

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered as of this 19th day of September 2006, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as “SBBC”.)

a body corporate and political subdivision of the State of Florida,

whose principal place of business is

701 Northwest 31st Avenue

Fort Lauderdale FL 33311

and

**CATAPULT LEARNING, LLC**

(hereinafter referred to as “CATAPULT”)

whose principal place of business is

1001 Fleet Street

Baltimore MD 21202

**WHEREAS, SBBC** desires to obtain academic tutoring for targeted students for the 2006-2007 school year.

**WHEREAS CATAPULT** is willing to provide academic tutoring to the targeted students as stated in this agreement.

**NOW, THEREFORE,** in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 RECITALS**

**1.01 Recitals:** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

**ARTICLE 2 – SPECIAL CONDITIONS**

**2.01 Term:** The Term of this agreement shall be the period from the commencement of this contract, through May 31, 2007 subject to the contingencies or conditions contained herein for early termination.

## **2.02 Educational Services Provided By Catapult**

### **a) Overview**

Catapult shall provide instruction in Reading and/or Math utilizing Catapult's proprietary programs, systems, teaching techniques and individualized diagnostic tests and academic prescriptive educational courses and materials to a minimum of 1,200 select students enrolled in grades K-8. Participating students shall have the opportunity to attend the Program up to 135 minutes per week per subject, during the Term of this Agreement.

### **b) Materials**

Catapult will provide Catapult teachers with appropriate materials that supplement but not supplant regular classroom instruction. The nonpublic regular curriculum may differ significantly from that of the public schools. Catapult will select materials which complement and supplement nonpublic classroom materials. This enables Catapult to capitalize on thematic strands in the supplemental classroom. Reading materials offer a variety of literacy genres and multi-cultural texts at student instructional levels.

### **c) Diagnostic Testing of Students**

Based on a criterion referenced test (CLCRT) and teacher observations, a specific Personalized Education Plan (PEP) is developed for each student via an instructional objectives database. This plan details a child's strengths and weaknesses as well as instructional goals and objectives. Plans are regularly updated through diagnostic instructional observations, and cooperative planning with both the classroom teacher and the student. This is done both face-to-face and through our communication forms between the Title I CATAPULT teacher and classroom teacher. Long-term student gains are assessed through a pretest/posttest norm-referenced evaluation model. These results are used to assess individual student growth and to identify areas for program development. The results of all assessments will be provided to the SBBC upon request. CATAPULT will administer additional tests when and as required by the SBBC.

### **d) Student Instruction**

In small group work with the teacher, the emphasis is placed on the process as well as the product. CATAPULT'S Education Plan supports the early identification of learning difficulties, instruction tailored to meet the needs of individual students, and the development of student self-

esteem through a positive learning environment. CATAPULT uses specific teaching strategies within a diagnostic-prescriptive model. Upon referral, students' needs are identified through teacher observation and testing. A Personalized Education Plan (PEP) is then written for each student in the program. This plan, in conjunction with classroom teacher input, outlines those educational objectives needing development. Student progress is carefully monitored by the CATAPULT teacher on a continual basis in the small group setting. This setting supports learning in an atmosphere that is cheerful and work-centered. Expectations for student behavior and participation are clear and consistent. Lastly, the physical environment exposes students to peripheral reading supports, which are designed to provoke thought and discussion.

Intervention and re-identification of learning deficits target instruction that is effective in meeting student needs. While in class, an emphasis is placed on the learning process through the development of critical thinking skills. In reading, the four aspects of language are developed: listening, speaking, reading and writing.

**e) Catapult's Personnel**

1. Catapult shall hire, supervise, train, and evaluate all staff required by Catapult to provide all services required under this Agreement.
2. Only qualified instructors who hold or have held a duly issued teacher's certificate from the Florida state teacher licensing agency or who meet current provisions for certification will be used for direct instruction.
3. Fees associated with certifying Catapult instructors to teach in these select private schools shall be assumed by Catapult or individual instructors (i.e. fingerprinting fee.)

**f) Professional Development for Title I Teachers**

CATAPULT Professional development is accomplished through monthly faculty meetings at which guest speakers and workshop leaders are scheduled. Additional workshop days are scheduled to coincide with non-service days at the schools. CATAPULT shall provide an in-service staff development training session for the school's teachers and administrators to facilitate familiarization with CATAPULT'S instructional methods, and coordination of students' learning environment in the CATAPULT program and in the regular classroom. Additionally, professional development workshops/classes are offered at no cost to CATAPULT Title I teachers through Broward County Schools Human Resources Department on a monthly basis.

