

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 11/09/10	Open Agenda ___ Yes <u> X </u> No	Time Certain Request ___ Yes <u> X </u> No	Agenda Item Number E-1
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TITLE: **TUTOR.COM Learning Suite**

REQUESTED ACTION:
 Approve the Agreement for TUTOR.COM Learning Suite® (TUTOR.COM), which includes the full K-12 Student Center, Live Homework Help® (one-to-one tutoring), Proofpoint™; real-time writing help, and 24/7 access to the SkillsCenter™ Resource School.

SUMMARY EXPLANATION AND BACKGROUND:

TUTOR.COM is an online classroom that features text chat, a real-time interactive whiteboard, and other tools that make for a robust educational experience online. Students connect to a TUTOR.COM tutor for a one-to-one session online whenever they need help. The service is available 24/7 year-round.

TUTOR.COM services include the full K-12 Student Center. This includes Live Homework Help®, which offers one-to-one tutoring; ProofPoint™, real-time writing help; and 24/7 access to the SkillsCenter™ Resource School. Students access the TUTOR.COM Learning Suite® Web site after authenticating into the School District's system, select the subject in which they need tutoring and connect to a qualified tutor. Learning takes place in TUTOR.COM'S proprietary, Web-based, Online Classroom. Subjects offered include Math, Science, Social Studies and English for all students.

Through this Agreement, TUTOR.COM will provide access for all 9th grade students taking Algebra at Coconut Creek High School, Blanche Ely High School, Dillard High School, Boyd Anderson High School, Hallandale High School, and Hollywood Hills High School (approximately 2,000 students).

The Agreement(s) have been approved as to form and legal content by the School Board Attorney.

- SCHOOL BOARD GOALS:**
- Goal One: Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education.
 - Goal Two: Improve the health and wellness of students and personnel.
 - Goal Three: Provide a safe and secure physical and technological environment for all students and employees.
 - Goal Four: Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position.
 - Goal Five: Recruit, develop, retain, and recognize high performing and diverse faculty and personnel.
 - Goal Six: Build strong partnerships with family, business, community and government at the classroom, school, area, and district level.
 - Goal Seven: Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.

FINANCIAL IMPACT:
 The total financial impact to provide this service is \$120,000. The funding source is Title I.

EXHIBITS: (List)
 1. Copy of the Agreement

APPROVED	SOURCE OF ADDITIONAL INFORMATION: Christopher McGuire 754-321-1100 Jeffrey S. Moquin 754-321-2650 Donnie Carter 754-321-2610		
<small>(For Official School Board Records' Office Only)</small>	<table style="width:100%; border: none;"> <tr> <td style="border: none; width: 80%;">Name</td> <td style="border: none; width: 20%;">Phone</td> </tr> </table>	Name	Phone
Name	Phone		

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Donnie Carter, Chief Operations Officer
Office of the Chief Operations Officer

Approved in Open Board Meeting on: **NOV 09 2010**

By: *Jennifer Gettel* School Board Chair

AGREEMENT

THIS AGREEMENT is made and entered into as of this 9th day of November, 2010, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

TUTOR.COM, INC.
(hereinafter referred to as "TUTOR.COM"),
whose principal place of business is
9 East 40th Street, 2nd Floor, New York, New York 10016.

WHEREAS, TUTOR.COM is an online classroom that features text chat, a real-time interactive whiteboard, and other tools that make for a robust educational experience online. Students connect to a TUTOR.COM tutor for a one-to-one session online whenever they need help. The service is available 24/7 year round; and

WHEREAS, SBBC is an academic K-12 district school system interested in offering online classroom tutoring produced by TUTOR.COM for SBBC's students; and

WHEREAS, TUTOR.COM is a provider of online classroom/web-based communication services also referred to as TUTOR.COM Property; of TUTOR.COM's Learning Suite with ProofPoint™ therefore, SBBC desires to obtain the online classroom services provided by TUTOR.COM for its SBBC students; and

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

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** , The term of this Agreement shall commence from ~~effective date and~~ **November 10, 2010** ~~continue through August 31, 2011~~ unless terminated earlier pursuant to Section 3.04 of this Agreement.

