

Master Service Agreement Between City Of Commerce Public Library and Tutor.com

THIS MASTER SERVICE AGREEMENT, made as of 8/1/2016 ("Effective Date") by and between Tutor.com, Inc. ("Tutor.com") with its principal offices at 555 West 18th Street, New York, NY 10011, and City of Commerce (the "Client") with its principal offices at 5655 JILLSON ST., COMMERCE, CA 90040 sets forth the agreement and mutual understandings of Tutor.com and the Client with respect to the delivery by Tutor.com and the purchase by the Client of the services as set forth in a service order (each a "Service Order" and collectively, the "Service Orders"), the first of which is attached hereto as Exhibit A (the "Services"). The term "Agreement" means, collectively, this Master Service Agreement, the Service Orders, and any other agreements and addendums attached hereto or subsequently signed by both of the parties and that explicitly reference being a part of or coming under this Master Service Agreement.

1. License. Tutor.com hereby grants to the Client a non-exclusive non-transferable, limited license to use, and to permit its Users to use, the Services during the Term (as defined below), subject to the terms and conditions set forth in this Agreement. For purposes of this Agreement, "User" means visitors of the Client who are authorized by Client's rules and procedures to access the Services under this Agreement. Except as set forth in this Agreement, the Client shall not (i) access or use the Services in any manner to allow the Services to be used by any person who is not a User, or (ii) sublicense, transfer or distribute the Services, or any portion thereof, to any third party. The Client acknowledges that no source code or technical level documentation is licensed under this Agreement, and that Tutor.com reserves all title and other rights to the Services, including without limitation the right to access and modify the Services for training, maintenance, upgrades, and security purposes.

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

3. User Information. Tutor.com shall not disclose to any third party any personally identifiable information of a User without first obtaining the prior written consent of the Client unless Tutor.com believes that an immediate disclosure may be necessary to protect someone's physical safety or if required by law (such as a court order). Subject to the foregoing, Tutor.com is entitled to use any information or data it collects as a result of the Services in accordance with applicable law and its privacy policy, as the same may be revised from time to time.

4. Payment. The Client hereby agrees to pay Tutor.com the amounts set forth in Exhibit A and any subsequent Service Orders. Payment shall be made to Tutor.com within 30 days of the invoice date. Payment obligations shall survive termination of this Agreement.

5. Representations. Each of Tutor.com and the Client represents, warrants and covenants to the other that:

(a) it has the full power, authority, and legal right to enter into and perform fully its obligations under this Agreement;

(b) it shall comply at its own expense with all applicable laws, ordinances, rules, regulations, codes and policies in connection with its performance under this Agreement ; and

(c) the individual signing this Agreement on its behalf has the authority to execute, deliver, and cause such party to perform its obligations under this Agreement.

6. Term and Termination.

(a) The term of this Agreement shall commence as of the date hereof and continue until the expiration or other termination of all Service Orders issued hereunder, including any renewals or extensions thereof.

(b) Either party may terminate this Agreement at any time upon written notice to the other if: (1) the other party commits a material breach of this Agreement that remains uncured for a period of thirty (30) days following written notice thereof; or (2) fails to pay any amounts owed to the other under this Agreement when due.

7. WARRANTY DISCLAIMER AND LIMITATION ON LIABILITY.

(a) OTHER THAN AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND TUTOR.COM EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TUTOR.COM MAKES NO WARRANTY OR REPRESENTATION THAT THE SERVICES WILL MEET CLIENT'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 WILL BE CORRECTED. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE. EXCEPT FOR ANY LIABILITY ARISING FROM THE PARTIES' INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER SECTION 10(a) BELOW OR FROM A BREACH OF SECTION 9 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL TUTOR.COM'S AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY RECEIVED BY TUTOR.COM UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING SUCH CLAIM. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

(b) In the event of a defect in the Services, the Client's sole remedy shall be to have Tutor.com use commercially reasonable efforts to correct any defect in the applicable computer code, either by modification or via workaround. Tutor.com shall have no obligation to correct nonconformities resulting from (i) any modifications not authorized by Tutor.com; (ii) any use or misuse thereof contrary to Tutor.com's specifications; (iii) any Tutor.com property being installed or operated in contravention of requirements contained in such specifications; (iv) Tutor.com software that has been obviated by later versions, updates, upgrades or releases lacking such nonconformity; (v) Services which operate properly in combination with third party software or hardware recommended by Tutor.com; or (vi) Tutor.com property which has been modified by the Client or a User not in accordance with the Tutor.com's specifications or applicable guidelines.

