

CONTRACT NAME: AGREEMENT BETWEEN SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDER AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: These Master Contracts are agreements between the following Supplemental Educational Services Providers and Davis Joint Unified School District to provide tutoring services to meet the academic needs of students in DJUSD schools that are identified as Program Improvement Year 2 under federal legislation *No Child Left Behind*.

The terms of these agreements are from November 6, 2015 to June 24, 2016. The maximum annual cost for this service is \$80,065.

Supplemental Educational Services Providers

- 1 ! #1 Touch-Screen Tablet Computer Tutoring
- 2 ! 1st Choice Android Smart-Phone Tutoring
- 3 ! ACE Tutoring Services
- 4 #1 Academia de Servicio de Tutoria
- 5 #1 Achieve Academic Excellence
- 6 #1 Educando Con Tabletas
- 7 1 2 3 MATH
- 8 1 iPad Gratis
- 9 1 Online Tutoring
- 10 1 to 1 Study Buddy Tutoring
- 11 5 Star Tutors
- 12 A Better Tomorrow Education
- 13 A Tree of Knowledge
- 14 A+ Educational Centers
- 15 Carter, Reddy & Associates
- 16 Club Z! Tutoring
- 17 Healthy Families
- 18 Keep Hope Alive
- 19 Learn with iPads
- 20 Math Think
- 21 Professional Tutors of America
- 22 Studentnest
- 23 Sylvan
- 24 The Learning Curve
- 25 Total Education Solutions
- 26 Tutor Works
- 27 Voice of Hope



**DJUSD Instructional Service-Categorical Programs
Supplemental Educational Services**

**2015-2016
MASTER CONTRACT AGREEMENT BETWEEN
DAVIS JOINT UNIFIED SCHOOL DISTRICT
AND
SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDER**

AUTHORIZATION AND GENERAL PROVISIONS

A. MASTER CONTRACT

This Master Contract ("Master Contract" or "Contract") is entered into this sixteenth day of October 2015, between the Davis Joint Unified School District (hereinafter referred to as "DJUSD" or the "District") and Professional Tutors of America, Inc. (hereinafter referred to as "CONTRACTOR") for the purpose of providing Supplemental Educational Services (hereinafter referred to as "SES" or "Supplemental Educational Services" and defined in Section (I)(F)(1)) to all eligible DJUSD students whose parent selects CONTRACTOR under the No Child Left Behind (hereinafter referred to as "NCLB") Act. It is understood that this Master Contract does not commit DJUSD to pay for SES provided to any DJUSD student, or CONTRACTOR to provide such Supplemental Educational Services, unless and until an authorized Federal and Special Programs Division representative approves the provision of Supplemental Educational Services by CONTRACTOR.

Upon acceptance of a DJUSD student, CONTRACTOR shall submit to DJUSD a Student Learning Plan (hereinafter referred to as "SLP") as specified by the SES Department for each DJUSD student served by CONTRACTOR. With each invoice, CONTRACTOR shall submit to DJUSD an executed Student Learning Plan (hereinafter referred to as "SLP") as specified by the Supplemental Educational Services Department for each DJUSD student served for the first time during that calendar month by CONTRACTOR. Unless otherwise agreed in writing, this form shall acknowledge CONTRACTOR's intent to provide all services specified in the student's SLP.

DJUSD and CONTRACTOR shall also enter into an Individual Services Agreement (hereinafter referred to as "ISA"), CONTRACTOR's attached hereto as Exhibit A, and made a part hereof, and generally describes CONTRACTOR's program.

B. CERTIFICATION/APPROVAL

CONTRACTOR shall be certified or otherwise approved by the California Department of Education (hereinafter referred to as "CDE") as an SES provider. A copy of CONTRACTOR's current approved SES



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application must be provided to DJUSD on or before the date determined by the Instructional Services-Categorical Programs. This Master Contract shall be null and void if such certification or approval expires, or is revoked, rescinded, or otherwise nullified during the Term of this Master Contract.

C. COMPLIANCE WITH LAWS, STATUTES, REGULATIONS

During the Term of this Master Contract unless otherwise agreed, CONTRACTOR shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules, policies, and regulations, as well as DJUSD policies and procedures. CONTRACTOR shall also comply with all DJUSD policies and procedures unless CONTRACTOR determines, taking into consideration all of the surrounding facts and circumstances, a policy or procedure or a portion there does not reasonably apply to CONTRACTOR. CONTRACTOR hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with DJUSD policies and procedures and shall indemnify DJUSD under the provisions of Section II.I of this Master Contract for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of CONTRACTOR's failure to comply with DJUSD policies, and procedures.

D. TERMS OF MASTER CONTRACT

The Term of this Master Contract shall begin on October 16, 2015, and end on June 24, 2016 ("Term").

E. INTEGRATION

This Master Contract and all attachments and amendments thereto including the ISA, attached hereto as Exhibit A, each SLP, and the District's policies and procedures, per Section 1.C above, constitute the agreement between DJUSD and CONTRACTOR. This Master Contract supersedes any prior or contemporaneous written or oral understanding or agreement. This Master Contract may be amended only by written amendment executed by both parties. Notwithstanding the foregoing sentence, DJUSD may modify or amend this Master Contract without CONTRACTOR's consent to conform to federal and state laws and regulations.

F. DEFINITIONS

The following definitions shall apply for purposes of this Master Contract:

1. The term "Supplemental Educational Services," or "SES," means "additional academic instruction designed to increase the academic achievement of students in low-performing schools." These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the District and are aligned with the State of California academic content standards. Supplemental Educational Services must be provided outside of



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the regular school day. Supplemental Educational Services must be high quality, research-based, and specifically designed to increase student academic achievement. [NCLB, Title I, Part A, Section (1116.)(e)(12)(C)]

2. The term “authorized DJUSD representative” means a DJUSD SES Instructional Services-Categorical Programs administrator.
3. The term “credential” means a valid teaching credential or permit in single or multiple subjects, special education or student personnel services issued by, or under the jurisdiction of, the State Board of Education if issued prior to 1970 or the California Commission on Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required as defined in Title 5 of the California Code of Regulations section 3001.j.
4. The term “qualified” means that a person has met federal and state certification, licensing, registration, or other comparable requirements (e.g., professional development, coursework completed, etc.) which apply to the area in which he or she is providing SES, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation.
5. The term “license” means a valid non-expired document issued by a licensing agency within the Department of Consumer Affairs or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license shall be deemed to be a license as defined in Title 5 of the California Code of Regulations section (3001)(r).
6. The term “parent” means the natural parent, adoptive parent, parent surrogate, legal guardian, or any other adult granted educational decision-making rights by the natural or adoptive parent, a court of competent jurisdiction, or pursuant to state law.
7. The term “days” means calendar days unless otherwise specified.
8. The phrase “billable day” means a service day meeting the requirements for payment under this Master Contract.
9. The phrase “billable day of attendance” shall have the meaning set forth in Section III.E of this Master Contract.