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

2.02 License.

2.02.1 **Grant.** TUTOR.COM hereby grants to SBBC a non-exclusive non-transferable, limited license to use the Services during the Term (as defined below), subject to the terms and conditions set forth in this Agreement. For the purposes of this Agreement, “Services” shall refer to the TUTOR.COM Learning Suite which includes the full K-12 Student Center, Live Homework Help (one-to-one tutoring), Proofpoint; real-time writing help, and 24/7 access to the SkillsCenter Resource School; TUTOR.COM Learning Suite en Espanol; Implementation and Training, Software Maintenance/Support; and basic reporting. TUTOR.COM hereby grants to SBBC the right to permit Users to use the Services in accordance with the terms of SBBC’s permitted use under this Agreement.

2.02.2 **Limitation to Grant.** Except as set forth herein or in any attachment to this Agreement, SBBC shall not use the Services in any manner to provide web-based communication Services to any third party including charter schools, nor shall SBBC sublicense, transfer or distribute the Services, or any portion thereof, to any third party. SBBC acknowledges that no source code or technical level documentation is licensed under this Agreement, and that TUTOR.COM reserves all other rights to the Services, including without limitation the right to access and modify the Services for training, maintenance, upgrades, and security purposes

2.03 **Setup.** TUTOR.COM shall set up and deliver to SBBC the Services for launch on a date mutually agreeable to the parties. SBBC shall provide TUTOR.COM with all information needed to develop and launch the Services.

2.04 Indemnification.

A. By SBBC: SBBC agrees to be fully responsible for its acts of negligence or its agents’ acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. Nothing herein shall be construed as consent by SBBC to be sued by third parties in any matter arising out of any contract. Nothing herein shall be construed as a waiver by SBBC of any rights or limits to liability under Section 768.28, Florida Statutes.

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

2.05 **Copyright Indemnification.** SBBC agrees to notify TUTOR.COM promptly in writing of any threatened or pending judicial action brought against SBBC alleging SBBC’s improper or unlawful use

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

of any of the Services or TUTOR.COM Property, including but not limited to its infringement of a valid United States copyright law, patent or regulation (all such claims being referred to collectively herein as "Infringement Claims"). TUTOR.COM shall indemnify and defend the SBBC, including its board members, employees, and agents, against any and all of such Infringement Claims at its own expense and will pay (i) the legal fees of counsel engaged to defend SBBC and all of SBBC's related reasonable expenses, (ii) any costs and damages awarded against the SBBC in such action, and (iii) any amount agreed to be paid by SBBC in settlement of such action. TUTOR.COM's foregoing obligations are subject to and conditioned upon SBBC's full cooperation with TUTOR.COM in the defense of such Infringement Claims.

2.06 SBBC Photo Identification Badge.

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

SBBC issued identification badges must be worn at all times when on SBBC property and must be worn where they are visible and easily readable.

L-1 Enrollment Services has been contracted to provide all background and fingerprinting services. All questions pertaining to fingerprinting, photo identification and background check services must be directed to the EasyPath Project Coordinator at 754-321-1830 or easypathinfo@L1ED.com. **Each individual, for whom a SBBC photo identification badge is requested, must fill out the forms that are required, show his/her driver's license and social security card, and must be fingerprinted.** A background check will be conducted for each badge applicant. SBBC reserves the right to require additional information, should it be necessary, and to deny the issuance of a badge to an applicant. Any applicant, who has been denied a badge, is prohibited from entering SBBC property as an employee, sub-contractor or agent of TUTOR.COM. There will be two websites used for services: 1) <http://www.L1Enrollment.com> (used for scheduling and registering applicants) and 2) <http://sbbc-easypath.browardschools.com> (used for vendors to check the status of applicants and order replacement badges). The total fee for the SBBC photo identification badge, fingerprinting and a FBI background check can be found at the following website: www.L1Enrollment.com. Payment options can be made by electronic check (e-check), Visa, MasterCard or use of an established escrow account code. **These fees are non-refundable and are subject to change without notice. Badges are issued for a one-year period and must be renewed annually. The renewal date will be one year**

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

from date of issuance. Failure to renew the badge, at that time, will result in the vendor being required to re-apply and pay the going rate for badging and fingerprinting.

