

This Agreement will be posted on the CPS Internet website.

Chicago Public Schools
Supplemental Educational Services ("SES") Program
Provider Agreement

This PROVIDER AGREEMENT ("Agreement") dated this 4th day of September, 2009 ("Effective Date") is entered into by and between the **Board of Education of the City of Chicago**, a body politic and corporate (the "Board") and **Brain Hurricane, LLC** (the "Provider").

RECITALS

- A. The No Child Left Behind ("NCLB") Act of 2001 reauthorizes the Elementary and Secondary Education Title I ("Title I" or the "Act") and requires that supplemental educational services be provided to certain low income, low performing students attending schools that are beyond the second year of School Improvement, as defined under the Act;
- B. The term 'supplemental educational services' means tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the regular school day and which are high quality, research-based and specifically-designed to increase the academic achievement of eligible children on academic assessments and attain proficiency in meeting Illinois academic achievement standards;
- C. The Board has established an SES Program for certain approved providers to furnish supplemental educational services predominately in mathematics, science, reading and English language arts to eligible students in order to meet the goals and requirements of the Act;
- D. The Provider has been approved by the Illinois State Board of Education ("ISBE") to provide SES within the State of Illinois in accordance with ISBE's application process established pursuant to NCLB and ISBE's administrative rules for SES providers set forth in 23 Ill. Adm. Code 675 ("SES Administrative Rules");
- E. At least one parent or guardian ("Parent") of an eligible Chicago Public Schools student has selected Provider to furnish his/her child with supplemental educational services for the school year; and
- F. Provider has represented that it has the requisite knowledge, skill, experience and resources necessary to perform such supplemental educational services and is desirous of providing such services at the prices, terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

- 1. **Incorporation of Recitals, Provider's Application and ISBE Requirements:** The matters recited above are hereby incorporated into and made a part of this Agreement. Provider has submitted an application to ISBE ("Application") to provide the services described herein, which ISBE-approved Application is hereby incorporated into and made a part of this Agreement as though fully set forth herein. Any amendments to the ISBE-approved Application after the Effective Date of this Agreement shall not be incorporated into and made part of this Agreement unless approved by the Board.
- 2. **Term:** The term of this Agreement shall commence on the Effective Date and shall end on June 30, 2010 ("Term"), unless terminated sooner as provided herein.
- 3. **Program Services:** During the Term, Provider agrees to provide the tutoring program described in Provider's Application, the services summary ("Services Summary") which describes in detail the services provided specifically for Chicago Public Schools students as set forth in Exhibit A which is attached hereto and made a part of this Agreement (the "SES Program" or "Tutoring Program") and the services and deliverables set forth herein (collectively the "Services"), in accordance with the terms and conditions of this Agreement. The Services described in Exhibit A shall be consistent with and in accordance with Provider's Application.

Provider shall perform all Services to the reasonable satisfaction of the Board. The Board retains final authority with respect to all Services-related decisions. The Board's Chief Education Officer reserves the right to make all final determinations on any issue regarding the administration of the Board's SES Program and the provision of tutoring Services to Chicago Public School ("CPS") students. The Board may, from time to time, request changes in the Services. Any material changes shall be documented by an amendment to this Agreement signed by both parties. The Services shall be designed to achieve the goals identified for each individual CPS student participating in Provider's Tutoring Program. Provider shall ensure that the Tutoring Program is i) consistent with the Board's academic policies and standards, ii) aligned with Illinois Learning Standards, and iii) that the instruction and content is secular, neutral and non-ideological.

4. **SES Program Administration:**

- a. **Student Assignments.** Provider shall furnish Services to eligible CPS students who are assigned to Provider via the process described in this section. Parents will select a SES provider from a list of ISBE-approved providers and will submit their selection to their child's school or to the Board's Office of Extended Learning Opportunities ("OELO"). OELO will then assign eligible students to an approved provider in accordance with Parent selections and its SES Program guidelines. The Board's SES Program Manager will then issue a student assignment list to Provider indicating the students to be served, the designated school representative for each student, and other information relevant to serving such student ("Student Assignment List"). The Student Assignment List may be provided electronically via the internet or in hard copy. Provider will only provide its Tutoring Program to those students listed on the Student Assignment List issued to Provider by the Board's Program Manager ("Assigned Students"). In order to accommodate subsequent Parental requests and student transfers, the students identified on Provider's Student Assignment List are subject to change from time to time at the discretion of the Board's Program Manager and the school Principal. Any additions to Provider's Student Assignment List are subject to Provider capacity. Provider agrees that it shall not transfer any Assigned Students without OELO's consent. Any such transfer requested must be submitted to OELO. Upon any such change in Provider's Assigned Students, Provider will receive an updated Student Assignment List from the Board's Program Manager. Provider may not impose any additional criteria on the admission or assignment of eligible students to its Tutoring Program. The Board does not guarantee that any minimum or maximum number of student assignments will be made to Provider.
- b. **Marketing.** Provider shall produce marketing materials/flyers that are free from deception and accurately describe its Tutoring Program. Such marketing materials/flyers shall not include Confidential Information as described herein in section 14.a below and must comply with the Illinois School Student Records Act, the Protection of Pupil Rights Amendment, and the Family Education Rights and Privacy Act of 1974 ("FERPA"), otherwise known as the Buckley Amendment. Upon request, Providers shall submit copies of all promotional materials, advertisements and press materials related to the SES Program to OELO. Providers will use best efforts to make these marketing materials available in Spanish and other specified high incidence languages.
- c. **Incentives.** Provider shall not offer or advertise economic incentives or gratuities of any kind to students or parents to solicit them to select Provider for SES except for promotional materials of negligible value. During the provision of SES, the Provider may offer only nominal incentives to students, at no more than \$50 per pupil, as rewards for achievement for program milestones or objectives that cannot be attained through attendance alone, or for above-average attendance when given after the midpoint of the Tutoring Program. Provider shall not encourage or induce students or Parents to switch providers once enrolled. Provider agrees to comply with all requirements set forth in the SES Provider Code of Ethics attached hereto as Exhibit B.
- d. **Registration.** In order to avoid multiple enrollments of students in SES Programs and the enrollment of ineligible students in the Program, the Board shall distribute and collect

registration forms from Parents and schools for the Program. The Board shall oversee and direct the registration process and Provider agrees to cooperate with the Board in this regard.