**g) Parental Involvement Program**

CATAPULT is acutely aware of the need for effective and informative parent communications. CATAPULT will be required to spend a minimum of 1% of the Title I allocation on parent involvement activities and provide documentation to the Title I office. CATAPULT will conduct a parent meeting at the beginning of the program. At that time, parents will be advised of eligibility, enrollment, instruction and reporting procedures. They will be afforded the opportunity to view instructional materials and student work. Most importantly, parents will be offered the opportunity to become aware of and participate in their children's Title I program through conferences, classroom observation, newsletters, periodic informative handouts, and guest reading. Progress reports are sent home four times a year.

**H) Reports**

CATAPULT shall prepare a monthly summary showing actual instructional time delivered to each student in the preceding month to be submitted by the tenth (10) day of each month.

All Catapult programs conduct an annual program evaluation. These evaluations generally include: the analysis of pretest and posttest score data; interviews with classroom teachers and principals concerning their perceptions and observations of our program; and parent and student questionnaires to elicit attitudes, opinions, observations and suggestions for the program.

Program evaluation information, once compiled, is interpreted in cooperation with the school district and nonpublic schools.

**2.03 SBBC Obligations**

Upon acceptance of this Agreement, and at times during the term of this Agreement when requested by CATAPULT, the SBBC shall provide, deliver or designate the following:

Within six (6) weeks of SBBC approval of the program the SBBC will provide and update a list of the students to be served and designate a sufficient number of students for enrollment.

**2.04 Program Evaluation**

The parties agree and understand that overall evaluation of the success of the CATAPULT program is the responsibility of the nonpublic schools receiving the services and/or their designee. This evaluation will be

developed by the nonpublic schools and may include results of standardized achievement tests, as well as climate surveys, classroom observations, qualitative assessments, or any other criteria determined by the nonpublic schools in consultation with CATAPULT.

## 2.05 Payment of Services

\_\_\_\_\_ FTE part-time certified teachers  
program coordinator, salary, benefits  
administrative costs and operational fees: **\$344,705**

The facts that this contract allows payment for services rendered not to exceed, it does not require SBBC to pay up to **\$344,705.00** but to pay for only those services which are purchased and rendered pursuant to this contract. As such, there is no assurance or guarantee that SBBC will purchase a certain volume of services under the contract.

Said sum shall be paid in ten (10) equal monthly installments yearly (or pro-rated monthly from the commencement of the contract), the first of which shall be paid within thirty (30) days from the commencement of this contract and each subsequent payment shall be made the first of each month. According to State Law, SBBC will not pay in advance; therefore, each pay period will be invoiced on the last day specified. Please forward all payments to the address as listed on the invoice.

Within six (6) weeks from the date of this contract, CATAPULT will commence providing services at **Annunciation, Nativity, Our Lady, St. Elizabeth, St. Helen, and St. Stephen, St. Ambrose, and St. Bartholomew**, hereinafter referred to as “Nonpublic Schools.”

The Program Teachers who provide services in the Program (hereinafter referred to as “**Program Teachers**”) shall at all times remain Catapult employees, subject to Catapult’s ultimate control and authority, including on issues of teacher conduct, discipline and termination.

## 2.06 Confidential Proprietary Information

The SBBC acknowledges that CATAPULT’S programs, courses, diagnostic tests and techniques for preparation of individualized courses of instruction are proprietary and confidential in nature and the confidential and exclusive property of CATAPULT and that the SBBC has no right, by virtue of this Agreement or otherwise, to have access to or to disclose said property, except as may be required for monitoring purpose, or by applicable law.

**A. General Insurance Requirements**

CATAPULT shall not provide any services under this Agreement until CATAPULT has obtained all insurances required hereunder and such insurances have been approved by SBBC.

CATAPULT shall furnish certificates of insurance to SBBC for review within fifteen (15) days after SBBC approval and shall maintain same at all times during the term of this Agreement.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this Agreement shall have at least an "A-" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.

Insurance policies required under this Agreement shall be endorsed to be primary of all other valid and collectable coverages maintained by the SBBC. The SBBC shall be named as an additional insured under the General Liability policy on the Certificate of Insurance.

The Certificates shall clearly indicate that CATAPULT has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice and approval by SBBC.

**B. Insurances Required**

General Liability Insurance: CATAPULT shall maintain General Liability Insurance, including Contractual Liability to cover the "Hold Harmless Agreement/Indemnification language set forth herein, with bodily injury limits of not less than One Million (\$1,000,000) Dollars per occurrence combined single limit for bodily injury and property damage.

Automobile Liability Insurance: CATAPULT shall maintain Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the provided services as described in this Agreement in amounts not less than (\$1,000,000) Dollars per occurrence combined single limit for bodily injury and property damage.