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10. The term "incentive" means any up-front monetary or material gifts valued at more than \$2.00 given to parents or students to encourage them to choose a specific provider to provide Supplemental Educational Services to their child and incentives valued at \$5.00 each or \$50.00 in the aggregate used within a provider's program to encourage students to reach certain achievement or attendance levels AFTER they have begun service.

II. ADMINISTRATION

A. NOTICES

All notices, demands, or other communications given under this Master Contract shall be in writing and shall be deemed to have been duly given as of the date delivered if made by personal delivery, or if mailed as of the second business day after mailing by United States mail, postage pre-paid, addressed to the parties whose signatures appear on this document, or to other such address or to such other person as any party hereto shall designate to the other for such purposes in the manner hereinabove set forth. Delivery of such notice, demand, or communication may be made to the below-described addresses, shall be deemed given as of the date(s) of such delivery as provided herein, and shall be served either by United States mail or personal delivery:

All notices provided for by this contract shall be in writing.

Notices mailed to DJUSD shall be addressed to:

Notices mailed to CONTRACTOR shall be addressed to:

DISTRICT:	PROVIDER:
Kitty Hudson-Cawley	Name
Educational Services-Categorical Programs	Robert Gordon, CEO
Davis Joint Unified School District	Company Professional Tutors of America, Inc.
526 B Street	Address 3350 E. Birch St., Suite 108
Davis, CA 95616	City State Zip Brea, CA 92821
530-757-5300 x149	Phone 800-832-2487
	Email Rgordon@professional tutors.com



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B. MAINTENANCE OF RECORDS/CONFIDENTIALITY

1. CONTRACTOR will comply with all federal, state and local laws, rules and regulations regarding personally identifiable information concerning District students, employees and agents over which CONTRACTOR has control or to which CONTRACTOR has access, as well as any other student or District employee data provided or made available to CONTRACTOR in connection with this MASTER Contract (including, without limitation, all applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA) and the Children's Internet Protection Act (CIPA), and will observe all District security procedures related to the foregoing, as in effect from time to time, (including (without limitation) those set forth in DJUSD Administrative Procedures 5700 "Information Technology Security of Information"; 6525 "Release of Directory-Type Student Information"; and 6527 "Access to, Release of, and Confidentiality of Nondirectory-Type Student Information").
2. CONTRACTOR shall maintain all records as required by state and federal laws and regulations. Notwithstanding the foregoing sentence, CONTRACTOR shall maintain all records for at least five (5) years after the termination of this Master Contract. For purposes of this Master Contract, "records" shall include, but not be limited to: pupil records as defined by California Education Code sections 49061(b); registers and roll books of teachers and/or daily service providers; daily service logs and notes and other documents used to record the provision of services including SLPs; staff lists specifying credentials held and documents evidencing other staff qualifications, social security numbers, dates of hire and termination; clearance certifications referenced in Section IV.A; staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related services subcontracts; liability and workers' compensation insurance policies; SES agency certifications; statements of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; federal/state payroll quarterly reports (IRS Form 941/CA Form De3Dp); bank statements and canceled checks.
3. This Master Contract, all communications and information obtained by CONTRACTOR from District relating to this Master Contract, and all information developed by CONTRACTOR under this Master Contract including without limitation all pupil records and the identity of DJUSD students being served by CONTRACTOR, are confidential. Except as provided in Sections II.B(4) and II.B(7), without prior written consent of an authorized District representative, CONTRACTOR shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, CONTRACTOR shall inform District, in writing, of the nature and reasons for such disclosure. CONTRACTOR shall not use any



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communications or information obtained from District for any purpose other than the performance of this Master Contract, without District's written consent.

4. CONTRACTOR may disclose to any subcontractor, or other District-approved third parties, any information otherwise subject to Section II.B that is reasonably required for the performance of the subCONTRACTOR's work. Prior to any such disclosure, CONTRACTOR shall obtain the subCONTRACTOR's written agreement to the requirements of Section II.B and shall provide a copy of such agreement to District.
5. CONTRACTOR represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which is related to this Master Contract or the services provided hereunder without prior written approval of District.
6. CONTRACTOR shall maintain DJUSD pupil records in a secure location to ensure confidentiality and prevent unauthorized access. CONTRACTOR shall maintain a current list of the names and positions of CONTRACTOR's employees who have access to confidential records. CONTRACTOR shall maintain an access log for each DJUSD student's record that lists all persons, agencies, or organizations requesting or receiving information from the record. Such log shall be maintained as required by California Education Code Section 49064 and include the name, title, agency/organization affiliation, and date/time of access for each individual requesting or receiving information from the DJUSD student's record.
 - a. Such log may not record access to the DJUSD student's records by: the DJUSD student's parent; an individual to whom written consent has been executed by the DJUSD student's parent; and employees of DJUSD or CONTRACTOR having a legitimate educational interest in requesting or receiving information from the pupil record. For purposes of this agreement, "employees of DJUSD or CONTRACTOR" do not include subcontractors.
7. CONTRACTOR shall grant access to pupil records, and comply with all requests for copies of pupil records, as required by state and federal laws and regulations.
8. CONTRACTOR's obligation of confidence under this Section II.B shall survive cancellation, termination, or expiration of this Master Contract.

C. SEVERABILITY CLAUSE

If any provision of this Master Contract is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Master Contract shall be severable and remain in effect.



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D. SUCCESSORS IN INTEREST

This Master Contract binds CONTRACTOR's successors and assignees. CONTRACTOR may not assign nor transfer any duties under this Master Contract without the prior written consent of District.

E. VENUE AND GOVERNING LAW

The laws of the State of California shall govern the terms and conditions of this Master Contract with venue in Yolo County, California.

F. TERMINATION FOR CONVENIENCE

1. Not withholding any other provision of this Agreement, DJUSD may, by written notice to the CONTRACTOR, terminate this Master Contract in whole or in part at any time, for DJUSD's convenience with thirty (30) days written notice to CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall:
 - a. Immediately discontinue all services under this agreement (unless the notice directs otherwise); and
 - b. Deliver to DJUSD all information and material as may have been involved in the provision of services whether provided by DJUSD or generated by the CONTRACTOR in the performance of this Master Contract, whether completed or in process (unless otherwise directed by notice). Such notice shall be deemed to have been served as of the date delivered if made by personal delivery, or if mailed, as of the date of mailing by United States mail, postage pre-paid.
2. If the termination is for the convenience of District, CONTRACTOR shall submit a final invoice within thirty (30) days of termination, and DJUSD shall pay the CONTRACTOR the sums earned for the services actually performed prior to the effective date of termination and other costs reasonably incurred by CONTRACTOR to implement the termination in accordance with the provisions of this Master Contract.
3. The CONTRACTOR shall not be entitled to anticipatory, lost profits, or consequential damages as a result of any termination under this section. Payment to CONTRACTOR in accordance with this section shall constitute CONTRACTOR's exclusive remedy for any termination hereunder.