- e. *Instructor Ratios.* In providing its Tutoring Program, Provider shall maintain the instructor to student ratio specified in Exhibit A or better, except as otherwise approved by ISBE. Provider agrees to furnish sufficient numbers of qualified and trained personnel to provide high-quality tutoring Services to all Assigned Students with such tutor qualifications as set forth in Exhibit C. Provider will ensure that all Provider tutors who will serve Assigned Students hereunder complete Provider's training program described in its Application *before* the first day of student tutoring. Provider shall, upon the request of the Board, furnish information and assurances to establish that the Provider is sufficiently staffed with qualified and fully trained personnel to serve all Assigned Students. Upon the written direction of the Board, Provider agrees to remove any instructor/tutor from performing Services if, in the sole discretion of the Board, said instructor/tutor's Services are unsatisfactory.
- f. *Dates, Hours and Frequency of Service.* Provider shall furnish its Tutoring Program to Assigned Students during non-school hours and will meet the duration, hours and frequency of Service specified in Exhibit A. Provider shall not provide Services to any Assigned Students during the regular school day. Provider's Services must be in addition to any and all other educational services provided to Assigned Students, including mandated after school programs/activities and shall not supplant any educational services provided to such Assigned Students. If Provider furnishes on-line Services to its Assigned Students, Provider shall offer no more than six (6) hours of Services per day and shall provide records of the logins/logouts for each Assigned Student to OELO on a monthly basis. The actual dates and hours of Service that Provider shall furnish to each Assigned Student shall be set out on such student's Individualized Tutorial Plan as specified in Section 4.g. below and shall meet the total program hours per subject per student specified in Provider's ISBE-approved Application and the Services Summary. Provider's Tutoring Program shall begin no later than November 16, 2009 and shall end no later than May 10, 2010 ("Dates of Service"). If Provider's Tutoring Program offers less than sixty (60) total program hours to its Assigned Students, Provider must furnish ninety (90%) percent of its total program hours on or before the ISAT testing dates for elementary students and PSAT testing dates for high school students receiving tutoring. However, if Provider offers sixty (60) or more total program hours to its Assigned Students, Provider must furnish seventy (70%) percent of its total program hours on or before the ISAT testing dates for elementary students and PSAT testing dates for high school students. If, for any reason, Provider cannot provide Services to an Assigned Student by November 16, 2009, Provider shall immediately notify OELO in writing of such circumstance. Provider agrees that it is imperative that the Parent of such Assigned Student be allowed to select another Provider in a timely fashion.
- g. *Individualized Tutorial Plan.* On dates specified by the Board's Program Manager, Provider shall communicate with the Parent(s) to develop an individualized tutorial plan ("ITP") which shall include the following minimum information and be in the form attached hereto as Exhibit D:
- (1) A statement of the specific achievement goals for the Assigned Student based on such student's specific education needs;
 - (2) A description of how the Assigned Student's progress will be measured;
 - (3) A timetable for improving the Assigned Student's achievement;
 - (4) For Assigned Students with disabilities, items 1, 2 and 3 above shall be consistent with such student's individualized education program ("IEP") or Section 504 plan, as applicable;
 - (5) The initiation date, total tutoring days, frequency and duration of the Tutoring Program to be provided to the Assigned Student;
 - (6) The location where the Tutoring Program will be provided to the Student;
 - (7) A description of how the designated school representative, teachers and Parents of each Assigned Student and the Board's Program Manager will be regularly informed, on no less frequently than a quarterly basis, of the Assigned Student's progress;
 - (8) A description of the specific Tutoring Program to be provided including diagnostic measures that Provider will use to assess a student's academic baseline level and progress; and

- (9) A description of the method for recording each Assigned Student's attendance at the Tutoring Program.

ITPs for off-site and on-site Providers shall be completed and submitted in accordance with the following procedure:

- A. Prior to obtaining Parent signatures, Provider shall complete and submit ITPs to the Board's Program Manager no later than December 4, 2009 using the Board's web-based system. Any student for whom an ITP is not submitted on or before December 4, 2009 will not be considered registered and will be dropped from Provider's SES Program. Provider shall not be paid for any Services rendered to students for whom an ITP is not submitted on or before December 4, 2009.
- B. The Board's SES Program Manager shall review and approve ITPs no later than December 18, 2009.
- C. If an ITP is approved, the Provider shall then obtain Parent signatures and no later than January 15, 2010, shall 1) submit a hard copy of signed ITPs to the school of each student receiving Services and 2) indicate in the Board's web-based system that the Parent signatures were obtained. Students who do not have signed ITPs on file and submitted in accordance with the foregoing requirements on or before January 15, 2010 will be dropped from Provider's SES Program as of that date and Provider shall not be paid for Services rendered to those students after January 15, 2010. In order to be paid for Services rendered prior to January 15, 2010, Provider must submit a letter by registered or certified mail (return receipt requested) to the Board's Program Manager no later than January 15, 2010 listing the names of the Assigned Students' Parents who were sent unsigned ITPs by registered or certified mail (return receipt requested) but failed to sign the ITPs in order to show proof to the Board that attempts were made to receive Parent signatures.
- D. If an ITP is not approved, the Board's Program Manager will notify the Provider of the deficiency (i.e. ITP not specific to student, etc.) no later than December 18, 2009 and the Provider shall then submit a revised ITP to the Board no later than December 30, 2009. Any student for whom a revised ITP is not submitted on or before December 30, 2009 will be dropped from Provider's SES Program and will be transferred to another Provider. The previous Provider shall not be paid for Services rendered to those students after December 30, 2009. The Board's Program Manager shall review and approve revised ITPs no later than January 8, 2010 and the Provider must then submit the revised ITPs with Parent signatures to the Board in accordance with the procedure set forth in paragraph C above no later than January 15, 2010. Students who do not have revised ITPs with a Parent signature on file or proof of Parent signature submitted in accordance with the requirements set forth in paragraph C above on or before January 15, 2010 will be dropped from Provider's SES Program as of that date and Provider shall not be paid for any Services rendered to those students after January 15, 2010.

ITPs for on-line Providers shall be completed and submitted in accordance with the following procedure:

- E. Provider shall require the Parents to sign parent release forms for the computers received by its Assigned Students and Provider must receive completed parent release forms from the Parents no later than November 14, 2009 to ensure that Provider acts in accordance with the ITP schedule. Upon OELO request, Provider shall sufficiently deliver to the Board's Program Manager certifications, reports, Federal Express tracking sheets verifying services and delivery of computers to its Assigned Students which must be in advance of the start of Provider's Tutoring Program. Prior to obtaining Parent signatures for ITPs, Provider shall complete and submit ITPs to the Board's Program Manager no later than December 4, 2009 using the Board's web-based system. Any student for whom an ITP is not submitted on or before December 4, 2009 will not be considered registered and will be dropped from Provider's SES Program. Provider shall not be paid for any Services rendered to students for whom an ITP is not

submitted on or before December 4, 2009.

- F. The Board's SES Program Manager shall review and approve ITPs no later than December 18, 2009.
- G. If an ITP is approved, the Provider shall then obtain Parent signatures and no later than January 15, 2010, shall 1) submit a hard copy of signed ITPs to the school of each student receiving Services and 2) indicate in the Board's web-based system that the Parent signatures were obtained. Students who do not have signed ITPs on file and submitted in accordance with the foregoing requirements on or before January 15, 2010 will be dropped from Provider's SES Program as of that date and Provider shall not be paid for Services rendered to those students after January 15, 2010. In order to be paid for Services rendered prior to January 15, 2010, Provider must submit a letter by registered or certified mail (return receipt requested) to the Board's Program Manager no later than January 15, 2010 listing the names of the Assigned Students' Parents who were sent unsigned ITPs by registered or certified mail (return receipt requested) but failed to sign the ITPs in order to show proof to the Board that attempts were made to receive Parent signatures.
- H. If an ITP is not approved, the Board's Program Manager will notify the Provider of the deficiency (i.e. ITP not specific to student, etc.) no later than December 18, 2009 and the Provider shall then submit a revised ITP to the Board no later than December 30, 2009. Any student for whom a revised ITP is not submitted on or before December 30, 2009 will be dropped from Provider's SES Program and will be transferred to another Provider. The previous Provider shall not be paid for Services rendered to those students after December 30, 2009. The Board's Program Manager shall review and approve revised ITPs no later than January 8, 2010 and the Provider must then submit the revised ITPs with Parent signatures to the Board in accordance with the procedure set forth in paragraph G above no later than January 15, 2010. Students who do not have revised ITPs with a Parent signature on file or proof of Parent signature submitted in accordance with the requirements set forth in paragraph G above on or before January 15, 2010 will be dropped from Provider's SES Program as of that date and Provider shall not be paid for any Services rendered to those students after January 15, 2010.

An Assigned Student's ITP is subject to change as necessary based on the student's performance and proficiencies as further indicated during the tutoring sessions. In such event, Provider shall notify the Board's SES Program Manager and Parents in order to develop a revised ITP. All revised ITPs must be identified as 'modified' and then approved and signed by the Provider and the Parent and forwarded to the Board's Program Manager. Provider shall not submit an Assigned Student's ITP to the Board's Program Manager if the Provider has not first given the Assigned Student a diagnostic assessment to measure the Assigned Student's academic levels.