**C. Student Records/Consents**

CATAPULT shall maintain the confidentiality of all students' records in compliance with applicable federal and state laws. Additionally,

CATAPULT shall procure from the parent or guardian of each student receiving services hereunder a written consent in favor of CATAPULT and the SBBC for the mutual disclosure of the student's records by and between the SBBC and CATAPULT.

CATAPULT shall make student records available to the nonpublic schools to allow them to compile evaluation data of student achievement.

CATAPULT agrees to complete and submit on a timely basis the forms (paperwork) generated by the Broward County Title I administrative office.

**D. Record Retention**

CATAPULT agrees to retain and make available to the SBBC all records related to this Agreement for at least five (5) years after the Agreement is completed. The SBBC reserves the right to audit and inspect all records maintained by CATAPULT in providing services under this Agreement.

**2.07 Indemnification**

- a. SBBC agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- b. CATAPULT agrees to indemnify, hold harmless and defend SBBC, its agents' servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by CATAPULT its agents, servants or employees: the equipment of CATAPULT, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of CATAPULT or the negligence of CATAPULT'S agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by CATAPULT, SBBC or otherwise.

**2.08 Background Screening**

Background Screening. CATAPULT agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and the CATAPULT and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of CATAPULT or its personnel providing any services under the conditions described in the previous sentence. CATAPULT will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to CATAPULT and its personnel. The Parties agree that the failure of CATAPULT to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SCCB to terminate immediately with no further responsibilities or duties to perform under this Agreement. CATAPULT agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in CATAPULT's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

- 3.01 No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.
- 3.02 No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be used by third parties in any matter arising out of any contract.
- 3.03 Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**3.04 Termination.** This Agreement may be terminated by either party if the other party is in breach of any material provision of this Agreement, but only after written notice of default and an opportunity to cure has been given to the breaching party. The notice of default must give the breaching party an opportunity to cure of at least sixty (60) days in the case of a non-monetary default and at least ten (10) days in the case of a monetary default. If the breaching party has not cured the breach before the cure date stated in the notice of default, the party giving notice may terminate this Agreement by giving the breaching party written notice of termination stating the date on which the termination is to be effective. Notwithstanding the delivery of a notice of default or notice of termination under this Section, the parties shall continue to observe and perform their respective obligations under this Agreement until the effective date of termination.

In the event either party elects to terminate this Agreement, Catapult shall be entitled to an equitable adjustment hereunder. Said equitable adjustment shall include all fees for services rendered up to the date of termination and costs reasonably incurred by Catapult in connection with such termination. If adequate notice is not provided, Catapult shall also be entitled to payment of any fees that would have been earned during the balance of the notice period.

**3.05 Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

**3.06 Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**3.07 Amendments.** No modification, amendment, or alteration in the terms or conditions contained here in shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

- 3.08 Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to from a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 3.09 Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 3.10 Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
- 3.11 Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement of interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 3.12 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 3.13 Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.
- 3.14 Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure".) In no event shall a lack of funds on the party of either party be deemed Force Majeure.

**3.15 Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonable susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.16 Severability.** In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforcability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**3.17 Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice.

To SBBC: Superintendent of Schools  
The School Board of Broward County  
701 Northwest 31st Avenue  
Fort Lauderdale FL 33311

With a Copy to: Jeffrey Williams, Program Specialist  
Title I, Nonpublic Program  
The School Board of Broward County  
701 Northwest 31st Avenue  
Fort Lauderdale FL 33311  
Telephone: (954) 321-1402

To Catapult: Stephen K. Freeman  
President  
Private and Religious School Services  
Catapult Learning, LLC  
470 North 2<sup>nd</sup> Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19123  
Telephone: (215) 592-7000

With a Copy to: Ms. Margaret Russell  
Regional Director  
Catapult Learning, LLC  
431 Lakepark Trail  
Oviedo, FL 32765  
Telephone: (321) 230-9932

- 3.18 Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.
- 3.19 Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 3.20 Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgements under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written:

**FOR SBBC**

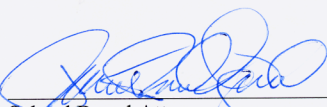
THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
Benjamin J. Williams, Chairperson

\_\_\_\_\_  
Dr. Franklin L. Till, Jr.  
Superintendent of Schools


Approved as to Form:


  
\_\_\_\_\_  
School Board Attorney

**FOR CATAPULT**

CATAPULT LEARNING, LLC

ATTEST:


  
\_\_\_\_\_  
Thomas K. Purcell  
Vice President, Finance

  
\_\_\_\_\_  
Stephen K. Freeman  
President,  
Private & Religious School Services

My Commission expires: \_\_\_\_\_

*May 28, 2008*

(SEAL)

  
\_\_\_\_\_  
Signature – Notary Public

*Patricia A. Silva*  
\_\_\_\_\_  
Printed Name of Notary