G. TERMINATION FOR DEFAULT

1. DJUSD may, by written notice to the CONTRACTOR, terminate this Master Contract in whole or in part at any time because of the failure of CONTRACTOR to fulfill its contractual obligations and District may, in its sole discretion, provide CONTRACTOR with a reasonable period within which to cure the default. Upon receipt of such notice, the CONTRACTOR shall:



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- a. Immediately discontinue all services affected (unless the notice directs otherwise);
and
 - b. Deliver to DJUSD all information and material as may have been involved in the provision of services whether provided by DJUSD or generated by CONTRACTOR in the performance of this Master Contract, whether completed or in process (unless otherwise directed by notice). Termination of this Master Contract shall be as of the date of service to CONTRACTOR of such notice. Such notice shall be deemed to have served as of the date delivered if made by personal delivery, or if mailed, as of the second business day after mailing by United States mail, postage pre-paid.
2. If the termination is due to the failure of CONTRACTOR to fulfill its contractual obligations, DJUSD may assume responsibility for the services, and complete the services by contract or otherwise. CONTRACTOR shall be liable for the reasonable costs and expenses related to the transfer of DJUSD students to another SES provider. The expense of completing the Services, or any other costs or damages otherwise resulting from the failure of the CONTRACTOR to fulfill its obligations, will be charged to the CONTRACTOR and will be deducted by the District out of such payments as may be due or may at any time thereafter become due to the CONTRACTOR. If such costs and expenses are in excess of the sum which otherwise would have been payable to the CONTRACTOR, then the CONTRACTOR shall promptly pay the amount of such excess to the DJUSD upon notice of the excess so due.
 3. If, after the notice of termination for failure to fulfill contract obligations, it is determined that CONTRACTOR has not so failed, the termination shall be deemed to have been effected for the convenience of DJUSD. In such event, adjustment shall be made as provided in Section II.F, Termination for Convenience.
 4. CONTRACTOR shall not be entitled to anticipatory, lost profits, or consequential damages as a result of any termination under this section. Payment to CONTRACTOR in accordance with this section shall constitute CONTRACTOR's exclusive remedy for any termination hereunder. The rights and remedies of DJUSD provided in this section are in addition to any other rights and remedies provided by law or under this Master Contract.

H. TERMINATION FOR CHANGE OF CONTROL

In the event that CONTRACTOR undergoes a change in control where voting or other control of CONTRACTOR is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of CONTRACTOR's assets are acquired, by any entity (other than an Affiliate) to form a new entity, then, at any time within nine (9) months after the last to occur of these events, DJUSD may terminate this Agreement by (a) giving CONTRACTOR ninety (90) calendar days' prior written notice and (b) designating a date upon which the termination(s) will be effective.



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I. TERMINATION FOR INSOLVENCY

DJUSD may terminate this Agreement in its entirety if CONTRACTOR (a) becomes insolvent or is unable to meet its debts as they mature, (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors, (c) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy, arrangement or reorganization, (d) is adjudicated a bankrupt or makes an assignment for the benefit of its creditors generally, (e) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part its property, or (f) any such receiver or trustee is appointed and not discharged within thirty (30) calendar days after the date of such appointment, or (g) files or petitions voluntary or involuntary dissolution.

J. INSURANCE

CONTRACTOR shall, at its sole cost and expense, maintain in full force and effect, during the term of this Master Contract, the following insurance coverage from a California licensed insurer with an A minus (A-), VII, or better rating from A.M. Best, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorneys' fees) arising out of or in connection with CONTRACTOR's fulfillment of any of its obligations under this contract or either party's use of the work or any component or part thereof:

1. Commercial Form General Liability Insurance, including both bodily injury and property damage, with limits as follows:

- a. \$1,000,000 per occurrence. Any policy with an aggregate limit shall have a \$1,000,000 aggregate dedicated to this contract or \$3,000,000 general aggregate limits. If CONTRACTOR provides services solely over the Internet or some other means that does not require physical contact between CONTRACTOR's employees, agents, or subcontractors and DJUSD students, CONTRACTOR shall maintain at least \$1,000,000 per occurrence and \$1,000,000 general aggregate for all damages arising from each accident or occurrence.
- b. \$100,000 fire damage
- c. \$5,000 medical expenses
- d. \$1,000,000 personal and advertising injury
- e. \$1,000,000/occurrence products/completed operation. Any policy with an aggregate limit shall have a \$1,000,000 aggregate dedicated to this contract or \$3,000,000 general aggregate limits.

2. Business Auto Liability Insurance for owned scheduled, non-owned or hired automobiles with a combined single limit of no less than \$1,000,000 per occurrence (required only if CONTRACTOR and/or its employees have physical contact with DJUSD students or visit District sites).



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3. Workers' Compensation and Employers' Liability Insurance in a form and amount covering CONTRACTOR's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws.
 - a. Part A – Statutory Limits
 - b. Part B - \$1,000,000/\$1,000,000/\$1,000,000 Employers' Liability
4. Errors and Omissions (Professional Liability) coverage, \$1,000,000 per occurrence/\$1,000,000 aggregate
5. Not later than the date CONTRACTOR signs this Master Contract, and periodically thereafter upon request, CONTRACTOR shall furnish DJUSD with certificates of insurance and endorsements evidencing coverage specified in Sections II.J(1) through II.J(4) above. Satisfactory evidence of insurance shall be equivalent to the standard insurance company Certificate of Liability Insurance form ACORD 25-S. The certificate of insurance shall include a thirty (30) day non-renewal notice provision. The policies of insurance providing the coverages referred to in Sections II.J(1) and II.J(2) shall name DJUSD and the DJUSD Board of Education as additional insured with respect to any potential tort liability, irrespective of whether such potential liability might be predicated on theories of negligence, strict liability or products liability. Premiums on all insurance policies shall be paid by CONTRACTOR and shall be deemed included in CONTRACTOR's obligations under this contract. Failure to maintain the insurance coverage specified in Section II.J(1) through Section II.J(4) above shall be cause for termination of this Master Contract.
6. If CONTRACTOR is self-insured, CONTRACTOR shall submit to DJUSD a description of the self-insurance plan and excess insurance coverages, evidence that the plan is adequately funded to provide:
 - a. At least \$1,000,000 per occurrence and \$3,000,000 general aggregate (or if CONTRACTOR provides services solely over the Internet or some other means that does not require face to face contact between CONTRACTOR's employees, agents, or subcontractors and DJUSD students, CONTRACTOR shall have at least \$1,000,000 per occurrence and general aggregate for all damages arising from each accident or occurrence) general liability and,
 - b. \$1,000,000 per occurrence and \$1,000,000 general aggregate professional liability coverage for all damages arising from each accident or occurrence.
 - c. A statement by Plan Administrator that written notice of discontinuance or material change in coverage or provision of the plan will be sent to the DJUSD at least thirty (30) days before such discontinuance or material change.
 - d. Any deductibles or self-insured retentions shall be declared in writing to the DJUSD. DJUSD approval is required for any amounts over \$25,000.