- h. *Principal Conference.* If Provider provides its SES Program on-site at CPS facilities, then the Provider shall schedule an orientation conference with the Principal of each Assigned Student's home school. During such conference, the Provider and Principal will develop an outreach plan to contact Parents to set up ITP development conferences. At that conference, the Principal will also explain the policies, procedures and guidelines to be followed by Provider when serving students on school property including, but not limited to, the following: student discipline (including the Board's Student Code of Conduct), student dismissal, school operating schedule, school security, procedures for collecting and transferring students within the building, accident reporting, as well as any facility and equipment usage conditions. The Principal will also identify the school's designated SES Coordinator who will be Provider's point of contact to address day-to-day issues related to the SES Program. The Principal at each school shall have the authority, to the maximum extent possible, to direct the Provider when serving students on the school site. Using a third-party consultant's secure, password-protected online database, Provider and the school Principal shall also complete a "School Program Plan" which shall detail the tutoring services to be provided on-site at the school, the date services are to begin and end, the days and times tutoring is to take place, the classroom space assigned to the Provider for tutoring sessions, and the name of the school's SES Coordinator. The School Program Plan is to be

completed prior to the first tutoring session and is to be signed by the school Principal and Provider and a copy submitted to the Board's Program Manager.

- i. **Parent Involvement.** Provider shall maintain regular contact with Parents of Assigned Students regarding their child's progress in the Tutoring Program. Provider shall make available a phone number for Parents to communicate with the Tutoring Program instructor about their child's participation and progress. If Provider is an on-site Provider, Provider shall be available during CPS Report Card Pick-Up Days to hold individual progress conferences with the Parents of Assigned Students. Further, Provider shall designate additional dates and times which coincide with the issuance of its TSRs for purposes of conducting progress conferences as requested by Parents.
- j. **Assigned Student Withdrawals.** Provider shall immediately notify the SES Coordinator (if an on-site Provider) and the Board's Program Manager in writing within three (3) business days of any Assigned Student who fails to attend five (5) consecutive Tutoring Program sessions other than for illness or vacation (each a "No-Show") and such student(s) shall automatically be dropped from the Tutoring Program. Provider shall discontinue all future Services and issue a final TSR for such student as described in Section 5.a. below.
- k. **Tutor No-Shows and Rescheduling of Tutoring Sessions.** Provider shall provide advance notice to the Principal/SES Coordinator if Provider is on-site, or to the Parent for an off-site Provider, any time its tutor will be unable, for any reason, to conduct a scheduled tutoring session. Provider shall also furnish the school Principal/SES Coordinator with a contact person and number to report any tutor no-shows or late-shows that have not been otherwise reported in advance to the school. Any tutoring sessions that are cancelled due to tutor no-shows, as opposed to student no-shows, must be rescheduled as soon as possible on a date (preferably prior to the ISAT and PSAT testing dates) mutually agreed upon by the school Principal and Provider.
- l. **Make-Up Sessions for Students' Excused Absences.** At the school Principal's discretion, Provider may offer two (2) additional tutoring sessions at the end of its scheduled Tutoring Program for any of its Assigned Students who was not able to attend all of the required tutoring sessions due to the Assigned Student's excused absence(s). Make-up tutoring sessions for Assigned Students shall not be permitted for rain days, school cancellations or school holidays. Dropped students are not allowed to be included in Provider's make-up tutoring sessions.
- m. **Limitations on Number of Tutoring Sessions.** Under no circumstances shall the Provider offer any additional tutoring sessions to its Assigned Students outside of the two (2) make-up sessions, if necessary, and its specified number of Total Program Hours per Student as set forth in its Exhibit A which is attached hereto.

5. **Reporting:**

- a. **Tutoring Status Reports.** Provider shall provide the Board's Program Manager, Parents and, if an on-site Provider, the Assigned Student's home school designated representative, with tutoring status reports ("TSRs") which shall be due January 30, 2009, March 30, 2009 and May 9, 2009 only if Provider's Tutoring Program ends after March 30, 2009. TSRs are to be submitted to the Board electronically via the web-based SES data management system, and to the extent practicable, will be prepared in a language that the Parents can understand. Provider's final TSR for an Assigned Student must include cumulative reporting on the student's participation and overall progress in the Tutoring Program, describe the student's performance on the post-assessment delivered by the Provider, and include an assessment of whether Provider met the objectives for the student set out in the ITP. Provider shall ensure that the Tutoring Program instructor signs each TSR prior to entering student information into the web-based SES data management system and distributing the TSR to the Board's Program Manager, school representative and Parent.
- b. **Attendance Reports.** Provider shall enter attendance information for all Assigned Students

weekly in the web-based SES data management system ("Attendance Report"), which attendance data shall be subject to validation and monitoring by the Board. Unless there is an exigency on the part of the Board or its third-party technology subcontractor, there shall be no change to any Attendance Reports once submitted to the Board on the web-based SES data management system. Provider shall also retain a hard copy of each Attendance Report for its own records.

- c. Year-End Reports. Provider shall furnish the Board's Program Manager with a copy of the final cumulative written report which summarized the activities and progress of all Assigned Students for whom the Provider provided its Tutoring Program hereunder ("Comprehensive Year-End Report") which has been submitted to ISBE at the end of its Tutoring Program. The Comprehensive Year-End Report shall include: i) information on students served, ii) details of any complaints received from teachers or Parents, iii) the percentage of students meeting the academic goals set out in their ITPs, and iv) such other information as required in 23 Ill. Adm. Code 675.70. Upon request, an on-site Provider shall furnish to the Principal of the school who has students served by Provider, a final cumulative written report which will summarize the activities and progress of each Assigned Student attending such school ("School Year-End Report"). All Year-End Reports are due within 60 days after Provider's conclusion of SES. Provider shall provide additional reports and information regarding the Services, program implementation and Assigned Students as requested by the Board's Program Manager.

6. **Per-Student Amount, Invoicing and Payment:**

- a. Initial Per-Student Amount. Under NCLB, the maximum per-student amount the Provider is permitted to charge the Board for Services is limited to the lesser of: (i) the Board's per-student allocation under Part A of Title I of NCLB; or (ii) the reasonable estimate of its actual cost of the services. For the 2009-2010 academic year, the Board's per-student allocation under Part A of Title I of NCLB (the "Per-Student Allocation") shall be the actual amount calculated by ISBE as stated in its Per Pupil Expenditure Report for FY10. In accordance with the SES Administrative Rules, the Provider must establish the reasonable estimate of its actual cost of Services provided under this Agreement (the "Actual Cost Contract Amount" or "ACCA"). The Provider's ACCA for the provision of Services in non-Board facilities (i.e. off-site or on-line) is **\$ NA** per-student. Provider's ACCA for provision of Services in Board facilities (i.e. on-site) is **\$ 2,604.14** per-student, which amount reflects, excluding the security fee charge, the deduction of the facility fee of \$62 per student. The facility fee shall include the costs for building maintenance, building access, utilities, and classroom equipment except for telephones, copiers and facsimile machines. Accordingly, the "Initial Per-Student Contract Amount" shall be the lesser of the Per-Student Allocation or the applicable ACCA stated herein. The per-student hourly rate shall be calculated by dividing the Initial Per-Student Contract Amount by the total program hours per student stated in Exhibit A. Provider shall be paid the per-student hourly rate based upon actual attendance; Provider shall not be compensated for student No-Shows. Provider shall not be allowed to include additional "free" hours in its Tutoring Program to artificially raise Provider's hourly rate. The per-student hourly rate represents full compensation for all Services and materials provided under this Agreement. Provider shall not charge other fees nor seek any payment and/or compensation of any kind whatsoever from the Assigned Students or their Parents for the Services provided under this Agreement. The Board shall not be obligated to pay for any Services not in compliance with this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay the portion of the Initial Per-Student Contract Amount incurred up to the date of termination. In no event shall the Board be liable for any costs incurred or Services performed after the effective date of termination as provided herein.
- b. Security Fee Charge. When a Provider utilizes a Board facility to deliver Services to its Assigned Students, Provider shall pay a security fee charge directly to the Board for the use of such Board facility. The security fee charge includes providing security guard(s) for each Board facility in use during non-school hours. The security fee charge for each Board facility shall be \$2,800 which shall be split equally among the number of Providers furnishing Services to their Assigned Students in that particular Board facility (e.g., \$2,800/2 Providers equals \$1,400 per

Provider). By December 7, 2009, the Board's Program Manager shall inform each on-site Provider of the exact amount of the security fee charges owed to the Board for using its facilities. Payment shall be due on Friday, January 15, 2010 in the form of a money order or certified check drawn upon a banking institution in good standing and made payable to the order of the Board of Education of the City of Chicago.

