



Master Service Agreement

This Master Services Agreement (“Agreement”) is made as of the date of last signature below (“Effective Date”) between Tutor.com, Inc. (“Tutor.com”) and the City of North Miami (“Customer”).

1. Services. Tutor.com will provide to Customer and its Users the online tutoring services (“Services”) set forth in service orders (“Service Orders”), the first of which is attached hereto as Exhibit A and each of which is part of this Agreement. “User” means visitors of Customer who are authorized by Customer’s rules and procedures to access the Services under this Agreement. Tutor.com provides the Services through its proprietary online classroom (“Online Classroom”), and during the term of this Agreement and subject to the terms and conditions of this Agreement, Tutor.com grants Customer and its Users the non-exclusive, non-transferable right to access the Online Classroom in connection with the Services.

2. Setup. Tutor.com will set up the Services for launch on a date mutually agreeable to the parties. Customer will provide Tutor.com with all information and other cooperation needed to set up and launch the Services.

3. Payment. The fees for the Services will be set forth in Services Orders and will be invoiced in accordance with the Service Orders. Customer will pay invoices within 30 days of the invoice date unless otherwise specified in the Service Orders. Tutor.com may suspend the Services if any amounts remain unpaid 30 days after the due date. All fees are net of taxes, except for taxes on Tutor.com’s income. If Customer is exempt from taxes, Customer will provide its tax exemption certificate.

4. Representations and Warranties.

- a. Each party represents and warrants to the other that (i) it will comply with all applicable laws and regulations in connection with its performance under this Agreement and (ii) the individual signing this Agreement on its behalf has the authority to do so.
- b. Tutor.com represents and warrants that it will perform the Services in a professional manner in accordance with industry standards. Customer’s sole remedy for a breach of this warranty is re-performance of the particular Services that breached the warranty at no additional charge.
- c. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND THE ONLINE CLASSROOM ARE PROVIDED “AS IS” AND TUTOR.COM EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TUTOR.COM MAKES NO WARRANTY THAT THE SERVICES OR THE ONLINE CLASSROOM WILL MEET CUSTOMER’S REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR APPLICATIONS PROVIDED BY THIRD PARTIES, THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SERVICES OR THE ONLINE CLASSROOM WILL BE CORRECTED.

5. Term and Termination.

- a. The term of this Agreement is from the Effective Date through the date of termination by either party. Either party may terminate this Agreement upon 30 days prior written notice to the other if no Service Order is in effect.
- b. Either party may terminate this Agreement (or any Service Order) upon written notice to the other if the other party commits a material breach of this Agreement (or the Service Order) that remains uncured for 30 days following written notice of the breach.

6. User Information. Tutor.com will not disclose to any third party any personally identifiable information of a User without first obtaining Customer's prior written consent unless Tutor.com believes that disclosure may be necessary to protect someone's safety or if required by law. Subject to the foregoing, Tutor.com is entitled to use any information it collects as a result of the Services in accordance with applicable law and its privacy policy, as amended from time to time.

7. Certain Obligations and Restrictions.

- a. Customer is responsible for the compliance of its Users with this Agreement. Customer will not allow the Services or the Online Classroom to be used by any person who is not a User. Customer will notify Tutor.com promptly of any known or suspected breach of Tutor.com's rights to the Services or the Online Classroom that comes to its attention and will reasonably cooperate in Tutor.com's efforts to protect its rights.
- b. Customer will not (i) use, copy, create derivative works of, display, or modify the Services (including any content available through the Services) or the Online Classroom except as permitted by this Agreement, or (ii) decompile, reverse engineer, or otherwise attempt to discover any source code of the Online Classroom.
- c. Customer will not upload to or distribute or publish through the Online Classroom any content (i) which is libelous, defamatory, threatening, or otherwise unlawful, (ii) which is obscene or pornographic, (iii) which violates any person's privacy or publicity rights, or (iv) which violates the intellectual property or other proprietary rights of any person.
- d. Customer will not (i) attempt to gain unauthorized access to the Services or the Online Classroom or use or access the Services or the Online Classroom in a way intended to avoid fees, (ii) interfere with or disrupt the the Services or the Online Classroom or (iii) upload to or distribute through the Online Classroom any viruses, Trojan horses, worms, or other similar programs.
- e. All marketing and other communications by Customer that refer to the Services (which include but are not limited to Tutor.com, Live Homework Help[®], and SkillsCenter resource library), as well as all Customer web pages that refer to or link to the Service site, must include the "Tutor.com" logo or the words "Powered by Tutor.com", and include the ® symbol. Customer will not delete or alter the copyright, trademark, or other proprietary notices of Tutor.com appearing on the Services or the Online Classroom.

