

**Individuals with Disabilities Act - Section 611 and Section 619**  
**Able2**

THIS AGREEMENT made between the Elmira Heights Central School District (hereinafter referred to as the "DISTRICT"), a municipal corporation of the State of New York, having its principal, office at 2083 College Avenue, Elmira Heights, New York, 14903.

AND

Able2 (hereinafter referred to as the "PROVIDER"), having its principal offices at 1118 Charles Street, Elmira, New York, 14904.

WITNESSETH

WHEREAS the parties hereto desire to make available to the DISTRICT the services as authorized by applicable laws of the State of New York; and as outlined in ATTACHMENT A, and

WHEREAS the PROVIDER is qualified to provide and is willing and authorized to furnish Such services to the DISTRICT, and

WHEREAS the DISTRICT desires to contract with the PROVIDER for the furnishing of such services as aforesaid, and the said PROVIDER has agreed to render and furnish such services to the DISTRICT to the extent indicated herein, and under the terms and conditions hereinafter provided, and

WHEREAS the DISTRICT wishes to make these services available to those persons eligible under applicable regulations,

NOW, THEREFORE, it is mutually agreed between the parties involved as follows:

1. **TERM OF AGREEMENT**

This Agreement shall become effective September 1, 2013 and shall terminate on August 31, 2014.

2. **BUDGET AND TOTAL AMOUNT OF AGREEMENT**

The PROVIDER agrees that the budget attached hereto and made part hereof as ATTACHMENT B, accurately lists any personnel and/or other costs for services to the DISTRICT to be rendered By the PROVIDER under this Agreement.

The total budgeted for this Agreement shall not exceed the sum of:

**Four Thousand Nine Hundred Ninety (\$4,990) for Section 611.**  
**One Thousand Seven Hundred Three (\$1,703) for Section 619.**

The DISTRICT will provide payment to the PROVIDER as described in ATTACHMENT D, attached hereto and made a part hereof.

3. **RELATIONSHIP AS INDEPENDENT PROVIDER**

The relationship of the PROVIDER to the DISTRICT shall be that of independent PROVIDER. The PROVIDER, in accordance with this status as an independent provider, covenants and agrees that it will conduct itself in accordance with this status as an independent provider, covenants and agrees that it will conduct itself in accordance with such status, that it will neither hold itself out as, nor claim to be an officer or employee of the DISTRICT by reason thereof and that it will not by reason thereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the DISTRICT, including, but not limited to Worker's Compensation coverage, or retirement membership or credits.

4. **ASSIGNMENTS**

The PROVIDER shall not assign, transfer, convey, sublet, subcontract or otherwise dispose of this contract or the right, title or interest therein or the power to execute such contract to any other person, company or corporation without prior written consent of the DISTRICT which consent shall not be unreasonably withheld.

5. **COMPLIANCE WITH APPLICABLE LAWS**

The PROVIDER shall have the overall administration and responsibility for carrying out the terms of this contract and agrees not to knowingly violate any Federal, State or Local statutes, rules and regulations.

The PROVIDER shall furnish services in accordance with applicable requirements of law as they are known and shall cooperate with the DISTRICT as may be required so that the DISTRICT shall be able to fulfill its function and responsibilities applicable to the County, State, Federal and Local requirements pertaining thereto.

6. **NEW FEDERAL OR STATE REQUIREMENTS**

In the event that Federal or State Agencies issue new or revised requirements to the DISTRICT pertaining to services rendered in the performance of the Agreement, then the DISTRICT shall promptly notify the PROVIDER of said change(s) and the PROVIDER shall then have a reasonable amount of time to comply with said requirements.

7. **RECORDS RETENTION**

The PROVIDER agrees to retain all books, records and other documents relevant to this Agreement for seven years after final payment. Federal and/or State auditors and any persons duly authorized by the DISTRICT shall have full access and the right to examine any of said materials during said reporting period.

8. **CONFIDENTIALITY**

The PROVIDER and the DISTRICT shall observe and require the observance of applicable District, Federal and State requirements relating to the confidentiality of records and information.

9. **GRIEVANCES/FAIR HEARINGS**

The PROVIDER shall establish a system through which recipients may present grievances about the operation of the service system. The PROVIDER will advise all recipients of this right and will also advise applicants and recipients of their right to appeal.

10. **FEES**

The PROVIDER will retain all fees collected from eligible individuals or other entities required to pay such fees and will reduce its claim for Federal, State or County reimbursements by the amount of such fees collected. The collection of such fees is solely the responsibility of the PROVIDER,

It is further understood and agreed that in the event that the actual fees or contributions collected by the PROVIDER exceed the estimated amount as stated in the attached budget, that such fees may, with the mutual written consent of the parties hereto, be used to expand the services provided by the PROVIDER and to increase the amount of gross expenditures by amending this budget with the approval of the DISTRICT and the appropriate State Agency.