- c. Invoicing and Payment. Provider shall review, print and sign detailed monthly invoices for Services rendered during the prior calendar month using the Board's web-based system and submit same to the Board's Program Manager for payment. Invoices shall be due no later than 30 days after the end of the previous month. All invoices will be furnished in a format acceptable to the Board's Program Manager. In the event there are any interruptions to, or delays in the Board's web-based system while Provider is submitting its monthly invoices, Provider shall submit duplicate paper invoices on company letterhead to the Board's Program Manager as substitute. The Board's Program Manager will not approve an invoice for payment until all fully signed ITPs have been received by the Program Manager. In the case of ITPs that have not been signed by Parent(s), the invoices for Assigned Students without fully signed ITPs will only be approved for payment by the Board's Program Manager after Provider has submitted to the Board's Program Manager copies of the registered or certified letters to Parent(s) described in Section 4.g. above. Invoices submitted for the SES Program may not be combined with invoices for other Board programs that Provider may be participating in. Provider shall submit such additional supporting documentation as may be requested by the Board in connection with invoices and Services. The Board will process payments in its normal course of business, not to exceed sixty (60) days from Board's receipt of invoice. If the Board, in good faith, deems any of the obligations required of Provider to not meet the requirements of this Agreement, the Board may withhold payment of the invoiced amount until such insufficiency is corrected.
- d. Adjustment to Contract for Actual Cost and Final Payment. No later than sixty (60) days after the conclusion of its Tutoring Program, the Provider must report to the Board its cost of SES within the Chicago Public Schools during the Term of this Agreement in accordance with SES Administrative Rules. The final amount paid to Provider shall be the lesser of (i) its actual cost of SES provided to the Board; or (ii) the Initial Per-Student Contract Amount set forth in paragraph 6.a, multiplied by the number of students enrolled in the SES Program (with appropriate prorations for students completing only a portion of the Program). The Board shall have the right to withhold 5% of monthly invoice amounts pending the reporting of the Provider's actual cost of SES to the Board. The final invoice shall be due no later than June 30, 2010 and the final payment shall be adjusted as set forth in this paragraph. Final payment by the Board, or the repayment of any amounts overpaid to the Provider, shall occur no later than August 27, 2010.
- e. Cancellation of Service. If any tutoring sessions are cancelled or suspended by the Board because schools are not open or operating for any reason including, but not limited to, adverse weather conditions, labor strikes, civil disturbances or temporary school closings, the Board will not pay, and Provider will not be compensated for, Services cancelled or suspended. All such cancelled sessions are subject to a make-up schedule approved by the Board's Program Manager.
- f. Non-Appropriation. Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event sufficient funds are not appropriated in a subsequent fiscal year by the Board for performance under this Agreement, the Board shall notify Provider and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated. Appropriations for Services are further subject to, and limited by, the continued availability of Title I Part A subpart 2 funding in amounts specified in subpart 1 Section 1116 (e)(6) of the No Child Left Behind Act of 2001.

7. **Conditions of Use of Board Facilities and Right of Access:** If Provider is to use Board facilities in connection with the Services, said use shall be in accordance with the following terms and conditions:

- a. Facilities and Equipment Usage. Provider, its employees and agents performing Services, shall be permitted to enter upon and utilize Board facilities in connection with the performance of its Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the school. Provider shall provide advance notice to the school Principal and the Board's Program Manager for any such intended use of school property to furnish Services hereunder. In those instances where Provider is authorized to utilize a Board facility and related equipment to provide Services, Provider shall establish a usage schedule with the Principal and shall pay the security fee charge to provide security at the Board facility during non-school hours.
 - b. Conditions of Use. Provider accepts the school premises and equipment in as-is condition and Provider is solely responsible for determining that such premises and equipment are suitable for its program use. Consent to enter upon and use Board property given by the Principal and the Board's Program Manager shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. The Principal shall have the authority to the maximum extent possible to direct and condition Provider's use of a school in performing the Tutoring Program set forth herein. Provider shall not conduct any other business or commercial activity on Board property other than the Tutoring Program set forth herein without the prior approval of the Board. Provider shall use, and shall cause each of its employees and agents to use, the highest degree of care when entering upon and utilizing any property owned by the Board in connection with the Services. Provider shall be responsible for all costs associated with the repair and restoration of any school property that is damaged as a result of Provider's usage, reasonable wear and tear excepted. Provider shall comply and shall cause each of its employees and agents, to comply with any and all instructions, requirements and licenses for the use of such property. Any and all third party claims, suits or judgments, costs or expenses, including attorneys fees arising from, by reason of, or in connection with any such entries shall be treated in accordance with the insurance and indemnification provisions contained in this Agreement.
8. **Standards of Performance:** Provider shall devote, and shall cause all of its staff and subcontractors to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to perform all Services in a competent, professional and timely manner to the reasonable satisfaction of the Board's Chief Education Officer. Provider shall retain and utilize a sufficient number of qualified and trained staff to assure that CPS students receive effective and high-quality Services that are equivalent to the level of service Provider customarily furnishes to its regular clients.
9. **Cooperation:** Provider acknowledges and accepts a relationship of trust and confidence with the Board and agrees to cooperate with the Board, and all other persons or entities which may be retained by the Board, in performing Services to further the best interests of the Board. Provider shall cooperate with the Board's administration and evaluation of the Services that Provider furnishes as well as the Board's administration and evaluation of the overall SES Program. Such cooperation shall require the Provider to make available all requested data including, but not limited to, attendance information, tutor staffing information, information related to Provider's implementation of its Tutoring Program and to Provider's success in meeting the program goals and ITP goals. Failure to supply the Board with complete reports, certifications, documentation including, without limitation, Attendance Reports, TSRs, year-end reports by the deadlines set forth herein shall result in the Provider's Assigned Students being transferred from the Provider's Tutoring Program. Provider shall cooperate with the Board's Program Manager or designee as they visit and observe tutoring sessions, interview students and Parents and distribute questionnaires and other materials necessary to administer and/or evaluate the Provider's Services and the overall SES Program.

Provider will cooperate with the Board in investigating any and all allegations of suspected child abuse or neglect that are reportable pursuant to the Abused and Neglected Child Reporting Act. This cooperation will include providing unrestricted access to Provider's employees, agents and subcontractors. Within twenty-four (24) hours of becoming aware of any suspected case of child abuse or neglect, Provider must notify the Board and the Department of Children and Family Services ("DCFS") of the suspected case of child abuse or neglect. If any of Provider's employees, agents and

subcontractors are accused of child abuse or neglect and either the alleged victim has sustained injury or if the Board requests, Provider will immediately reassign the alleged perpetrator or restructure his/her position so that (s)he has no unsupervised contact with the student. In any case where an allegation of child abuse or neglect is sustained by the Board, the Provider will immediately comply with any requests by the Board to remove such person(s) from having contact with any students.

10. **Background Checks & Health Screenings:** Provider represents and warrants that, at its own cost and expense, it shall have a national fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and the Statewide Child Murderer and Violent Offender Against Youth Database ("Records Check") conducted on all non-CPS employees, agents and subcontractors providing tutoring services under this Agreement in accordance with the Illinois School Code (105 ILCS 5/10-21.9) to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of 105 ILCS 5/10-21.9, or have been convicted within the past 7 years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois. Provider understands and agrees that it shall not allow any non-CPS employees, agents and subcontractors providing tutoring services under this Agreement have direct regular contact with a student until a Records Check has been conducted for such person and the results of the Records Check satisfies the requirements of 105 ILCS 5/10-21.9.