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- e. Upon approval in writing by the DJUSD, this self-insurance will satisfy the liability insurance requirement of this Section II.J of this Master Contract.
7. For the provision of transportation services by CONTRACTOR, subject to the written consent of DJUSD and as specified in the ISA, CONTRACTOR shall keep in effect a liability insurance policy providing at least \$5,000,000 per occurrence and \$5,000,000 in aggregate coverage. CONTRACTOR shall ensure that CONTRACTOR's insurance provider submits written notice of cancellation to DJUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy. CONTRACTOR shall provide proof of insurance to DJUSD before the start of transportation services and upon renewal of coverage thereafter. Certificates of insurance are acceptable proof of insurance.
8. In the event that CONTRACTOR enters into subcontracts for the provision of transportation services, the insurance requirements with respect to such subcontractor are set forth in Section II.M of this Master Contract.
9. If DJUSD determines that change in insurance coverage obligations under Section II.J is necessary, DJUSD may reopen negotiations to modify the insurance requirements.

K. INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR shall defend, hold harmless and indemnify the DJUSD, its Board Members, administrators, employees, agents, attorneys, volunteers, and subcontractors (collectively, DJUSD Indemnitees) against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this Master Contract or its performance, to the extent that such loss, expense, damage or liability was proximately caused by an act or omission of CONTRACTOR, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it (excluding DJUSD and DJUSD Indemnitees) and from every claim or demand which may be made by reason of:

1. Any injury to person or property sustained by the CONTRACTOR or by any person, firm, or corporation, employed directly or indirectly by them upon or in connection with his performance under the Master Contract, however caused, unless such injury is caused by the negligence or willful misconduct of the District.
2. Any injury to person or property sustained by any person firm or corporation, caused by any act, neglect, default, or omission of the CONTRACTOR or of any person, firm, or corporation, indirectly employed by them upon or in connection with his performance under the Master Contract.
3. Any liability that may arise from the CONTRACTOR or any of its employees, agents or subcontractors furnishing or use of any copyrighted composition, or patented invention, under this Master Contract.



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L. INDEPENDENT CONTRACTOR

1. CONTRACTOR shall provide all services under this Master Contract as an independent CONTRACTOR, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing herein contained will be construed to imply a joint venture, partnership or principal-agent relationship between DJUSD and CONTRACTOR. CONTRACTOR shall provide all services under this Master Contract as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing contained in this Master Contract shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the parties or any affiliates of the parties, or between DJUSD and any individual assigned by CONTRACTOR, upon the prior written consent of DJUSD, to perform any services for DJUSD. If DJUSD is held to be a partner, joint venturer, co-principal, employer or co-employer of CONTRACTOR, CONTRACTOR shall defend, indemnify and hold harmless DJUSD from and against any and all claims for loss, liability, or damages arising from that holding, as well as any expenses, costs, taxes, penalties and interest charges incurred by DJUSD as a result of that holding.
2. If the CONTRACTOR employs DJUSD employees, CONTRACTOR must ensure that these staff members understand they are working as contractors of CONTRACTOR and must look solely to the CONTRACTOR for background clearance, wages and benefits, if any. If the CONTRACTOR employs DJUSD employees, CONTRACTOR must notify its employees that the CONTRACTOR has the responsibility to receive and process complaints regarding their employment relationships with the CONTRACTOR.

M. SUBCONTRACTING

1. CONTRACTOR shall provide written notification to DJUSD before subcontracting for SES pursuant to this Master Contract. CONTRACTOR shall subcontract only with SES providers that have received state certification or approval or independent contractors paid under IRS 1099 rules and only after receiving DJUSD's prior written consent. CONTRACTOR shall incorporate all of the provisions of this Master Contract in all subcontracts, to the fullest extent reasonably possible. Furthermore, when CONTRACTOR enters into subcontracts for the provision of SES for DJUSD students, CONTRACTOR shall ensure that such subcontract shall require the subcontractor to keep in effect appropriate policies of liability insurance including, but not limited to, general liability, professional liability, and automobile liability policies acceptable to DJUSD with the limits specified in Section II.J. CONTRACTOR shall ensure that such subcontract shall require the subCONTRACTOR's insurance provider to submit written notice of cancellation to DJUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy.



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2. If CONTRACTOR hires independent contractors paid under IRS 1099 rules to perform services under this Master Contract, CONTRACTOR must demonstrate compliance with the insurance requirements of Section II.J with respect to each such independent contractor by either:
 - a. Covering each such independent contractor under CONTRACTOR's own insurance, as evidenced by submitting complete copies of all relevant insurance policies of CONTRACTOR; or
 - b. Submitting insurance certificates evidencing that each such independent contractor has its own insurance with coverage that complies with the insurance requirements of Section II.J.
3. If CONTRACTOR enters into subcontracts for the provision of transportation services, subject to the written consent of DJUSD and as specified in the ISA, CONTRACTOR shall ensure that such subcontract requires the subcontractor to keep in effect a liability insurance policy providing at least \$5,000,000 per occurrence and \$5,000,000 in aggregate coverage. CONTRACTOR shall ensure that such subcontract shall require the subCONTRACTOR's insurance provider to submit written notice of cancellation to DJUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy. CONTRACTOR shall ensure that such subcontract shall require the transportation subcontractor to provide proof of insurance to DJUSD before the start of transportation services and upon renewal of coverage thereafter. Certificates of insurance are acceptable proof of insurance. CONTRACTOR shall ensure that such subcontract shall require the transportation subcontractor to provide copies of its insurance policies upon request of DJUSD.
4. If CONTRACTOR hires independent contractors paid under IRS 1099 rules to perform services under this Master Contract, independent contractors shall adhere to MONITORING (expectations/rules/procedures) set forth in Section III.L of this Master Contract.
5. Failure of the CONTRACTOR to require its subcontractor(s) to obtain and maintain the same minimum limits and coverages and to provide the required certificates, endorsements and policies as described in Section II.J shall also constitute a material breach of, and may result in, termination of the Master Contract.

N. CONFLICTS OF INTEREST

1. CONTRACTOR shall provide to DJUSD a copy of its current bylaws and a current list of its Board of Directors (or Trustees), if it is incorporated. CONTRACTOR and any member of its Board of Directors (or Trustees) shall avoid any relationship with DJUSD that constitutes or may constitute a conflict of interest.
2. CONTRACTOR represents that CONTRACTOR has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this agreements and that no person having



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- any such interest shall be subcontracted in connection with this agreement, or employed by CONTRACTOR. CONTRACTOR shall not conduct or solicit any non-District business while on District property or time.
3. CONTRACTOR will also take all necessary steps to avoid the appearance of a conflict of interest and shall have a duty to disclose to the District prior to entering into this agreement any and all circumstances existing at such time which pose a potential conflict of interest.
 4. CONTRACTOR warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of District any cash or non-cash gratuity or payment with view toward securing any business from District or influencing such person with respect to the conditions, or performance of any contracts with or orders from District, including without limitation this agreement. Any breach of this warranty shall be a material breach of each and every contract between District and CONTRACTOR.
 5. Should a conflict of interest issue arise, CONTRACTOR agrees to fully cooperate in any inquiry and to provide the District with all documents or other information reasonably necessary to enable the District to determine whether or not a conflict of interest existed or exists.
 6. Failure to comply with the provision of this section shall constitute grounds for immediate termination of this agreement, in addition to whatever other remedies the District may have.

