by providers are prohibited from conducting provider business during school time, or using district resources such as the district email system.

18. Progress Reports

All Cayen System progress reports shall contain the student’s name, school, homeroom teacher, the goal(s) the student is working towards, and the percentage of each tutoring goal accomplished as evidence by tutoring work completed. The student’s level of attendance and level of participation must also be included.

PROVIDER must monthly notify each student’s parents and teachers of the student’s progress. If requested by the LEA or a parent, the PROVIDER shall give these reports in the following languages: English, Spanish, and Creole.

19. Student Learning Gains

As per SEA approval, providers must use a method for measuring student learning gains. Providers shall report data on individual student learning gains in the manner defined by the SEA. Providers must use an SEA approved pre- and post- test assessment for measuring student learning gains. A pre-test assessment score must be entered into the Cayen System for each individual student prior to the Student Learning Plan being submitted to the district.

20. SES Software

PROVIDER agrees to utilize LEA SES software (Cayen System) to invoice, record attendance, develop the Student Learning Plan, complete monthly progress reports and maintain an employee roster and other miscellaneous records. PROVIDER agrees to keep the LEA SES software up to date within two weeks of services rendered. Any
PROVIDER support calls to the SES software company over two hours per contract year will be at PROVIDER cost.

21. Records of Attendance

PROVIDER shall maintain daily records of student service provided, including the name/address of student, the name of PROVIDER’s employee who rendered the service and the amount of time of such service. PROVIDER shall permit access to and/or a copy of such records to LEA upon request.

22. Right to Withhold

LEA may withhold payment to PROVIDER, on ten (10) working days written notice of such withholding, when in the opinion of the LEA:

a. PROVIDER’s performance, in whole or in part, either has not been carried out or is insufficiently documented.

b. PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work or records.

c. PROVIDER has failed to submit the invoice in a timely manner.

If LEA gives notice of intent to withhold, PROVIDER shall have fourteen (14) days from the date of receipt of said notice to correct such deficiency and/or may invoke the dispute resolution provision herein.

23. Modifications and Amendments:

This Contract may be modified or amended only by a written document signed by authorized representatives of PROVIDER and LEA. No change in this Contract or in the SLP shall result in a LEA financial obligation to PROVIDER in excess of the State/Federal reimbursement rate per student per year to the LEA.

24. Disputes

Disputes between LEA and PROVIDER concerning the meaning, requirements or performance of this contract shall be submitted to Cyndi Van Meter, Associate Superintendent, Brevard Public Schools. The determination of Cyndi Van Meter, Associate Superintendent, Brevard Public Schools, shall be made in writing and shall be binding on both parties.

25. Subcontract and Assignment

PROVIDER shall not subcontract or assign any of the work contemplated under this Contract without first obtaining written approval from the LEA. Such approval shall be attached and made part of this Contract. Subcontracts or assignments may be entered into only with providers approved by the state.

The contractor shall remain bound by all of the terms of this Contract, including the insurance and indemnification provisions even if their subcontractor or assign this contract to a third party. The contractor remains liable for any subcontractor or assignees actions.

26. Termination
a. This agreement may be terminated by LEA at any time and by the PROVIDER with notice and after completion of performance of its duties under any SLP’s contracted pursuant to item #1 of this agreement. PROVIDER’S exercise of its right to terminate this Contract shall not alleviate its responsibilities to complete any existing SLP’s. To terminate this Contract, either party shall give twenty (20) calendar days written notice as provided herein prior to the date of the termination. Upon termination without default of PROVIDER, LEA shall pay, without duplication, for all services satisfactorily performed to date of termination.

b. In consideration of this payment, PROVIDER waives all rights to any further payment or damage. Upon termination, PROVIDER shall turn over to LEA all student records in its possession generated as a result of services rendered under this Contract, possessed by PROVIDER or under its control at the time of termination.

c. A Student Learning Plan (SLP) may be terminated by PROVIDER only upon consent of the LEA. A SLP shall terminate if the student ceases to be enrolled in the District. Upon termination under this paragraph, final payment from LEA will be calculated based upon a pro-rata calculation of total services agreed-upon in the SLP for which the LEA is responsible for payment, divided by that portion of services actually rendered.

27. Compliance with Laws

During the term of this agreement, PROVIDER shall comply with all applicable federal, State Board of Education, and local statutes, laws, ordinances, rules and regulations relating to the provision of supplemental services, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract.

28. Entire Agreement

This Contract constitutes the entire agreement between LEA and PROVIDER and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated.

29. Governing Law

The terms and conditions of this agreement shall be governed by the laws of the state of Florida.

30. Severability Clause

If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.
31. Notices

Notices required under this Contract shall be valid when mailed first class postage or personally delivered to the following representatives, as indicated below:

For the LEA: Teresa Wright, Director
Early Childhood Education & Title I Programs
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

For the PROVIDER: _________________________________________________
(Name/Title)
________________________________________________
(Address)
________________________________________________
(City/State/Zip Code)

32. Authorized Representative

The persons signing this Contract certify they are the authorized representatives of the respective parties and are authorized to sign this document.

The parties hereto have executed this agreement by and through their duly authorized agents or representatives. This contract is effective upon signature of both parties, and terminates at 5:00 pm on June 30, 2011, unless sooner terminated as provided herein.

PROVIDER: SCHOOL DISTRICT:

BY: ____________________________________ / Date
    Name/Title / Date
    Dr. Brian Binggeli, Superintendent / Date

    (Type/print name and Title)