In the event that any tutor resides outside of the United States, Provider shall represent and warrant that, at its own cost and expense, it shall have a fingerprint-based criminal history records check conducted by the national or regional law enforcement authorities identified in the Provider's Application where such tutor resides prior to such person having direct regular contact with any student in Provider's Tutoring Program.

In addition, in accordance with 105 ILCS 5/24-5, Provider shall ensure, at its own expense, that all employees, agents and subcontractors providing Services under this Agreement are in good health and free from communicable disease which shall include, but not be limited to, tuberculosis.

Provider shall also maintain records of the criminal background checks and health screenings conducted on its employees, subcontractors and agents for its own records.

11. **Audit and Document Retention:** Provider shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. Provider shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Provider's Services under this Agreement. All records referenced above shall be retained for five (5) years after completion of Services and shall be subject to inspection and audit by the Board. Provider shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.

12. **Termination:**

- a. **Termination for Convenience.** If at any time during the Term of this Agreement the Board determines, in its sole discretion, that the Services provided by Provider are no longer in its best interest, the Board has the option to terminate this Agreement on thirty (30) calendar days prior written notice to Provider and the State Superintendent of Education. After receipt of such notice, Provider shall cease all Services unless otherwise directed in the notice.
- b. **Termination for Failure to Meet Goals.** The Board shall have the sole discretion to terminate this Agreement upon written notice to Provider and the State Superintendent of Education when, in the opinion of the Chief Education Officer, Provider is unable to meet the academic achievement goals and timetables outlined in Provider's ISBE-approved Application, Services Summary and Assigned Student ITPs.
- c. **Provider Events of Default.** Events of default ("Events of Default") include, but are not limited to,

the following:

- (1) Any misrepresentation by Provider in the inducement of this Agreement or the performance of Services;
- (2) Breach of any agreement, representation or warranty made by Provider in this Agreement;
- (3) Provider's action or failure to act which affects the safety and/or welfare of students or school staff;
- (4) Provider's removal from the ISBE-approved provider list;
- (5) Failure of Provider to perform in accordance with or comply with the terms and conditions of this Agreement including, but not limited to, the following:
 - (a) Failure to perform, or timely perform, in accordance with terms, conditions and specifications of this Agreement;
 - (b) Failure to provide any portion of the Services herein at the time fixed for performance and in the manner specified herein;
 - (c) Failure to perform the Services with sufficient trained personnel to ensure the performance of the Services due to a reason or circumstances within Provider's reasonable control;
 - (d) Failure to perform the Services in a manner satisfactory to the Board, or inability to perform the Services satisfactorily as a result of insolvency, inability to pay debts, filing for bankruptcy or assignment for the benefit of creditors;
 - (e) Discontinuance of Services for reasons not beyond Provider's reasonable control; or
 - (f) Failure to comply with any term of this Agreement including, but not limited to, the provisions concerning insurance, criminal background checks and nondiscrimination, and any other acts specified in this Agreement as constituting an event of default.
- (6) Assignment by Provider for the benefit of creditors or consent by Provider to the appointment of a trustee or receiver or the filing by or against Provider of any petition or proceeding under any bankruptcy, insolvency or similar law.

d. Remedies. The occurrence of any Event of Default which Provider fails to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within thirty (30) calendar days after notice, Provider fails to commence and continue diligent efforts to cure in the sole opinion of the Board, may permit the Board to declare Provider in default. A copy of any such notice shall also be given to the State Superintendent of Education. Whether to declare Provider in default is within the sole discretion of the Board's Chief Education Officer. Written notification of an intention of the Chief Education Officer to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Provider's receipt of such notice. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies:

- (1) The right to take over and complete the Services or any part thereof, by contract or otherwise at the cost of Provider, either directly or through others. The Provider shall be liable to the Board for any excess costs incurred by the Board;
- (2) Any amount due Provider under this Agreement may be offset against amounts claimed due by the Board;
- (3) The right to terminate this Agreement, in whole or in part; provided, however, if said default is due to the circumstances specified in Sections 12.c.(3), 12.c.(4) or 12.c.(6) above, the Board may terminate the Agreement immediately upon written notice to Provider without regard to the thirty (30) day cure period;
- (4) The right to specific performance, an injunction or any other appropriate equitable remedy;
- (5) The right to receive from Provider any and all damages incurred as a result or in consequence of an Event of Default;
- (6) The right to terminate access to and use of Board facilities to provide Services;
- (7) The right to money damages;
- (8) The right to withhold all or part of Provider's compensation under this Agreement; and
- (9) The right to deem Provider non-responsible in future contracts to be awarded by the

Board.

If the Board considers it to be in its best interest, it may elect not to declare Provider in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Provider to continue to provide the Services despite one or more Events of Default, the Provider shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

- e. Turnover of Documents and Records. Upon demand of the Board after termination of this Agreement for any reason or the expiration of this Agreement by its terms, Provider shall turn over to the Board or its designee within three (3) business days of demand all completed or partially completed reports, data, records, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except Provider may keep a copy of such information for its own records.

13. **Liquidated Damages:** Because of the difficulty in ascertaining and quantifying the actual damages which the Board may sustain should the Provider fail to perform certain services that are required under this Agreement, the Board and Provider agree that the Board shall have the right to assess liquidated damages for each failure by the Provider to perform the Services specified hereunder. The amount of liquidated damages for each such failure by the Provider shall be assessed on a fixed amount basis as identified below in this Agreement. The Board and Provider further agree that the imposition of liquidated damages is a reasonable measure of the Board's damages.

The Provider agrees to pay such amounts as fixed, agreed and liquidated damages, and not by way of penalty, to the Board and further authorizes the Board to deduct the amount of damages from money due the Provider under this Agreement. If the monies due Provider are insufficient or no monies are due the Provider, the Provider shall pay the Board the amount(s) within thirty (30) calendar days after receipt of a written demand by the Board.

However, failure by the Board to assess liquidated damages in any particular instance shall not preclude, or constitute a waiver, of the Board's right to assess such damages at a later time, or on a subsequent occasion. The Board's right to assess liquidated damages shall not preclude the assertion of, or be exclusive of, any other available remedy, including the right to terminate this Agreement, in whole or in part, or the right to seek damages for an unspecified amount for other failures to perform under this Agreement. The Board may assess liquidated damages in the amounts set out below on a per occurrence basis.

Service Failure/Event Resulting In Assessment of Liquidated Damages	Assessment
1. Provider: i) terminates services at a school after Program has begun, ii) closes an off-site tutoring facility, or iii) terminates on-line tutoring after the tutoring program has begun	\$2,000 multiplied by the number of Assigned Students* at site/school where services were dropped or terminated
2. Provider drops or terminates a class at a school after the class has begun	\$2,000 multiplied by the number of Assigned Students* in the grade/classroom where services were dropped or terminated
3. Provider fails to commence tutoring sessions for any Assigned Student after having received a Student Assignment List	\$2,000 multiplied by the number of Assigned Students for whom Provider failed to provide services
4. Tutor no-shows:	i) \$7,500 upon the third occurrence of a tutor no-show

i) Three (3) tutor no-shows	ii) \$5,000 for each additional tutor no-show occurrence thereafter
ii) Each additional tutor no-show	

* *Excluding Assigned Students dropped from the Program*

Liquidated damages will not be assessed if an occurrence set forth above results from a "Force Majeure". The term "Force Majeure" as used herein means acts of God, fire, storm, flood or natural disaster, governmental restraints, either federal or state, civil or military, civil disturbances, war, acts of public enemy, strikes or labor disputes, or any other act or condition beyond the reasonable control of Provider.