Vendors shall return expired and/or terminated employee badges to the following location: The School Board of Broward County, Florida, Attn: L-1 Enrollment Services, 600 SE 3rd Avenue, Fort Lauderdale, Florida 33301.

2.07 INSURANCE REQUIREMENTS

Proof of the following insurance will be furnished by TUTOR.COM to SBBC by Certificate of Insurance. Such certificate must contain a provision for notification to SBBC 30 days in advance of any material change in coverage or cancellation. **SBBC shall be named as an additional insured under the General Liability policy including Products Liability. Include the Agreement on the Certificate.**

A. General Liability Insurance with limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

B. Product Liability or Completed Operations Insurance with bodily injury limits of liability of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

The insurance policies shall be issued by companies qualified to do business in the State of Florida and grant The School Board of Broward County, Florida, thirty days of advanced written notice of a cancellation, expiration or any material change in the specified coverage. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service. All policies must remain in effect during the performance of the contract.

Prior to the commencement of any work, TUTOR.COM must provide SBBC's Supply Management and Logistics Department with a Certificate of Insurance which is evidence of the above coverage and with SBBC named as an additional insured.

2.08 User Information Is Strictly Confidential Absent Extraordinary Circumstances. TUTOR.COM will not disclose to any third party any personal information that would permit identification of a User without first obtaining the prior written consent of SBBC unless TUTOR.COM believes that an immediate disclosure may be necessary to protect someone's physical safety (for example if a User tells a tutor that he "has a gun and is going to shoot someone"), or if otherwise required by law (such as a court order).

2.09 Payment. SBBC hereby agrees to pay TUTOR.COM the amounts set forth in Attachment A. Payment shall be made to TUTOR.COM within 30 days of the invoice date. Payment obligations shall survive termination of the Term.

2.10 Representations. TUTOR.COM and SBBC represents, warrants and covenants to the other that:

A. It has, and will have, the full power, authority, and legal right to enter into and perform fully its obligations under this Agreement.

B. Neither the execution and delivery of this Agreement nor the consummation of transactions contemplated hereby does or will (i) violate any provision of the charter or by-laws of such Party, or any laws, ordinances, rules, regulations, codes or policies to which such Party is subject to or (ii) conflict with,

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

result in breach or violation of, constitute a default under, or require any notice under any agreement to which such Party is Party or by which it is bound or to which any of its assets is subject.

C. It shall comply at its own expense with all applicable laws, ordinances, rules, regulation, codes and policies in connection with its performance under this Agreement; and

D. It has all rights and authorizations necessary to grant the rights and licenses set forth herein.

2.11 WARRANTY DISCLAIMERS AND LIMITATIONS ON LIABILITY.

A. OTHER THAN AS EXPRESSLY PROVIDED HEREIN, THE TUTOR.COM PROPERTY IS PROVIDED ON AN “AS IS” BASIS WITHOUT, AND TUTOR.COM EXPRESSLY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER 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 ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, TUTOR.COM MAKES NO WARRANTY OR REPRESENTATION THAT THE TUTOR.COM PROPERTY OR SERVICES WILL MEET SBBC’S REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR APPLICATIONS PROVIDED BY THIRD PARTIES, THAT THE OPERATION OF THE TUTOR.COM PROPERTY OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE TUTOR.COM PROPERTY OR 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. THIS LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. IN NO CASE SHALL TUTOR.COM’S AGGREGATE LIABILITY FOR ALL MATTERS 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.