8. LIMITATION OF LIABILITY. EXCEPT FOR A BREACH OF SECTION 10 OR A BREACH OF TUTOR.COM'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TUTOR.COM'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING

TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY TUTOR.COM UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING SUCH CLAIM.

9. Proprietary Rights. Tutor.com retains all rights, title, and interest in and to all aspects of the Services, including but not limited to the Online Classroom and any changes to or derivative works of the Services or the Online Classroom.

10. Confidentiality.

- a. Each party will retain in strict confidence all non-public information (the “Confidential Information”) received from the other party and not use the disclosing party’s Confidential Information except in the performance of this Agreement. “Confidential Information” does not include information which (i) is or becomes generally available to the public other than as a result of the breach of this Agreement by the receiving party, (ii) is independently developed by the receiving party, (iii) was rightfully within the receiving party’s possession prior to disclosure by the disclosing party, (iv) is received from a third party which was not bound by a confidentiality obligation with respect to such information, or (v) is legally required to be disclosed, provided that the receiving party will notify the disclosing party before disclosing the Confidential Information.
- b. If there is a breach of this Section 10, the disclosing party may suffer irreparable harm and will therefore be entitled to obtain injunctive relief in addition to any other available rights and remedies.

11. Notices. Any notice under this Agreement will be in writing and be deemed given if: (i) personally delivered; (ii) sent by overnight courier, with proof of delivery; (iii) sent by registered or certified U.S. mail, return receipt requested, or (iv) delivered by email, to the parties as set forth below.

If to Tutor.com:
Tutor.com, Inc.
110 E. 42nd Street, 7th Floor
New York, NY 10017
Attn: Legal Department
Email: legal@review.com

If to Customer:
North Miami Public Library
835 NE 132 Street
North Miami, FL 33161
Attn: Paul Bazile
pbazile@northmiamifl.gov

With a copy to:
City of North Miami
Office of the City Attorney
776 NE 125th St
North Miami, FL 33161

12. Miscellaneous Provisions. If there is a conflict between this Agreement and any Service Order, this Agreement will control unless the Service Order expressly provides otherwise. No provision of this Agreement will be deemed waived unless waived in writing. Sections 3, 6, 7, 8, 9, 10, 11, and 12 and any other provisions which would reasonably be expected to survive the termination of this Agreement will so survive. The terms in any purchase order (other than the services, quantities, and prices) will not be binding on Tutor.com. Neither party will be responsible for any delay in performance or failure to perform due to causes beyond its reasonable control. No joint venture, partnership, employment or agency relationship exists between the parties as a result of this Agreement. This Agreement may not be assigned by either party without the prior written consent of the other party; provided that Tutor.com may assign its rights and

obligations under this Agreement to an affiliate or in connection with a merger, reorganization, consolidation, or sale of all or substantially all of its stock or assets. Subject to the preceding sentence, this Agreement shall be binding upon the parties and their permitted successors and assigns. There are no intended third party beneficiaries of this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will be governed by the laws of the state where Customer is located, without regard to its conflicts of law principles. If any provision of this Agreement is held to be invalid or unenforceable, then such provision will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with the other provisions remaining in full force and effect. This Agreement comprises the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written negotiations, understandings, and agreements.

Accepted and agreed to by:

Tutor.com, Inc.

Customer

By: _____

By: City of North Miami

Name: _____

Name: Theresa Therilus, Esq.