O. NON-DISCRIMINATION

CONTRACTOR shall not unlawfully discriminate in the performance of any activities pursuant to this Master Contract on the basis of race, creed, color, national origin, religion, sex, sexual orientation, handicap, age, veteran's status, medical condition, physical or mental disability, marital status or citizenship, or any other protected characteristic under Federal or California law.

P. COMPLAINT PROCEDURES

CONTRACTOR shall maintain and adhere to its own written procedures for responding to parent complaints. These procedures shall include annually notifying and providing parents of DJUSD students with appropriate information including complaint forms.



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III. EDUCATIONAL PROGRAM

A. APPROPRIATE EDUCATIONAL SERVICES

All instruction provided by CONTRACTOR shall be secular, neutral, and non-ideological. Unless otherwise agreed between CONTRACTOR and DJUSD, CONTRACTOR shall be responsible for the provision of all appropriate supplies, equipment, assessments, and/or facilities for DJUSD students, as specified in the DJUSD student's SLP and the ISA. CONTRACTOR shall make no charge of any kind to parents for SES as specified in the DJUSD student's SLP (including, but not limited to, screenings, DJUSD-designated and other assessments, or interviews that occur prior to or as a condition of the DJUSD student's enrollment under the terms of this Master Contract).

B. STUDENT LEARNING PLAN (SLP)

1. CONTRACTOR shall develop an SLP for each DJUSD student to whom CONTRACTOR is to provide SES. An SLP shall only be prepared for DJUSD students enrolled in CONTRACTOR's program with the approval of the Instructional Services-Instructional Services-Categorical Programs. An SLP must be submitted and approved by the DJUSD for each student before tutoring can begin for that student.
2. Any and all changes to a DJUSD student's educational program shall be made solely on the basis of a revision to the DJUSD student's SLP. At any time during the Term of this Master Contract, a DJUSD student's parent or DJUSD may request a review of a DJUSD student's SLP.

C. GENERAL PROGRAM OF INSTRUCTION

CONTRACTOR's general program of instruction shall be described in writing within the ISA and approved by DJUSD and shall be a part of this Master Contract. CONTRACTOR's general program of instruction shall be consistent with DJUSD and State of California standards, as well as the description of SES for which CONTRACTOR obtained CDE approval.

D. INSTRUCTIONAL MINUTES

The total number of instructional minutes per day provided by CONTRACTOR shall be specified on the ISA and on each DJUSD student's SLP, and all instruction shall be provided outside of the normal school day.

E. BILLABLE DAYS OF ATTENDANCE

CONTRACTOR shall provide services as specified in the ISA and the DJUSD student's SLP. CONTRACTOR shall bill only for services provided on billable days of attendance as included in the ISA and the DJUSD student's SLP.



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F. DJUSD STUDENT ATTENDANCE/PROGRESS REPORTS AND ASSESSMENTS

1. CONTRACTOR shall provide to parents and the Instructional Services-Categorical Programs written attendance/progress reports pursuant to the requirements specified by the Instructional Services-Categorical Programs and as described on the ISA. A copy of the attendance/progress reports shall be maintained at the CONTRACTOR's place of business and made available upon request of DJUSD and/or the DJUSD student's parent.
2. CONTRACTOR shall administer pre-test assessments at the beginning of service to each DJUSD student and administer post-test assessments to each DJUSD student before the end of the term of the relevant student's SLP. CONTRACTOR shall not charge the DJUSD student's parent nor DJUSD for the provision of attendance/progress reports, and/or any assessments including the post-test assessments, any interviews, or meetings. CONTRACTOR shall be responsible for purchase of the assessment tools necessary to comply with the above. CONTRACTOR shall provide DJUSD with sample pre- and post-test assessments no later than the date that CONTRACTOR signs this Master Contract.

G. DJUSD STUDENT CHANGE OF ENROLLMENT

If a DJUSD student changes enrollment to a school outside of DJUSD's service boundaries or a DJUSD school whose students are not eligible for SES under the NCLB Act, DJUSD shall not be responsible for the costs of services delivered after the DJUSD student's change of enrollment.

H. WITHDRAWAL OR DISMISAL OF DJUSD STUDENT FROM PROGRAM

CONTRACTOR shall immediately report to the Instructional Services-Categorical Programs Office when a parent of a DJUSD student has requested a withdrawal from services with stated reasons, or a DJUSD student is dismissed from services for nonuse, or lack of attendance for sixty (60) consecutive billable days. CONTRACTOR must follow Policies and Procedures steps when unable to contact the parent/guardian to schedule an appointment and must not request a withdrawal of a student.

I. PARENT ACCESS

CONTRACTOR shall provide reasonable parental access to DJUSD students and all facilities including, but not limited to, the instructional setting, recreational activity areas, and meeting rooms. CONTRACTOR shall comply with any known court orders regarding parental visits and access to DJUSD students.



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J. SERVICES AND SUPERVISION ON PUBLIC SCHOOL CAMPUSES

1. A CONTRACTOR that desires to use DJUSD facilities must submit a request in writing to the DJUSD describing the facilities they wish to use and the number of hours per session and per week the facilities will be utilized. Upon approval, a Facility Use Agreement will be entered into between the CONTRACTOR and DJUSD before access is permitted. Hourly rates for DJUSD facilities shall apply.
2. If CONTRACTOR is permitted access to public school campuses, CONTRACTOR shall comply with Penal Code Section 627.1 et. seq., and DJUSD procedures regarding visitors to school campuses specified by the DJUSD and the procedures of the campus being visited.

K. SUPPLIES AND EQUIPMENT

CONTRACTOR shall be solely responsible for the provision of all appropriate supplies, equipment, assessments, and facilities for a pupil as required in his/her SLP.

L. MONITORING

1. CONTRACTOR shall allow access by DJUSD to its facilities for periodic monitoring of each DJUSD student's instructional program and shall invite DJUSD to participate in the review of each student's progress. DJUSD shall have access to observe each DJUSD student at work, observe the instructional setting, interview CONTRACTOR, and review each DJUSD student's records and progress. Such access may include unannounced monitoring visits. When making site visits, DJUSD shall initially report to CONTRACTOR's site administrative office. CONTRACTORS who provide on-line internet tutorial services, before services are provided under this Master Contract, CONTRACTOR shall provide to DJUSD all website addresses, passwords, and any other information necessary to permit DJUSD to access CONTRACTOR's online services.
2. CONTRACTOR shall participate in person for an annual review process as deemed appropriate by DJUSD. This review will include, but is not limited to, programmatic aspects, compliance with relevant state and federal regulations, assessments of DJUSD students, DJUSD student achievement growth, and Master Contract compliance.
3. CONTRACTOR shall participate in any reviews, including without limitation, self reviews as required by law.
4. CONTRACTOR understands that DJUSD reserves the right to institute a program audit with or without cause. The program audit may include, but is not limited to, a review of core compliance areas of attendance; health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance
5. CONTRACTOR shall ensure that the tutors' on-the-job performance is regularly monitored.