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

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

2.12 Proprietary Rights.

A. TUTOR.COM Property. All aspects of the Services, including but not limited to 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, patent rights (including patent applications and disclosures), 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. SBBC acknowledges and agrees that this Agreement in no way shall be construed to provide to SBBC, or any other person or entity, any express or implied license to use, copy, reverse engineer, or otherwise exploit the TUTOR.COM Property or Services or any portion thereof (including any intellectual property embodied therein) other than as specifically set forth in this Agreement.

B. Protection of Proprietary Notices. SBBC 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 SBBC. SBBC shall reproduce such notices on all copies it makes of the Services. SBBC 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. SBBC shall notify TUTOR.COM promptly of any known or suspected breach of TUTOR.COM proprietary rights to the Services that comes to its attention.

2.13 Miscellaneous Provisions.

A. Choice of Law and Jurisdiction. This Agreement will be governed by, construed, and enforced in accordance with the substantive law of the State of SBBC, and any and all claims arising hereunder shall be subject to the exclusive jurisdiction of courts residing in that jurisdiction.

B. Indemnification. TUTOR.COM shall indemnify SBBC for claims relating to the negligent, improper or illegal use of the Service by any TUTOR.COM tutor. For such indemnity to apply SBBC must notify TUTOR.COM promptly of a claim.

C. Counterparts. 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.

D. Order of Precedence Between Documents. 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 Service Order of 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.

E. For Remote Home Access, SBBC will keep all links to the TUTOR.COM Learning Suite on web pages that require SBBC card or IP authentication for access. (Remote Home Access allows users to access the TUTOR.COM Learning Suite from residential settings only: Other entities need a separate license to allow access to the TUTOR.COM Learning Suite inside their physical facilities.)

F. All marketing, promotional, and other communications by SBBC that mention or refer to the TUTOR.COM Learning Suite or any of its individual components such as Live Homework Help[®] must

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

include the “Powered by TUTOR.COM” logo, include the ® symbol, and indicate that “Live Homework Help is a registered trademark of TUTOR.COM.” This includes all School web pages that refer to or link to the TUTOR.COM Learning Suite® site. In circumstances where the use of graphic logos may be inappropriate (such as press releases), the text phrase “Powered by TUTOR.COM” may be substituted.

G. Unless otherwise agreed in a Service Order, the Services are offered 360 days of each standard year, and 361 days of each leap year. The Services are unavailable on January 1, Easter Day, 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)

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or as to any rights or limits to liability existing under Section 768.28, Florida Statutes.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

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

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

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

ARTICLE 3 – GENERAL CONDITIONS (Continued)

3.08 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein, expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.14 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

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

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

ARTICLE 3 – GENERAL CONDITIONS (Continued)

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

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: _____
Name of District Representative

Address

Address

To TUTOR.COM: Julie Weintraub
9 East 40th Street, 2nd Floor
New York, New York 10016

With a Copy to: _____
Name to be Provided by Other Party

Address

Address

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

3.20 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

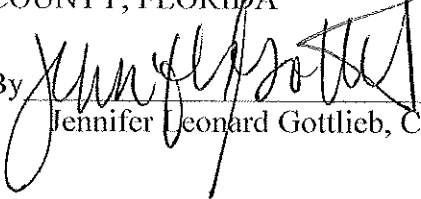
FOR SBBC


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

(Corporate Seal)

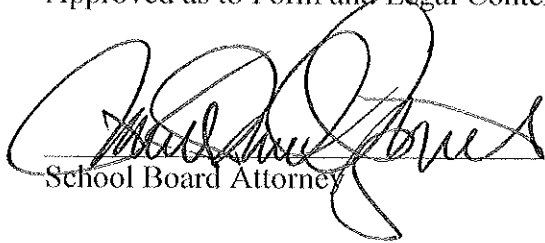
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

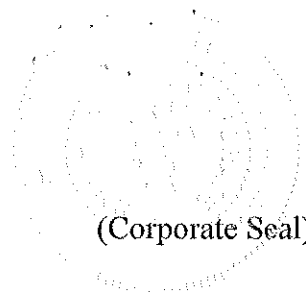
By 
Jennifer Leonard Gottlieb, Chair


JAMES F. NOTTER
Superintendent of Schools

Approved as to Form and Legal Content:


School Board Attorney

FOR TUTOR.COM, INC.