11. **SANCTIONS/NON-REIMBURSEMENT**

If the appropriate State Agency shall sanction and/or fail to approve full reimbursement to the DISTRICT for payments made hereunder by the DISTRICT to the PROVIDER (including sanctions) for expenditures made during the term of this Agreement, then the DISTRICT may deduct and withhold from any payment due the PROVIDER an amount equal to the reimbursement denied by the appropriate State Agency, and the DISTRICT'S obligation hereunder shall be reduced by such amounts. This shall apply to sanctions or disapprovals due to error, actions or omissions of the PROVIDER only. In the event the state reimbursement is withheld due to a DISTRICT error, actions or omissions, the PROVIDER shall not be penalized.

12. **FISCAL AND STATISTICAL REPORTS - NOT APPLICABLE**

The PROVIDER agrees to make fiscal and program statistical reports at times prescribed and in a format prescribed by the DISTRICT. Upon expiration or termination of this Agreement, the PROVIDER shall submit to the DISTRICT a final expenditure report delineating the manner in which the PROVIDER expended the DISTRICT'S funds which PROVIDER received under this Agreement. The District Treasurer shall pay the funds appropriated by the DISTRICT for said project and the District Treasurer is hereby authorized by this Agreement to pay such funds in the sum as stated in paragraph two upon authorization of the DISTRICT which shall request payment in the manner required for this project.

13. **DOCUMENTATION**

The PROVIDER agrees to document and maintain books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Expenditures shall be documented and maintained in separate and complete fiscal accounts (in accordance with generally accepted accounting principles) and the PROVIDER shall turn over, upon demand by the DISTRICT, all such documentation to the DISTRICT.

14. **CASE RECORDS AND REPORTING REQUIREMENTS**

- A. The PROVIDER shall maintain individual case records as approved for each participant and other program statistical records as may be required by the DISTRICT and the relevant State agency. All case records, summaries, statistics and other records and reports shall be maintained or submitted in a manner satisfactory to the DISTRICT and/or the relevant state department or agency. The individual case records for each participant shall be kept and maintained in a confidential manner, regulations or guidelines of the Federal, State or local government and its agencies.
- B. Concurrently with its execution of this Agreement, the PROVIDER shall submit to the DISTRICT a budget describing the services the DISTRICT is purchasing from the PROVIDER pertaining to the education of students with disabilities 3-21 at PROVIDER'S facilities.
- C. The PROVIDER shall submit to the DISTRICT'S Supervisor of Special Education quarterly written reports containing programmatic and fiscal information pertaining to the services rendered in accordance with this Agreement.
- D. The DISTRICT shall develop, in cooperation with PROVIDER, a system of reports to be made periodically as are or may be necessary to comply with applicable Federal and State requirements. The DISTRICT and the PROVIDER shall, through cooperative efforts, develop forms, procedures and financial controls for carrying out their respective responsibilities under this Agreement.
- E. These records shall be subject at all reasonable times for inspection, review or audit by DISTRICT and State and/or Federal personnel or their authorized representatives. The PROVIDER agrees that it shall make available for audit and inspection by the DISTRICT or designated agent, all financial and program records and cooperate with the review or audit entity.
- F. Designated representatives of the DISTRICT and authorized State agencies shall have access to persons eligible for the services herein and to the record of persons for the purposes of the proper discharge of its responsibilities under this agreement.

15. **ANNUAL AUDIT**

- A. The PROVIDER shall submit to the DISTRICT its annual audit and, if the PROVIDER has a fiscal year other than January 1 through December 31, the PROVIDER will submit a supplemental fiscal report which provides an exclusive accounting of DISTRICT funding for the calendar year January 1 through December 31.

16. **INSPECTION OF BOOKS AND RECORDS**

The PROVIDER agrees to maintain program records required by the DISTRICT and agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural assurances, review of staffing ratios and job descriptions and meetings with any staff directly or indirectly involved in the provision of services may be conducted at a reasonable time by appropriate State and Federal personnel and other persons duly authorized by the DISTRICT.

17. **CLAIMS, PAYMENTS AND AUDITS**

The PROVIDER agrees that all claims submitted for reimbursement to the DISTRICT shall be true and correct and that reimbursement by the DISTRICT does not duplicate reimbursement received by the PROVIDER from any other sources.

18. **INSURANCE**

The PROVIDER agrees to procure and maintain insurance at its own expense and without direct expense to the District. Insurance of the kinds and in the amounts hereinafter specified in and attached hereto at Attachment C.

Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the PROVIDER hereby agrees to effectuate the naming of the DISTRICT as an unrestricted additional insured on the PROVIDER'S insurance policies, with the exception of Workers' Compensation.

Said insurance policy shall be secured with an A.M. Best Rated secured New York State admitted insurer; provide for 30 day cancellation notice, and state that the PROVIDER'S coverage shall be primary coverage for the DISTRICT.

PROVIDER agrees to indemnify the DISTRICT for any applicable deductibles.

PROVIDER acknowledges that failure to obtain such insurance on behalf of the DISTRICT constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the DISTRICT. PROVIDER is to furnish the DISTRICT with a certificate of insurance evidencing the above requirements have been met prior to the commencement of work or use of facilities.

19. **HOLD HARMLESS INDEMNIFICATION**

The PROVIDER agrees to defend, indemnify and hold harmless the DISTRICT, its officers and agents, against all liability, judgments, costs and expenses upon any claims arising from the negligence of the PROVIDER, its agents, officers or employees, in performing the work under this Agreement.

20. **NEPOTISM/CONFLICT OF INTEREST**

The PROVIDER agrees and is obligated to disclose that no current officer, director or incorporator of the PROVIDER shall be hired or retained by the PROVIDER to fill any staff position or perform any services required under this Agreement and that parents, spouses, siblings and children of current officers, directors or incorporators will not be employees paid from these funds without prior written approval of the DISTRICT.

21. **TERMINATION**

Each party shall have the right to terminate this Agreement by giving thirty (30) days prior written notice to the other party.

- A. Notwithstanding the above, if, through any cause, the PROVIDER fails to comply with legal, professional, DISTRICT, Federal or State requirements for the provision of services or with the provisions of the Agreement, or if the PROVIDER becomes bankrupt or insolvent or falsifies its records or reports, or misuses its funds from whatever source, the DISTRICT may terminate this Agreement effective immediately, or, at its option, effective at a later date, after sending notice of such termination to the PROVIDER.
- B. The DISTRICT shall be released from any and all responsibilities and obligations arising from the services covered by this Agreement, effective as of the date of termination, but the DISTRICT shall be responsible for payment of all claims for services provided and costs incurred by the PROVIDER prior to termination of this Agreement, that are pursuant to, and after the PROVIDER'S compliance with, the terms and conditions herein, subject to any adjustments the DISTRICT may have.
- C. In the event of termination of the Agreement prior to the termination date set forth in the project description, the PROVIDER, agrees to:
  - (1) Account for and refund to the DISTRICT, within thirty (30) days, any unexpended funds which may have been paid to the PROVIDER pursuant to this Agreement.
  - (2) Not incur any further obligations pursuant to this Agreement beyond the termination date.
  - (3) Submit, within thirty (30) days of termination, a full report of fiscal and program activities, accomplishments and obstacles encountered related to this Agreement.

22. **NON-DISCRIMINATION**

- A. The PROVIDER and DISTRICT agree to comply with all applicable rules and regulations regarding non-discrimination regarding work to be performed under this Agreement. In compliance with New York State and Federal Laws, PROVIDER and DISTRICT shall not discriminate because of age, race, creed, sex, color, disability, national origin, marital status, blindness, sexual preference, sponsorship, employment, source of payment or retaliation in the performance of this Agreement.
- B. FOR CONTRACTS RECEIVING STATE FUNDING: The PROVIDER shall not discriminate in the admission, care, treatment, employment, and confidentiality of persons with AIDS or HIV-related medical conditions. PROVIDERS found to have discriminated or to have breached the confidentiality of AIDS-related medical records will be required to implement remedial plans, including staff education, to prevent future incident. In cases of repeated violations or refusal to comply, State funding to such PROVIDERS shall be terminated and/or administrative finds imposed.

23. **FOR CONTRACTS RECEIVING FEDERAL FUNDING, EITHER DIRECTLY OR THROUGH STATE OR LOCAL GOVERNMENTS:**

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), required that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. This law also applies to children's services which are provided in indoor facilities which are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification or contract agreement wherein this certification is included, the PROVIDER certifies that the organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The submitting organization agrees that it will require that the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The above recited language reflects the Federal requirements for all Federally funded programs.

However, New York State Public Health Law, Section 1399-o, governing smoking in public places and facilities, is more restrictive than the Federal law. In all instances, if any state or local law, rule or regulation is more restrictive than the applicable Federal law, then all terms of the state or local law, rule or regulation shall apply.

24. **EXECUTORY BASED ON AVAILABILITY OF MONIES**

This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the purchase beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract and monies are available only to the extent that this grant is funded by the State of New York.