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IV. PERSONNEL

A. CLEARANCE REQUIREMENTS

1. CONTRACTOR shall comply with the requirements of California Education Code sections 44237, 35021.1, and 35021.2, including, but not limited to: obtaining clearance from the California Department of Justice (hereinafter referred to as "CDOJ") and tuberculosis ("TB") clearance for CONTRACTOR's employees, volunteers, and independent contractors prior to providing service to any DJUSD student, unless CONTRACTOR determines that the employees, volunteers, and independent contractors will not be onsite and thus unable to have contact with DJUSD students. Such CDOJ and FBI clearance shall include a determination that any such person has not been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h), unless despite such person's conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to California Education Code section 44237 (i) or (j). In addition, CONTRACTOR shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2 with respect to each such person. CONTRACTOR shall certify in writing to DJUSD that CONTRACTOR has at all times complied with this section of the Master Contract. CONTRACTORS employing or staffing current DJUSD or other school district's employees must obtain clearance from the CDOJ verified with CONTRACTOR's ORI (Originating Agency Identification) number.
2. CONTRACTORS with employees who are residents of other states in the United States shall comply with the above identified statutory requirements by obtaining criminal record histories for their employees through the employee's state of residence equivalent to the CDOJ including subsequent arrest information or by obtaining annual FBI criminal records histories for their employees.
3. If CONTRACTOR's services, as specified in the ISA, are limited to online services, contact with DJUSD students shall also include electronic contact, and CONTRACTOR shall comply with the requirements for CDOJ and FBI clearance described in this section. In such cases, employees having electronic or telephone contact only with any DJUSD student shall not be required to obtain TB clearance.
4. Administrative staff for CONTRACTOR not in contact with students but having access to confidential student information shall comply with the requirements for CDOJ clearance described in this section. In such cases, employees only having access to any confidential DJUSD student information shall not be required to obtain TB clearance.



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5. Obtaining clearance for tuberculosis (TB). CONTRACTOR shall certify in writing that CONTRACTOR's employees and volunteers and subcontractors have received clearance for TB.
6. Representatives for CONTRACTOR attending any district approved function where students are in attendance (i.e., Meet the Providers Fairs) shall comply with all above clearance requirements.
7. Clearance certifications shall be submitted to the Instructional Services-Categorical Programs pursuant to their requirements.
8. The CONTRACTOR shall provide each tutor, site director, and any other employee(s) in contact with DJUSD students with an identification badge that exhibits the CONTRACTOR's company name, employee name, and a picture of the employee.

B. STAFF QUALIFICATIONS

1. CONTRACTOR shall ensure that all individuals employed, contracted, and/or otherwise hired by CONTRACTOR to provide classroom, on-line, home, and/or individualized instruction or related services are qualified in the area in which the individuals are providing Supplemental Educational Services.
2. CONTRACTOR shall comply with all laws and regulations governing the licensed professions, including but not limited to, the provisions with respect to supervision. CONTRACTOR shall deliver designated instruction and services utilizing personnel who possess a license issued by an appropriate licensing agency authorizing the licensee to provide the specific service, or possess a credential authorizing the service, or are otherwise qualified and trained to provide the service.

C. VERIFICATION OF LICENSES, CREDENTIALS, AND OTHER DOCUMENTS

1. Before the start of service, CONTRACTOR shall submit to DJUSD a staff list, and all current licenses, credentials, permits and/or other documents (e.g., proof of professional development or coursework completed, etc.) which entitle the holder to provide Supplemental Educational Services held by individuals employed, contracted, and/or otherwise hired or utilized by CONTRACTOR to provide Services under this Master Contract. CONTRACTOR shall ensure that all credentials are on file at the office of the County Superintendent of Schools. CONTRACTOR shall, in a manner specified by the Supplemental Educational Services Department, notify DJUSD each month with the submission of the invoices when personnel changes occur which may affect the provision of Supplemental Educational Services to DJUSD students.



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2. CONTRACTOR shall monitor the status of licenses, credentials, permits and/or other documents for all individuals employed, contracted, and/or otherwise hired or utilized by CONTRACTOR to provide Services under this Master Contract. CONTRACTOR shall provide to DJUSD updated information regarding the status of licenses, credentials, permits and/or other documents each month during the Term of this Master Contract.

D. STAFF ABSENCES

1. If CONTRACTOR's service provider is absent, CONTRACTOR shall provide a qualified substitute, as defined in Section I.F(4) of this Master Contract and as determined by DJUSD. DJUSD will not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider.
2. The CONTRACTOR shall notify the student's parent regarding staff absences and provision of "make-up" services by a qualified service provider.
3. The CONTRACTOR shall notify its employees who are DJUSD employees that an absence from their regular duties for DJUSD work prohibits them from working for a CONTRACTOR on that same day of absence if the absence was for illness.

V. HEALTH AND SAFETY MANDATES

A. HEALTH AND SAFETY

CONTRACTOR shall comply with all applicable federal, state, and local laws, regulations, and ordinances, and DJUSD policies and procedures regarding student health and safety.

B. FACILITIES AND FACILITIES MODIFICATIONS

CONTRACTOR shall provide Supplemental Educational Services to DJUSD students in facilities that comply with all applicable federal, state, and local laws, regulations, and ordinances related, but not limited to: disability access; fire, health, sanitation, and building standards and safety; fire warning systems; zoning permits; and occupancy capacity. CONTRACTOR shall be responsible for any structural changes and/or modifications to CONTRACTOR's facilities as required to comply with applicable federal, state, and local laws, regulations, and ordinances. CONTRACTOR may only provide SES at facilities or locations outlined in the ISA; any changes to such facilities or locations require the prior written consent of DJUSD Instructional Services-Categorical Programs administrator.



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C. TRANSPORTATION

CONTRACTOR shall neither provide transportation nor subcontract for transportation services for DJUSD students unless DJUSD and CONTRACTOR agree otherwise in writing, as specified in the ISA. If agreed, in the event CONTRACTOR provides transportation services CONTRACTOR will keep in effect appropriate policies of liability insurance with the limits specified in Section II.J or enters into a subcontract for the provision of transportation services, such subcontract shall require the subcontractor to keep in effect appropriate policies of liability insurance with the limits specified in Section II.M.

D. ADMINISTRATION OF MEDICATION

CONTRACTOR shall comply with the requirements of California Education Code Section 49423 when CONTRACTOR serves a DJUSD student that is required to take prescription and/or over-the-counter medication during the session. CONTRACTOR shall maintain a written log for each DJUSD student to whom medication is administered. Such written log shall specify the DJUSD student's name; the type of medication; the date, time, and amount of each administration; and the name of CONTRACTOR's employee who administered the medication.

E. INCIDENT/ACCIDENT REPORTING

CONTRACTOR shall submit within 24 hours, by mail, any accident or incident report to the Supplemental Educational Services Department, CONTRACTOR shall submit accident or incident reports pursuant to the procedures specified by the Supplemental Educational Services Department.

F. CHILD ABUSE REPORTING

CONTRACTOR must develop and/or maintain a written child abuse reporting procedure. CONTRACTOR hereby agrees that all staff members, including volunteers, are familiar with, and agree to adhere to child abuse reporting obligations and procedures as specified in California Penal Code Section 11166. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the Instructional Services-Categorical Programs Office. CONTRACTOR must develop and maintain a written child abuse reporting procedure.