14. **Confidential Information, Dissemination of Information, Ownership, Survival:**

- a. **Confidential Information.** In performance of Services to the Board, Provider may have access to or receive certain information that is not generally known to others including, but not limited to, school, student, Parent and teacher information ("Confidential Information"). Provider agrees not to use or disclose any Confidential Information or any information, records, reports, deliverables or documents collected, prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board or its designee. Provider further agrees to (a) receive and hold in confidence all Confidential Information and Work Product, and (b) use such Confidential Information and Work Product solely for purposes of performing Services hereunder, and (c) protect and safeguard all Confidential Information and Work Product from unauthorized disclosure.
- b. **Dissemination of Information.** In the event that Provider is presented with a request for documents by any administrative agency or with a *subpoena duces tucem* regarding any records, data, or Work Product which may be in Provider's possession as a result of Services under this Agreement, Provider shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Provider will not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Provider agrees to cause its personnel, staff and/or subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Provider under this Agreement.
- c. **Ownership.** All Confidential Information, Work Product, and any and all other records, reports, documents, and materials prepared or generated as a result of this Agreement, shall at all times be and remain the property of the Board. All of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement. In the event any of the above items are lost or damaged while in Provider's possession, such items shall be restored or replaced at Provider's expense. The Board acknowledges that all pre-existing Provider-copyrighted materials or materials licensed to Provider by others that are used and distributed by Provider in the course of providing Services hereunder are and shall remain the copyrighted property of Provider or its licensor and will not be considered Work Product as defined hereunder.
- d. **On-Line Data.** If Provider furnishes Services over the Internet, through use of a web site, the Provider shall comply with the Board's policy on Internet acceptable use, Policy Number 03-0326-PO03, as amended from time to time. In such instances it is understood that certain Confidential Information and Work Product including personal information of students who may be under the age of thirteen and data related to such students' participation in the Tutoring Program may be collected and/or transmitted on-line in the course of Provider furnishing Services hereunder ("On-Line Data"). With respect to such On-Line Data, it is agreed that all such data shall be the property of the Board and shall be gathered by and/or transmitted to Provider solely to enable Provider to furnish Services and the Board to carry out its educational responsibilities under NCLB. The Board notes that it may not be necessary for Provider to meet the requirement to obtain parental consent under the provisions of the Children's On-line Privacy Protection Act ("COPPA") because the Board is a non-profit entity and is not engaged in

any commercial activity in relation to making supplemental educational services available to eligible CPS students. It is understood, however, that if parental consent is required under COPPA or other applicable law, it will be the responsibility of Provider to obtain such parental consent. On-Line Data received or collected by Provider must be deleted and destroyed by Provider upon written notification from the Board.

- e. Family Educational Rights and Privacy. Provider acknowledges that certain information about CPS students participating in this Tutoring Program is confidential by reason of FERPA, otherwise known as the Buckley Amendment, the Illinois School Student Records Act and the Protection of Pupil Rights Amendment. Provider agrees to protect this information and to ensure the confidentiality of any and all information in its possession regarding participating CPS students. Provider shall not disclose to the public or any third party the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents. Any use of information contained in student education records to be released must be approved by the Board. To protect the confidentiality of student education records, the Provider will limit access to those employees who reasonably need access to them in order to perform their responsibilities under this Agreement.
- f. Survival. The provisions of this Section 14 shall survive the termination or expiration of this Agreement.

15. **Representations and Warranties of Provider:** Provider represents and warrants that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct (as may be modified from time to time subject to Board approval) during the Term of this Agreement:

- a. Contractor's Disclosure Form. The disclosures in the Contractor's Disclosure Form submitted by Provider to the Board's Department of Procurement and Contracts are true and correct. Provider shall promptly notify the Board of any material change in information set forth therein, including, but not limited to, change in ownership or control, and any such change shall be subject to Board approval, which shall not be unreasonably withheld.
- b. Qualified Professionals. Services required by law, by ISBE, or by this Agreement to be performed by licensed, certified, qualified or accredited individuals shall be performed by individuals deemed licensed, certified, qualified and/or accredited by the State of Illinois to undertake such Services.
- c. Financially Sound. Provider warrants that it is financially sound, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.
- d. Technical Accuracy. Provider warrants that all Services and Work Product will be technically accurate and correct.
- e. Compliance with Laws. Provider is and shall remain in compliance with all local, State and Federal laws, ordinances, regulations and statutes relating to this Agreement and the performance of Services. Further, Provider is and shall remain in compliance with all Board policies and rules relating to this Agreement and the performance of Services.
- f. Gratuities. No payment, gratuity or offer of employment was made to Provider, any of its members if a joint venture or, to the best of Provider's knowledge, to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Provider is and shall remain in compliance with all applicable anti-kickback laws and regulations.
- g. Good Standing. Provider, each of its joint venture members if a joint venture, and each of its subcontractors, if any, are not in default or have not been deemed by the Board's Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the Effective Date of this Agreement, and have not been debarred under the Board's Debarment Policy during the three (3) year period immediately

preceding the Effective Date of this Agreement.

- h. Authorization. Provider has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Provider is duly authorized by Provider and has been made with complete and full authority to commit Provider to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Provider.
- i. Statements of Assurance. Provider hereby represents and warrants to the Board the same assurances, in their entirety, which Provider granted to ISBE in the Overall Assurances Section of Provider's Application which is hereby incorporated into and made a part of this Agreement.
- j. Non-liability for Computers. Provider represents and warrants that the Board shall assume no responsibility for computers and other related equipment supplied by Provider to Assigned Students as part of the Tutoring Program.

- 16. **Independent Contractor:** It is understood and agreed that the relationship of Provider to the Board is and shall continue to be that of an independent contractor and neither Provider nor any of Provider's staff, agents, employees or subcontractors shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Provider, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Provider shall be the sole responsibility of Provider. Provider agrees that neither Provider nor its staff or subcontractors shall represent themselves as employees or agents of the Board. Provider shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code including, but not limited to, a social security number or a federal employer identification number.
- 17. **Indemnification:** Provider agrees to defend, indemnify and hold harmless the Board, and its respective Board members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent acts or omissions of the Provider, its officials, agents, employees and subcontractors in the performance of this Agreement. In any suit filed or claim or demand made, Provider shall, at its own cost and expense, appear, defend and pay all attorney's fees and other costs and expenses, including those incurred by or on behalf of the Board and shall pay all attorney's fees, costs and expenses the Board incurs in enforcing any rights provided under this Agreement including, but not limited to, this Indemnification section and the Insurance section. In addition, if any judgment shall be rendered against the Board in any such action, the Provider shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving the Provider of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies, which involve the interest of the Board. Provider expressly understands and agrees that the indemnity obligations set forth herein are separate from and not limited by Provider's obligation to maintain insurance pursuant to this Agreement. The indemnities set forth herein shall survive the expiration or termination of this Agreement.
- 18. **Non-Liability of Board Officials:** Provider agrees that no Board member, employee, agent, officer or official shall be personally charged by Provider, its members if a joint venture, or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Provider, its members if a joint venture, or any subcontractors.
- 19. **Insurance:** Provider, at its own expense, shall procure and maintain insurance for all operations under the Agreement, whether performed by Provider or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Provider shall submit to the Board satisfactory evidence of the following insurance coverage:
 - a. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars

(\$500,000.00) per occurrence for accident and disease. The workers' compensation policy shall contain a waiver of subrogation clause.

- b. Commercial General Liability Insurance. Commercial General Liability Insurance or equivalent with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense. Policy shall not exclude sexual abuse/molestation coverage.
- c. Automobile Liability Insurance. Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. If Provider does utilize CPS facilities to render Services and does not transport students hereunder, then the Board waives this Automobile Insurance requirement. Such waiver does not constitute a waiver of Provider's indemnifications obligations hereunder.
- d. Professional Liability/Errors & Omissions Insurance. Professional Liability/Errors & Omissions Insurance covering acts, errors or omissions with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim. Coverage extensions shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must provide for an extended reporting period of not less than two (2) years.
- e. Additional Insured. Provider shall have its General and Automobile Liability Insurance policies endorsed to provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board.
- f. Insurance Certificate. The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay the Provider for any work if satisfactory proof of insurance is not provided prior to the commencement of Services. The Certificate must provide sixty (60) days prior written notice of material change, cancellation or non-renewal be given to:

Board of Education of the City of Chicago
Bureau of Risk Management
125 S. Clark Street, 14th Floor
Chicago, Illinois 60603
Attn: Risk Management Coordinator
- g. General. Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Provider's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement.