Title: _____

Title: City Manager


Date: _____

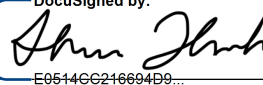
Date: 12/29/2020

ATTEST:

City of North Miami Municipal Corporation:

“City North Miami”

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By:  12/29/2020
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Vanessa Joseph, Esq., City Clerk

DocuSigned by:
By:  12/29/2020
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Theresa Therilus, Esq. City Manager

Approved as to form and Legal Sufficiency:

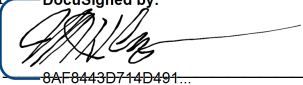
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By:  12/21/2020
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Jeff P. H. Cazeau, City Attorney

EXHIBIT A**INITIAL SERVICE ORDER UNDER MASTER SERVICE AGREEMENT**

This order for the online tutoring services listed below constitutes a Service Order under the Master Service Agreement to which this order is attached between Tutor.com, Inc. ("Tutor.com") and City of North Miami ("Customer").

Customer Primary Contact Information	Tutor.com Primary Contact Information
Name: Paul Bazile	Name: David Wills
Customer: City of North Miami	Address: Tutor.com
Address: 835 NE 132 Street	Address: 110 E. 42 nd Street, 7 th Floor
City, St, Zip: North Miami, FL 33161	City, St, Zip: New York, NY 10017
Telephone: (305) 891-5535	Telephone: (917) 455-4617
Email: pbazile@northmiamifl.gov	Email: David.wills@tutor.com

Customer Billing Contact Information	Tutor.com Billing Contact Information
Name: Maritza Santana	Name: Customer Invoicing
Customer: City of North Miami	Telephone: 800-444-0189
Address: 835 NE 132 Street	Email: customerinvoicing@tutor.com
City, St, Zip: North Miami, FL 33161	
Telephone: (305) 891-5535 ext. 11006	
Email: msantana@northmiamifl.gov	

Ordered Services: Tutor.com agrees to provide Customer the Services listed below.

Description of Services	Locations Served	Start Date	End Date	Price
Tutor.com Learning Suite*: 2pm to 9pm, Sun-Sat	ALL	12/15/2020	12/14/2021	\$7,480
Total:				\$7,480

Tutor.com Learning Suite includes:

- ✓ K-12 Student Center with Live Homework Help®, WriteTutor™ Center, Test Prep Center, SkillsCenter™ Resource Library
- ✓ College Center with LiveTutor, WriteTutor Center, SkillsCenter™ Resource Library
- ✓ Adult Education Center with LiveTutor, WriteTutor Center, Test Prep Center, SkillsCenter Resource Library
- ✓ Career Center with LiveTutor, WriteTutor Center, Test Prep Center, SkillsCenter Resource Library and 24/7 Resume & Cover Letter Reviews
- ✓ Study Skills Coaching for Students and Parents: 2pm – 9pm, Sun-Sat

Delivery Model**TUTOR PLUS**

- With TutorPlus, there is no pre-defined limit on the number of sessions during the term of this Service Order.

*As of the Effective Date of the Agreement, the Services are offered 361 days of each standard year, and 362 days of each leap year. The Services are unavailable on January 1, July 4, Thanksgiving Day, and December 25. On those holidays the Services close beginning at 2:00 a.m. and they reopen at 2:00 a.m. on the following day (all times Eastern). Tutor.com may change the availability of Services and will notify Customer of any changes.

Term: The initial term of this Service Order will be from the Start Date to the End Date listed above. This Service Order will automatically renew for additional, successive 1 year renewal terms unless either party notifies the other in writing no less than 30 days prior to the end of the then-current term that this Service Order will terminate at the end of the then-current term.

Fees: Customer agrees to pay Tutor.com the fees set forth in this Service Order, which do not include taxes. Tutor.com reserves the right to change the fees for any renewal term by giving Customer written notice of such change no later than 45 days prior to the end of the then-current term. If Tutor.com increases such fees for a renewal term, Customer will have the right to terminate this Service Order by giving written notice to Tutor.com within 15 days following Customer's receipt of such notice of fee change. **Taxes, if applicable, will be included in the invoice sent by Tutor.com to Customer unless Customer provides a tax exemption certificate.**

Invoicing and Payment: Tutor.com will invoice Customer in the initial term and any renewal term of this Service Order upon execution of the Agreement and upon the start date of the renewal term, respectively, unless different payment terms are specified above or here: _____.

Customer will send payments to: Tutor.com, 62996 Collection Center Drive, Chicago, IL 60693-0629.

If Customer requires a purchase order to order the Services, Customer will specify here:
____ **[check if purchase order is required]**.