8. Proprietary Rights.

(a) All aspects of the Services, including but not limited to the Tutor.com software and platform, the look and feel of the Tutor.com template pages, and all intellectual property and/or proprietary rights therein, including without limitation, copyright, moral rights, patents, trademarks, rights of priority, publicity rights, and trade secret rights, recognized in any country or jurisdiction in the world, and all session transcripts, survey data and usage information, are the sole and exclusive property of Tutor.com (the “Tutor.com Property”). The Tutor.com Property includes all changes and additions to the Services and all derivatives works thereof. The Client acknowledges and agrees that this Agreement in no way shall be construed to provide to the Client, any User or any other person or entity, any express or implied license to use, copy, reverse engineer, or otherwise exploit the Tutor.com Property or any portion thereof other than as specifically set forth in this Agreement.

(b) The Client shall not delete or in any manner alter the copyright, trademark, or other proprietary notices of Tutor.com, if any, appearing on the Services as delivered to the Client. The Client shall use commercially reasonable efforts to protect the Tutor.com Property and Tutor.com’s rights therein and to cooperate in Tutor.com’s efforts to protect its proprietary rights. The Client shall notify Tutor.com promptly of any known or suspected breach of Tutor.com rights to the Services that comes to its attention.

9. Confidentiality. Except as may be otherwise required by any applicable laws, each party shall retain in strict confidence all non-public information (the “Confidential Information”) received from the other party. The Client hereby acknowledges that the Confidential Information includes, without limitation, non-public Tutor.com Property, specifications, designs, development plans, business plans, sales projections, business records, prices and customer lists. The obligations of confidentiality set forth in this Section 9 shall survive termination of this Agreement. In the event of any breach of the provisions of this Section 9, Client agrees that Tutor.com would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against Client in addition to any other rights and remedies available to Tutor.com at law or in equity, or otherwise.

10. Miscellaneous Provisions.

(a) To the extent permitted by the laws of the State in which the Client is located, each party (the “Indemnifying Party”) shall indemnify and defend the other and its affiliates, and its and their directors, officers, employees and agents (collectively the “Indemnified Parties”), from and against any costs, fees, expenses (including reasonable attorneys’ fees whether arising out of a third party claim or in enforcing this indemnification), claims, liabilities, losses, judgments, settlements and damages (collectively “Claims”) arising out of: (i) the Indemnifying Party’s breach of any provision of this Agreement, or (ii) any negligent act or omission or willful misconduct of the Indemnifying Party or any of its officers, employees or agents; provided that the Indemnified Party notifies the Indemnifying Party reasonably promptly of any claim and provided further that an Indemnifying Party shall not be liable hereunder to the extent that any Claim arises out of the negligent act or wilful misconduct of the Indemnified Party.

(b) For any “Remote Access” option, the Client will either use the credentialed authentication (login) system provided by Tutor.com to permit Users to access to the Services or keep all links to the Tutor.com Services on Client web pages that require login or IP authentication for access.

(c) All marketing, promotional, and other communications by the Client that mention or refer to Tutor.com Services, which include but are not limited to Tutor.com, Live Homework Help®, and SkillsCenter resource library, must include the “Tutor.com” logo or the words “Powered by Tutor.com”,

and include the ® symbol. This includes all Client web pages that refer to or link to the Tutor.com Service site.

(d) No term or provision shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The waiver of either party hereto of any right hereunder or of the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other party whether of a similar nature or otherwise.