G. REPORTING OF MISSING CHILDREN

CONTRACTOR assures DJUSD that all staff members, including volunteers, are familiar with, and agrees to adhere to requirements for reporting missing children as specified in California Education Code Section 49370. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the Instructional Services-Categorical Programs. CONTRACTOR must develop and maintain a written missing children reporting procedure.



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VI. DJUSD SES DOCUMENTATION AND TRAINING

A. REQUIRED DOCUMENTS AND FORMS

1. CONTRACTOR agrees to utilize the SES documents and forms developed by DJUSD, including but not limited to: obtaining the list of students whose parent/guardian(s) have selected CONTRACTOR as their SES provider; creating student activity rosters and sign-in/out sheets; tracking attendance; creating invoices for reimbursement of services; creating SLPs; recording pre- and post-assessments; reporting student progress; recording student notes; and requesting student withdrawals.
2. CONTRACTOR shall provide its own computer(s) when necessary to complete the required SES documents and forms, as District will not provide computer(s) to CONTRACTOR.

B. TRAINING SESSIONS

CONTRACTOR shall attend any training sessions hosted by DJUSD on the date and at the time training is scheduled, at CONTRACTOR's expense. Attendance is highly recommended at technical assistance sessions scheduled during the duration of the contact year, though optional.

VII. FINANCIAL

A. ENROLLMENT, CONTRACTING, ATTENDANCE REPORTING, AND BILLING PROCEDURES

1. CONTRACTOR shall comply with all procedures concerning enrollment, contracting, attendance reporting, and billing as specified by the SES Department.
 - a. CONTRACTOR and its representatives shall not duplicate, distribute, alter, or collect SES enrollment forms at any time or for any reason.
 - b. CONTRACTOR and its representatives shall not enter any DJUSD campus, DJUSD sponsored activity, or contact school employees for SES recruitment purposes at any time except when participating in a DJUSD hosted SES Provider Fair.
 - c. If CONTRACTOR is not able to commence services to student on its list within thirty (30) days of receiving their student list, then DJUSD may reassign students not being serviced to another provider.
2. CONTRACTOR shall maintain separate registers that describe the services provided for each DJUSD student. Original attendance forms (i.e., daily service logs and notes) shall be completed by the actual service provider whose signature shall appear on such forms and shall be available for review, inspection, or audit by DJUSD during the Term of this Master Contract and for a period of five (5) years thereafter. CONTRACTOR shall verify the accuracy



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of minutes of reported attendance that are the basis of services being billed for payment. CONTRACTOR must begin providing service to students according to the terms and as of the date specified in the ISA, and must provide at least 80% of their services to 90% of the enrolled students by May 6, 2016. CONTRACTOR must begin providing service to ALL students by the date that allows each student sufficient time to receive the total number of hours of service to be provided to each students as indicated in the SLP unless otherwise agreed to in writing between the CONTRACTOR and the DJUSD. All services for the students by the CONTRACTOR shall end by May 27, 2016. Under special circumstances, if there is a need to extend the service period beyond May 27, 2016, the CONTRACTOR shall submit a written request for extension of the service period to the District, and upon written approval by the District, the service may continue. All services to the students shall end by May 27, 2016; all invoices shall be submitted to the District by June 24, 2016.

3. CONTRACTOR shall receive compensation only for sessions attended by qualified DJUSD students whose names have been provided to CONTRACTOR by the SES Department and for SES actually provided to DJUSD students. CONTRACTOR shall not receive compensation for DJUSD student absences. CONTRACTOR shall submit invoices and related documents to DJUSD for payment, for each calendar month that education or related services were provided. Invoices and related documents shall be submitted on a form and in the manner prescribed by DJUSD in the SES Department. Invoices shall be submitted no later than thirty (30) days after the end of the attendance accounting period in which the services were rendered. Students withdrawn from a CONTRACTOR's SES Program must have all attendance entered within seven (7) days and invoices submitted within thirty (30) days of the withdrawal approval date. DJUSD shall make payment to CONTRACTOR based on the number of billable days of attendance and hours of service at the rate specified on the ISA. Payment shall be within forty-five (45) days after DJUSD receipt of invoice prepared and submitted as specified by the SES Department. CONTRACTOR shall correct any deficiencies and resubmit invoice no later than thirty (30) days after the invoice is returned by DJUSD. DJUSD shall pay properly resubmitted invoices no later than forty-five (45) days after the date a completely corrected invoice is received by DJUSD. CONTRACTOR shall submit to District the final itemized invoice for services ending May 27, 2016, no later than June 24, 2016.
4. The District is not obligated to pay for unsatisfactory services, provided that the district shall give the CONTRACTOR at least 30 days written notice of its dissatisfaction and offer the CONTRACTOR the opportunity to improve. If the CONTRACTOR alters its service to the Districts' satisfaction within that 30-day period, there will be no interruption in payment. DJUSD SES Observation/Monitoring tool will be utilized to monitor implementation and progress of the services.



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B. ASSIGNMENT/FINANCING

The CONTRACTOR shall not assign this Master Contract, or assign any of its rights hereunder, and shall not delegate any of its obligations hereunder, in whole or in part, without the prior written consent of the District, which may be granted or withheld in the District's sole and absolute discretion. Without limiting the generality of the foregoing, the CONTRACTOR shall not place any burden or lien, and shall not factor, or otherwise encumber any right to receive payment hereunder. Assignment of this Master Contract by operation of law or the merger or acquisition of CONTRACTOR shall be deemed to be an assignment requiring the consent of the District. Any assignment in contravention of this section shall be void and no assignment shall relieve the assignor of any obligations under this Master Contract.

C. RIGHT TO WITHHOLD PAYMENT

1. DJUSD may withhold payment to CONTRACTOR when:
 - a. CONTRACTOR has failed to perform, in whole or in part, any of the terms of this Master Contract, ISA, and/or SLP;
 - b. CONTRACTOR was overpaid by DJUSD as determined by inspection, review, and/or audit of CONTRACTOR's program, work, and/or records;
 - c. Education and/or related services were provided to DJUSD students by personnel who are not appropriately identified to DJUSD as credentialed, licensed, or otherwise qualified;
 - d. DJUSD has not received prior to the end of the Master Contract Term, all documents concerning one or more DJUSD students enrolled in CONTRACTOR's educational program; and/or
 - e. CONTRACTOR receives payment from another agency or funding source for a service provided to a DJUSD student.
2. If the basis for the withholding is section VII.C(1)(d) above, DJUSD may only withhold the proportionate amount of the invoice related to that pupil for the time period after the violation occurred and until it is cured.
3. If the basis for the withholding is Section VII.C(1)(a) and/or Section VII.C(1)(b) above, DJUSD may only withhold the value of the service CONTRACTOR failed to perform or the amount of any overpayment.
4. If the basis for the withholding is Section VII.C(1)(c) above, DJUSD may only withhold payment for services provided by the applicable individual.
5. If the basis for the withholding is Section VII.C(1)(e) above, DJUSD may only withhold the amount paid to CONTRACTOR by the agency or funding source for the service provided to the DJUSD student.