25. **COOPERATION**

The PROVIDER and the DISTRICT recognize that in the performance of this contract, the greatest benefits will be derived by promoting the interest of both parties and each of the parties does, therefore, enter into this contract with the intention of loyally cooperating with the other in carrying out the terms of this contract and each party agrees to interpret its provisions insofar as it may legally do, in such manner as will thus promote the interest of both and render the highest service to the public and in accordance with the provisions of the Agreement.

26. **SECTARIAN PURPOSES**

The PROVIDER agrees that no funds received pursuant to this Agreement will be used for sectarian purposes or to further the advancement of any religion. This paragraph does not in any way limit expenditure of funds due to PROVIDER'S employees through this Agreement which become part of the employees' personal spending money.

27. **LOBBYING**

The PROVIDER/Contractor will not spend Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of Congress, a member of Congress, an employee of a member of Congress, or an officer or employee of any Federal agency in connection with any of the following Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. Furthermore, if the PROVIDER/Contractor spends any non-federal funds for these purposes, PROVIDER/Contractor will make and file any disclosures required by State or Federal Law.

28. **GENERAL PROVISIONS**

A. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.



- B. If any term or provision of this Agreement or the application thereof shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, other than those as to which it is held invalid or unenforceable, shall not be affected.
- C. The paragraph headings in the Agreement are inserted for convenience and reference only and shall not be used in any way to interpret this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date herein written:

ELMIRA HEIGHTS CENTRAL SCHOOL DISTRICT  
Federal ID #16-6001727

BY:

\_\_\_\_\_

Harry J. Blish, Board President

DATE: \_\_\_\_\_

Able2  
Federal ID#

BY: \_\_\_\_\_

Mark S. Peters

Title: Executive Director

Attachment A = Services to be Provided  
Attachment B = Budget  
Attachment C = Insurance Requirements  
Attachment D = Payment Schedule

**ATTACHMENT A**  
**Services to be Provided**

Services:

Special education services provided under contract with the Elmira Heights School District for the 2012-13 school year will be consistent with and in compliance with the IDEA (Individuals with Disabilities Act) Section 611 and Section 619, Part B requirements.

\$4,990 for Section 611, Part B at \$1,497 per student for three (3) students and \$499 per student for one (1) student.

\$1,703 for Section 619, Part B at \$511 per student for three (3) students and \$170 per student for one (1) student.

**ATTACHMENT B**  
**Budget**

Services will be provided to the Elmira Heights School District in accordance with file budgetary detail below:

<b>PROGRAM:</b>	<b>DISTRICT:</b>	<b>STUDENTS:</b>
Federal Part B, §611, IDEA Flow-Through Allocation	Elmira Heights Central School District 2083 College Avenue Elmira Heights, NY 14903	Section 611 \$1,497/Student 3 Students; \$499/Student 1 Student
		<b>Total: \$4,990</b>
Federal Part B, §619, IDEA Flow-Through Allocation	Elmira Heights Central School District 2083 College Avenue Elmira, NY 14905	Section 619 \$511/Student 3 Students; \$170/Student 1 student
		<b>Total: \$1,703</b>

**ATTACHMENT C**  
**Certificate of Insurance Requirements**

In satisfaction of the insurance requirements of this Agreement, PROVIDER is required to procure and maintain comprehensive general and automobile liability insurance in the sum of **ONE MILLION DOLLARS (\$1,000,000.00)**.

PROVIDER is further required to provide a copy of proof of said coverage in a Certificate of Insurance naming the DISTRICT as an additional insured. The Certificate of Insurance must include the term of this Agreement or PROVIDER shall, on or before thirty (30) days of the expiration date of the above insurance, provide the DISTRICT with a Certificate of Insurance with the same coverage for the balance of the term of this Agreement.

Any required insurance will be in companies authorized to do business in New York State, covering all operations under this Agreement, whether performed by the PROVIDER or by subcontractors.

All insurance coverage required to be purchased and maintained by the PROVIDER under this Agreement shall be primary for the defense and indemnification of any action or claim asserted against the DISTRICT and/or the PROVIDER for work performed under this Agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

Certificate attached hereto.

**ATTACHMENT D**  
**Payment Schedule**

The DISTRICT shall pay vendor funding to the PROVIDER under §4410-b of the Education Law in an amount equal to their proportional share of federal funds allocated to the DISTRICT based on the number of students with disabilities who were served by PROVIDERS ON December 1, 2012, as if the DISTRICT had received the section 611 funds and/or section 619 funds on September 1, 2013. Payment of funding to PROVIDERS with IDEA, PART B federal funds or local district funds shall begin within 30 calendar days of September 1, 2013, that is, by October 1, 2013.