Provider's failure to carry or document required insurance shall constitute a breach of the Provider's agreement with the Board. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the Board retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated. The Board will not pay the Provider for any work if satisfactory proof of insurance is not provided before the commencement of Services.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Provider. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the Provider under this Agreement.

All subcontractors are subject to the same insurance requirements of Provider unless otherwise specified in this Agreement. Provider shall require any subcontractors under this Agreement to maintain comparable insurance naming the Provider, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. Provider will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Provider in no way limit the Provider's liabilities and responsibilities specified within the Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement, if any, or any limitation that might be placed on the indemnity in this Agreement given as a matter of law.

Provider agrees and warrants that insurers waive their rights of subrogation against the Board.

Upon Board request, Provider and/or its subcontractors shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

20. **Non-Discrimination:** It shall be an unlawful employment practice for Provider or its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. Provider shall comply with the Civil Rights Act of 1964, 42 U.S.C.A. §2000, et seq., as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, et seq.; the Rehabilitation Act of 1973, 29 U.S.C.A. §701, et seq., as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, et seq.; the Illinois Human Rights Act, 775 ILCS 5/1-10 as amended; and the Chicago Human Rights Ordinance, MCC ch. 2-160.
21. **Assignment and Subcontracts:** This Agreement shall be binding on the parties and their respective successors and assigns; provided, however, Provider may not assign or subcontract this Agreement without the prior written consent of the Board, which consent shall be in the sole and absolute discretion of the Board. Under no circumstances shall Provider attempt to assign or subcontract this Agreement to a Provider not approved by ISBE.
22. **Entire Agreement; Amendments:** This Agreement, including all exhibits and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained therein. To the extent that any conflict or incompatibility exists between Provider's Application and the terms of this Agreement, the terms of this Agreement shall control. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. All referenced exhibits attached hereto are hereby incorporated into and made a part of this Agreement.
23. **Continuing Obligation To Perform:** In the event of any dispute between Provider and the Board, Provider shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.
24. **Survival/Severability:** All express representations, warranties or indemnifications made or given in this Agreement shall survive the completion of Services by Provider or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, this Agreement shall

be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

25. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of law or choice of law principles.
26. **Waiver:** No delay or omission, or series of delays or omissions, by the Board to exercise any right hereunder shall be construed as any type of waiver of any such right, and the Board reserves the right to exercise any such right from time to time as often as may be deemed expedient.
27. **Conflict of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3 which restricts the employment of, or the letting of contracts to, former Board members during the one-year period following expiration or other termination of their terms of office.
28. **Indebtedness:** Provider agrees to comply with the Board's Indebtedness Policy 96-0626-PO3, as amended from time to time, which policy is hereby incorporated by reference as if fully set forth herein.
29. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.
30. **Joint and Several Liability:** In the event that Provider, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof) then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Provider shall be the joint and several obligation or undertaking of each such individual or other legal entity.
31. **M/WBE Plan:** The SES Program is a tuition-based program and therefore, pursuant to the terms of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts ("M/WBE Plan"), Provider's Services are not subject to compliance with the requirements of the M/WBE Plan.
32. **Freedom of Information Act:** Provider acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.40. Provider further acknowledges that this Agreement shall be posted on the Board's Internet website at www.cps.edu.
33. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally; (ii) sent by confirmed telex or facsimile (followed by the actual document); or (iii) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt.

IF TO THE BOARD:

Board of Education of the City of Chicago
Office of Extended Learning Opportunities
125 South Clark Street, 10th Floor
Chicago, Illinois 60603
Attn: Erica L. Harris
Fax: 773-553-3702

Copy to: Patrick J. Rocks
General Counsel
125 South Clark Street, 7th Floor
Chicago, Illinois 60603
Fax: 773-553-1701

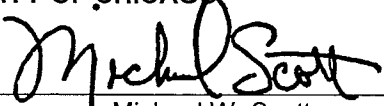
IF TO PROVIDER: Brain Hurricane, LLC
1 E. Erie St., Suite 353
Chicago, Illinois 60611
Attn: Ms. Jenetta Ross
Fax: 888-368-6746

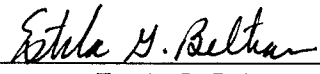
34. **Condition Precedent:** It is expressly agreed and understood that as a condition precedent to this Agreement becoming effective as of the Effective Date hereof, Provider must be in receipt of at least one student assignment in accordance with the process described in Section 4.a. herein. In the event Provider receives no such student assignment(s), the Board shall declare this Agreement null and void.
35. **Board Approval:** This Agreement is subject to the approval of the members of the Chicago Board of Education.

[Rest of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

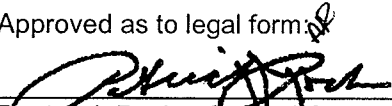
**BOARD OF EDUCATION OF
THE CITY OF CHICAGO**

By: 
Michael W. Scott
President


Attest: 
Estela G. Beltran
Secretary

Board Report No. 09-0826-PR22-12

Date: 9/4/09

Approved as to legal form: 
Patrick J. Rocks, General Counsel

BRAIN HURRICANE, LLC

By: 
Name: Sara Rosales

Title: Program Director

Attest: _____
Secretary

Date: _____

Attachments:

- Exhibit A – Services Summary
- Exhibit B – Code of Ethics for SES Providers
- Exhibit C – Tutor Qualifications for the SES Program
- Exhibit D – Individualized Student Tutorial Plan (ITP) Form

Exhibit A
Services Summary

COMPANY NAME

BRAIN HURRICANE

Defined terms used in this Services Summary shall have the same meanings as those ascribed to such terms in the Agreement.

This Services Summary contains supplemental information that is necessary to further detail the Services of the Provider as it specifically relates to CPS students. Provider shall include information in the Services Summary consistent with the information in its ISBE-approved Application. Any changes to this Exhibit shall be evidenced in a writing signed by both parties. Provider's SES Program shall serve the grade levels selected below.

Note: New Providers who have no history of providing SES for any school districts in the past must limit their Services to no more than two hundred (200) students during the first year of the SES Program in Illinois.

Provider must complete the following:

Type of Program: (Please check all that apply):

☒ On-site ☐ Off-site ☐ On-line ☐ On-site/On-line

Grade Levels Served												
Program Available	1	2	3	4	5	6	7	8	9	10	11	12
Reading	√	√	√	√	√	√	√	√				
Math	√	√	√	√	√	√	√	√				
Science												

Total Program Hours per CPS student (please offer a specific number, not a range) 45

Teacher: CPS Student Ratio..... 6:1

Average total cost per student (excluding Facilities Usage Credit)..... \$2666.14

Facilities Usage Credit to CPS (\$62/student)*..... \$62

Maximum total cost per CPS student (Total cost minus Facilities Usage Credit)*... \$2604.14

Maximum number of CPS Students Provider can serve district-wide..... 4,000

Minimum number of CPS students required by the Provider to offer
an SES program (per school) 25

Can you provide services to:

CPS Limited English Proficient students? ☒ Yes ☐ No

CPS Students with Disabilities? ☒ Yes ☐ No

Students may have varying levels of disabilities or language skills. Please consider the varying degrees of student needs when determining whether you can serve students with learning, physical, behavioral or emotional disabilities or limited English proficiency.

Provider shall not change the Total Program Hours per CPS student agreed upon by the Board's Program Manager and Provider after the execution of this Agreement.

*To be completed by on-site Providers only.

CONTINUED ON NEXT PAGE

Exhibit A
Services Summary

Identify the Chicago contact person who will be responsible for the day-to-day operations of your program.