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6. If DJUSD determines that cause exists to withhold payment to CONTRACTOR, DJUSD shall, within fifteen (15) days of this determination, provide CONTRACTOR written notice that DJUSD is withholding payment. The notice shall describe the reasons for the withholding. Such notice shall specify the basis or bases for DJUSD's withholding payment and the amount to be withheld. Within thirty (30) days from the date of receipt of such notice, CONTRACTOR shall take all necessary and appropriate action to correct the deficiencies that form the basis for DJUSD's withholding payment or submit a written request for extension to correct the deficiencies. Upon receipt of CONTRACTOR's written request showing good cause, DJUSD shall extend CONTRACTOR's time to correct deficiencies (usually an additional thirty [30] days), otherwise payment will be denied.

D. PAYMENT FOR ABSENCES

1. **STAFF ABSENCE:** when CONTRACTOR's service provider is absent, DJUSD shall not pay for services unless a qualified substitute, as specified in Section IV.D, is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider.
2. **STUDENT ABSENCE:** DJUSD shall not be responsible for the payment of services when a student is absent.

E. INCENTIVES

1. CONTRACTOR shall not provide any up-front incentive valued at over \$2.00 per student to parents or students to encourage enrollment in CONTRACTOR's program or to encourage any other student or parent to enroll in CONTRACTOR's program. Acceptable items are pencils, pens, magnets, etc. In any marketing information or other explanation, either verbally or in writing, and in the delivery of services, CONTRACTOR may not offer to parents and/or students incentives valued at more than \$5.00 each or \$50.00 in the aggregate per student as achievement and/or attendance incentives once the student has enrolled in CONTRACTOR's program.
2. CONTRACTOR's policy as to how students earn achievement and/or attendance incentives and the specific incentives with their specific costs must be fully explained in the ISA.
3. CONTRACTOR may not offer any incentive/payment of any amount to any DJUSD personnel for assisting CONTRACTOR in the recruitment of parents and/or students to enroll in CONTRACTOR's program.

F. BUDGET REDUCTIONS

In the event that during the Term of this Master Contract, the State of California Department of Education or the Board of Education of the District fails to appropriate sufficient funds to fund the Master Contract, reduces or terminates funding with respect to the relevant program, or otherwise



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directs budget cutbacks, District may either (a) terminate the Master Contract, without further liability to District, or (b) propose an amendment to the Contract for a reduced scope of Services and/or at a lower price, which may be retroactive to the beginning of the term hereof. Any such amendment shall require the mutual agreement of the parties. Further, if the Board of Education suspends payments to contractors due to budget cutbacks by the State of California, District shall have the option to suspend performance of the Master Contract and suspend payments to the CONTRACTOR until the State of California rescinds the suspension. In any event, the Contractor shall be paid in accordance with the Master Contract for Services performed through the date of termination, amendment (as more particularly set forth in the amendment) or suspension of payments. In no event shall the District be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits arising out of or in connection with any termination, amendment or suspension of payments pursuant to this Section.

G. INSPECTION AND AUDIT

1. CONTRACTOR shall maintain and DJUSD shall have the right to examine and audit all of the books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Master Contract.
2. CONTRACTOR shall provide access to all records including, but not limited to: pupil records as defined by California Education Code Section 49061(b); registers and roll books of teachers; daily service logs and notes and other documents, including SLPs, used to record provision of services; staff lists specifying credentials held, business licenses held, documents evidencing other qualifications, social security numbers, clearance documentation specified in Section IV.A; dates of hire and termination; staff timesheets; non-paid staff and volunteer sign-in sheets; transportation and other related service subcontracts; tutoring schedules; liability and workers' compensation insurance policies; certifications; statements of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; federal/state payroll quarterly reports (Form 941/DE3DP); bank statements and canceled checks. Such access may include unannounced inspections by DJUSD. CONTRACTOR shall make available to DJUSD all budgetary information including operating budgets submitted by CONTRACTOR to DJUSD for the relevant contract period being audited.
3. CONTRACTOR shall make said evidence/documents available at DJUSD or CONTRACTOR's office (to be specified by DJUSD) at all reasonable times and without charge. Said evidence/documents shall be provided to DJUSD within five (5) days of receipt of a written request from DJUSD. CONTRACTOR shall, at no cost to DJUSD, provide assistance in such examination or audit. DJUSD's rights under this section shall also include access to CONTRACTOR's offices for purposes of interviewing CONTRACTOR's employees. If any



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evidence/document is stored in electronic form, it shall be provided in a format that is accessible and readable by current software utilized by DJUSD.

4. CONTRACTOR shall obtain from its subcontractors and suppliers written agreements to the requirements of this section and shall provide a copy of such agreements to DJUSD upon request.
5. If an inspection, review, or audit by DJUSD, a state agency, a federal agency, and/or an independent agency/firm determines that CONTRACTOR owes DJUSD monies as a result of CONTRACTOR's over billing or failure to perform, in whole or in part, any of its obligations under this Master Contract, DJUSD shall provide CONTRACTOR written notice demanding payment from CONTRACTOR and specifying the basis or bases for such demand. Unless CONTRACTOR and DJUSD otherwise agree in writing, CONTRACTOR shall pay DJUSD the full amount owed. CONTRACTOR shall make such payment to DJUSD within thirty (30) days of receipt of written demand for payment.

H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD (34 CFR 85)

1. By signing this document, the CONTRACTOR certifies that it and its principals: and/or subcontractors
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - b. Have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in section VII.H(2)(b) above; and
 - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

I. NONFUNDING

Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement the Board of Education for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated.



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The parties hereto have executed this Master Contract by and through their duly authorized agents or representatives. This Master Contract is effective on October 16, 2015, and terminates at 5:00 p.m. on June 24, 2016, unless otherwise terminated as provided herein.

The parties understand that this Agreement is subject to and contingent upon District Board approval.

J. MODIFICATIONS AND AMENDMENTS

This Master Contract may be modified or amended only by a written document signed by authorized representatives of both parties. No change in this Master Contract or in the ISA shall result in DJUSD's financial obligation to CONTRACTOR in excess of the State/Federal reimbursement rate per student per year to the DJUSD.



**DJUSD Instructional Service-Categorical Programs
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K. NOTICES

Notices required under this Master Contract shall be valid when mailed first class postage or personally delivered to the following representatives, as indicated below:

For the LEA: Bruce Colby, Associate Superintendent
Davis Joint Unified School District
526 B Street
Davis, CA 95616
Attn: Educational Services-Categorical Programs

For PROVIDER: Name / Title: Robert Gordon, CEO
Address: 3350 E. Birch St., Suite 108
City/St./Zip: Brea, CA 92821

Contractor

DJUSD

Professional Tutors of America, Inc.

By:

Signature

9/28/15

Date

Davis Joint Unified School District

By:

Signature

Date

Robert Gordon, CEO

Name and Title of Authorized Representative

Name and Title of Authorized Representative

APPROVED AS TO FORM:
Office of Legal Analyst,
Davis Joint Unified School District

By: _____

DATE _____