(Corporate Seal)

Tutor.com, Inc.
Name of Corporation or Agency

ATTEST:

[Signature]
Bart Epstein, Secretary

By [Signature]
George Cigale

-or-

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF New York

COUNTY OF New York

The foregoing instrument was acknowledged before me this 22nd day of September, 2010 by George Cigale of
Name of Person

Tutor.com, Inc., on behalf of the corporation/agency.
Tutor.com, Inc.

He/She is personally known to me or produced Driver's license as identification and did/did not first take an oath.
Type of Identification

My Commission Expires:
9/22/11

[Signature]
Signature - Notary Public

Maria C. Poliski
Printed Name of Notary

(SEAL)
MARIA C. POLISKI
Notary Public, State of New York
No. 01P06099076
Qualified in Kings County
Commission Expires Sept. 22, 2011

01P06099076
Notary's Commission No.

ATTACHMENT 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 _____, 2010, between Tutor.com, Inc. ("Tutor.com") and The School Board of Broward County, Florida ("SBBC").

SBBC PRIMARY CONTACT	Tutor.com PRIMARY CONTACT	Tutor.com BILLING CONTACT
Name: Christopher McGuire	Name: Julie Weintraub	Name: Cesar Flores
SBBC: Broward County Public Schools	Address: 9 East 40 th St.	Address: 9 East 40 th St.
Address: 600 SE Third Ave.	Address: 2nd Floor	Address: 2 nd Floor
City, St, Zip: Fort Lauderdale, FL 33301	City, St, Zip: New York, NY 10016	City, St, Zip: New York, NY 10016
Telephone: 754-321-1100	Telephone: (212) 528-3101 x235	Telephone: 212-528-3101 x239
Fax: 754-321-1115	Fax: (212) 766-5855	Fax: 646-619-4981
Email: cmcguire@browardschools.com	Email: jweintraub@tutor.com	Email: cflores@tutor.com

Ordered Services and Fees. Tutor.com agrees to provide the SBBC with the following Services and the SBBC agrees to pay Tutor.com the fees set forth below.

Tutor.com Learning Suite Services include the full K-12 Student Center. This includes Live Homework Help[®] which offers one-to-one tutoring; ProofPoint[™], real-time writing help; and, 24/7 access to the SkillsCenter[™] Resource School. Students access the Tutor.com Learning Suite Web site after authenticating into the SBBC's system, select the subject in which they need tutoring and connect to a qualified tutor. Learning takes place in Tutor.com's proprietary, Web-based, Online Classroom. Subjects offered include math, science, social studies and English for all students.

SBBC Location and Description of Services	Student Licenses	Start Date	End Date	List Price	Final Price
Tutor.com Learning Suite with ProofPoint[™] Hours: 6am – 12am CT; 7 days Access for all 9th grade students taking Algebra at Coconut Creek HS, Blanche Ely HS, Dillard HS, Boyd Anderson HS, Hallandale HS, and Hollywood Hills HS (Approximately 2,000 students).	2,000 students @ \$75 each	Upon BCCS Board Vote	8/31/2011	\$150,000	\$150,000
Tutor.com Learning Suite en Español Hours: 12pm – 11pm CT; 7 days	Included		8/31/2011	Included	Included
SkillsCenter[™] Hours: 24hours/7 days	Included		8/31/2011	\$7,500	\$7,500
Implementation and Training				\$15,000	\$15,000
Software Maintenance/Support				\$15,000	\$15,000
Basic reporting				\$7,500	\$7,500
Total Fees					\$195,000
Early Adopter Program					<i>(75,000)</i>
Net Total					\$120,000

SBBC will be invoiced for the Net Total (\$120,000) upon execution of the agreement, and agrees to pay all invoices in full within 30 days of receipt of invoice.