Name:	Jenetta Ross
Title:	State Director
Street Address:	1 E. Erie Street., 353
City, State, Zip:	Chicago, IL 60611
Phone:	312-577-0066
Email:	Jenetta@brainhurricane.com
Fax:	888-368-6746

List the address(es) of the location(s) of service delivery (other than CPS facilities): ____

Exhibit B
Code of Ethics

- a) Providers must accurately and completely describe services to consumers in terms that are easy to understand. Providers' statements regarding the number of hours of service offered in their programs must match the number of hours for which districts have contracted. That is, a provider shall not charge a district for a portion of the hours of service offered and indicate that the remaining hours of service are to be provided free of charge.
- b) Providers must create and use promotional materials and advertisements that are consistent with their approved applications and free from deception. Upon request, providers shall submit all promotional materials and advertisements related to the SES program to ISBE or the school districts in which they wish to serve.
- c) Providers must not misrepresent to anyone the location of a provider's program or the approval status of a program. If the location of services is contingent upon a minimum student enrollment or the approval of a district, the provider shall indicate the applicable contingencies in its marketing materials.
- d) Providers must not publicly criticize or disparage other providers.
- e) Providers must not distribute a district enrollment form that has the selected provider's name pre-printed as part of the form. Providers must not distribute enrollment forms with directions for how to complete the forms.
- f) Providers must not market their programs directly to students in the absence of those students' parents or guardians, except in the course of district-sponsored provider fairs, school assemblies, or other events permitted pursuant to this Part.
- g) Providers must maintain a system of addressing consumer grievances and concerns and must immediately report any grievances to both the district and ISBE.
- h) Providers must not compensate district employees in exchange for access to facilities, to obtain student lists, or for any illegal purpose. Providers must not solicit or accept an exclusive arrangement with any district or school (including, but not limited to, an exclusive right to conduct in-school assemblies or other marketing activities).
- i) Role of District Personnel
 - 1) Employees of a particular district may be hired by a provider serving that district for instructional purposes or to perform other functions related to the delivery of the provider's program of SES. District personnel hired for these purposes shall not recruit students to a provider's program, engage in marketing activities on behalf of a provider, distribute or collect enrollment forms, or otherwise promote or encourage students to enroll in a provider's program.
 - 2) District personnel without responsibility for or involvement in the district's administration of SES may be employed to perform solely clerical functions having no relationship to the marketing of a provider's program or the recruitment of students.
 - 3) Where a school district or a school is also a provider of SES, an individual may be employed as coordinator or site manager for the SES program it provides if the individual will have no other responsibilities apart from oversight and management of that SES program, which may include marketing and recruitment, subject to the following additional requirements.

- A) The individual employed by the district for this purpose shall not present marketing or recruitment information on any occasion unless all other providers approved for the schools served are offered the same opportunity to present information or recruit students.
 - B) The district shall ensure that the individual has no greater access to parents and students at provider fairs, school assemblies, and other, similar occasions than is afforded to all other providers. "Access" means the amount of speaking time available, the space used, and any other resources allocated to providers.
 - C) The individual's duties related to the SES program for which the district is the provider shall be entirely distinct from those of any other district employee who performs oversight with respect to the provision of SES generally, such as serving as the district's liaison to all SES providers within a school or schools.
- j) Each restriction applicable to a school district employee under this Section shall apply equally to each officer of any governmental or nonprofit organization formed to support or advise a particular school in which the provider seeks to offer services, to each member of a local school board, governing body, or board of control, and to each member of a local school council in a school district organized pursuant to Article 34 of the School Code [105 ILCS 5/Art. 34].
 - k) Each parent of an eligible student who is hired by a provider must have a written job description and must be compensated on the same basis as all other employees of the provider who perform similar work. No parent may receive any commission or other benefit related to the enrollment of his or her child in a provider's program, nor may a parent be subject to any employment action by the provider on account of the parent's selection of an SES program for his or her child.
 - l) Providers must not make payments or in-kind contributions to a district, exclusive of customary fees for facility utilization.
 - m) Providers must not offer or advertise economic incentives or gratuities of any kind to parents or students to solicit them to select the provider for SES. Providers may not offer any incentives to potential students in the course of informational sessions, but may offer promotional materials of negligible value, such as pencils, balloons, or magnets.
 - n) During the provision of SES, providers may offer only nominal rewards to students for achievement of program milestones or objectives that cannot be attained through attendance alone, or for above-average attendance when given after the mid-point of the provider's program. Providers shall not spend more than \$50 per pupil on rewards, exclusive of rewards that consist of materials and equipment used directly in the provision of services.
 - o) Providers must not encourage or induce students or parents to switch providers once enrolled.
 - p) Providers must not attempt to influence or bias parents when performing an evaluation of the provider's services and achievement of the objectives in the student's Individual Learning Plan.
 - q) A provider shall not use information provided by parents of students served under this Part for any commercial purpose without securing the parent's prior written consent for the intended use of the specified information, except that a provider may use parental contact information to communicate about SES with the parents of students served by that specific provider in any prior year.
 - r) School district personnel shall treat all providers of SES impartially. Whether or not the employing district or school is a provider, school personnel shall not:

- 1) promote or disparage specific SES providers;
- 2) distribute SES enrollment forms that include a pre-printed provider's name;
- 3) obstruct parents in exercising their right to select an SES provider;
- 4) seek to influence parents' choices among SES providers;
- 5) alter or destroy registration forms submitted by parents without specific authorization from the parents; or
- 6) encourage students to drop out of an SES program or switch providers once enrolled.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Exhibit C
Tutor Qualifications for the SES Program

Qualifications for a Person to be a Tutor in SES Program: Teacher certification for a tutor in a SES Program is not a requirement but all individuals providing services to children (meaning anyone working in an instructional role with students, irrespective of job title) must meet, at a minimum, the requirements for paraprofessionals under the No Child Left Behind Act of 2001 ("NCLB"). The requirements are as follows:

- 1) have a high school diploma or equivalent, and
- 2) have completed at least two (2) years of study (60 semester hours or 90 quarter hours) at an institution of higher education, or have obtained an associate's degree or higher.

(Source: Section III, Item H "Qualification of Instructional Staff" of ISBE-approved Application)

Supplemental Educational Services- 2009-2010
Individualized Student Tutorial Plan (ITP)Exhibit D

STUDENT INFORMATION

STUDENT NAME	
STUDENT CPS ID	
SCHOOL NAME	
GRADE	

PROVIDER INFORMATION

TUTORING COMPANY	
TUTOR NAME	

SERVICE SCHEDULE

Tutoring sessions (instructional time only) will be held _____ times weekly, for _____ minutes per session at _____ in room _____ from _____ to _____.
(LOCATION, I.E. SCHOOL NAME OR OFFSITE ADDRESS) (START TIME) (END TIME)

ENGLISH LANGUAGE ARTS

PRE-TEST SCORE(S)

Based on your student's pre-test, these Illinois learning standards will be the focus of this year's tutoring sessions.

How we will work on these standards with your child

MATHEMATICS

PRE-TEST SCORE(S)

Based on your student's pre-test, these Illinois learning standards will be the focus of this year's tutoring sessions.

How we will work on these standards with your child

SCIENCE

PRE-TEST SCORE(S)

Based on your student's pre-test, these Illinois learning standards will be the focus of this year's tutoring sessions.

How we will work on these standards with your child

THIS IS HOW WE WILL TRACK YOUR STUDENT'S PROGRESS

THIS IS HOW WE WILL ADDRESS YOUR STUDENTS IEP OR PROVIDE SPECIAL SERVICES, IF NECESSARY

THIS IS HOW WE WILL STAY IN TOUCH WITH YOU AND YOUR CHILD'S SCHOOL

PARENT SIGNATURE

Thank you for reviewing your child's tutoring plan. Please sign below and return it to your child's s tutor. If there are no return instructions enclosed, please have your child return the form to his/her SES coordinator at the school.

If you have questions about any information on this form, please contact your child's tutor or the tutoring company using the information included above or by contacting the SES coordinator at your child's school.

PARENT SIGNATURE

DATE