(e) In the event of any conflict between the terms and conditions of this Agreement and any subsequent agreement between the parties, which does not specifically amend this Agreement or a Service Order under the Master Service Agreement, this Agreement shall take precedence. In the event of a conflict between this Master Service Agreement and the terms and conditions in any subsequent Service Order, the Master Service Agreement shall control unless Tutor.com expressly agrees in writing to the specific modification.

(f) This Agreement may not be assigned by a party without the prior written consent of the other party; provided that Tutor.com may assign its rights and obligations under this Agreement (without the prior written consent of the Client) to any surviving entity in a merger or consolidation in which Tutor.com is a party or to any entity that acquires all or substantially all of Tutor.com's capital stock or assets or of the Tutor.com business associated with this Agreement.

(g) 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; however, this Agreement will be of no force or effect until executed by both parties.

(h) This Agreement will be governed by, construed, and enforced in accordance with the substantive law of the State where the Client is located.

(i) As of the execution of this 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 1:01 a.m. and they reopen at 2:00 p.m. on the following day (all times Eastern). Tutor.com may change the dates of availability, and will notify the Client of any changes to the availability of the Services.

On behalf of Client:

On behalf of Tutor.com, Inc.:

Signature:

Name:

Ivan Altamirano

Title:

Mayor

Date:

08-01-2016

EXHIBIT A

SERVICE ORDER OF MASTER SERVICE AGREEMENT

This order for the online tutoring services set forth herein constitutes a Service Order of the Master Service Agreement dated 8/1/2016 between Tutor.com, Inc. ("Tutor.com") and City Of Commerce Public Library (the "Library").

Library Primary Contact Information	Tutor.com Primary Contact Information
Name: Sigrid Hudson	Name: Bob Bonocore
City Of Commerce Public Library	Tutor.com, Inc.
Address: 5655 JILLSON ST.	Address: 555 West 18 th Street
City, St, Zip: COMMERCE, CA 90040	City, St, Zip: New York, NY 10011
Telephone: 323-722-666	Telephone: 941-320-5437
Fax:	Fax: 646-532-4469
Email: sigridh@ci.commerce.ca.us	Email: bob.bonocore@tutor.com

Library Billing Contact Information	Tutor.com Billing Contact Information
Name: Sigrid Hudson	Name: Customer Invoicing
City Of Commerce Public Library	Address: 555 West 18 th Street
Address: 5655 JILLSON ST.	Address:
City, St, Zip: COMMERCE, CA 90040	City, St, Zip: New York, NY 10011
Telephone: 323-722-666	Telephone: 646-619-8224
Fax:	Fax: 646-532-4424
Email: sigridh@ci.commerce.ca.us	Email: customerinvoicing@tutor.com

Term of Service Order: The initial term of this Service Order (the "Initial Term") shall be for one (1) year and shall automatically renew for an additional one (1) year period (the "Renewal Period") unless either party notifies the other in writing no less than thirty (30) days prior to the end of the Initial Term that the Agreement shall terminate at the end of the Initial Term.

Ordered Services and Fees. Tutor.com agrees to provide Client's Library with the following Services and the Client agrees to pay Tutor.com the fees set forth below. Tutor.com reserves the right to change the fees for the Renewal Period by giving Library written notice of such change no later than sixty (60) days prior to the end of the Initial Term. If Tutor.com increases such fees for the Renewal Term, Client shall have the right to terminate this Agreement by written notice given to Tutor.com within fifteen (15) days following Client's receipt of such notice of fee change.

Tutor.com Learning Suite Services include (check all that apply)

- ✓ 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

Library Location and Description of Services	Locations Served	Start Date	End Date	Price
Tutor.com for Libraries: 1PM-10PM	All	8/1/2016	7/31/2017	\$10,000
Total				\$10,000

Prices set forth in the Agreement do not include sales tax. Sales tax, if applicable, will be included in the invoice sent by Tutor.com to Client, unless Client provides a sales tax exemption certificate.

Delivery Model

- TUTOR PLUS
 - With TutorPlus pricing, there is no pre-defined session limit on the number of sessions to be served through the Client's program for the term of the contract. Pricing may be adjusted at time of renewal if tutoring sessions served is outside of expected range.