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### Board Cover Memorandum

**To** Board of Education

**From** Sondra Aguilera, Acting Superintendent  
Jennifer Blake, Executive Director, Special Education

**Meeting Date** September 28, 2022

**Subject** Services Agreement 2022-2023 - HeyTutor, Inc. - Special Education Department

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**Ask of the Board**       Approve Services Agreement  
                                  Ratify Services Agreement

**Services**                      Approval by the Board of Education of a Services Agreement 2022-2023 between the District and HeyTutor, Inc., Woodland Hills, CA, for the latter to provide students at sixteen OUSD elementary school campuses with high-dosage, in person multisensory literacy services to attempt to close the unfinished learning gaps as brought on by the pandemic via the Special Education Department, for the period of August 3, 2022 through June 30, 2023.

**Term**                              Start Date: 8/3/2022                                              End Date: 6/30/2023

**Not-To-Exceed  
Amount**                      \$800,000.00

**Competitively Bid**      No- Specialty Staff Exemption

One exception to this competitive bidding requirement is the “special services and advice” exception, which applies where the person is providing the district “special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.” (Cal. Govt. Code § 53060; Janes v. Stockton, 193 Cal.App.2d 47, 52 (1961); Cobb v. Pasadena City Board of Education, 134 Cal.App.2d 93 (1955).)

Hey Tutor is providing tutors who have received specialized training in district-adopted, multisensory literacy intervention to support students with dyslexia and related, print-based disabilities. These highly specialized and appropriately trained staff cannot be hired directly by Oakland Unified School District in sufficient numbers to provide for the small-group, intensive intervention required for these students to progress toward their literacy-related IEP goals; and the Specialized Academic Instruction services supported by these staff are both legally-mandated and necessary to ensure students in our special day class settings develop and generalize the early literacy skills to support their access to the general curriculum.

**In-Kind Contributions**

OUSD is furnishing training in our adopted multisensory literacy intervention for all tutors prior to them beginning work.

**Funding Source(s)**

Special Education Learning Recovery- RES 6537

**Background**

Over the course of the COVID-19 pandemic, many students faced interruptions in learning that requires intensive intervention. Students with disabilities faced particular impacts. As a part of the Special Education Department's broader early literacy focus, this contract seeks to provide high-dosage tutoring using evidence-based, multisensory curricula for students placed in elementary mild-moderate self-contained settings, thereby remediating essential literacy skills and preparing these students to access the general curriculum more fully.

The OUSD Special Education Department has chosen HeyTutor specifically because of three unique features associated with their company. Firstly, they actively recruit and hire staff with diverse cultural and ethnic backgrounds, with an intentional focus on ensuring students engage with staff that reflect the diversity of the district in which they are working. Secondly, they allow contracting districts to train their staff in any specific methodologies or curricula that may be needed, which enabled us to ensure the staff were confident implementing our Spire multisensory reading intervention. Finally, their staff is able to work within the school day. Previously, the Department has offered tutoring or supplementary academic instruction services to students with COVID-19-related skill regression outside of the school day (i.e. nights and weekends), and our usage data show that fewer than half of families who were offered these services used them within the 2021-22 school year.

**Attachment(s)**

- Service Agreement 2022-2023 - HeyTutor, Inc.

## SERVICES AGREEMENT 2022-2023

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) HeyTutor, Inc. (“VENDOR,” together with OUSD, “PARTIES”):

The PARTIES hereby agree as follows:

1. **Term.**

- a. This Agreement shall start on the below date (“Start Date”):  
August 3, 2022

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):  
June 30, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment and Evaluation.**

- a. VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.
- b. OUSD may evaluate VENDOR in any manner which is permissible under the law. OUSD’s evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR’s employees, and each of VENDOR’s subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR’s employee(s), and VENDOR’s subcontractor(s).

4. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. Should OUSD require VENDOR's tutors to use a physical sign-in/sign-out form at the school site, then OUSD shall be responsible for providing and maintaining such a form.

5. **Data and Information Requests.** VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. VENDOR shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD's determination that the Services are not related to community school outcomes. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.

6. **Confidentiality and Data Privacy.**

a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.

b. VENDOR understands that student data is confidential. If VENDOR will access or receive identifiable student data, other than directory information, in connection with this Agreement, VENDOR agrees to do so only after VENDOR and OUSD execute a separate data sharing agreement.

(i) If VENDOR is a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E (available here).

(ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).

(iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.

c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

**7. Copyright/Trademark/Patent/Ownership.**

a. VENDOR is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all intellectual property rights therein. The term "Deliverables" means all documents, work product and other materials that are actually delivered to OUSD in the course of performing the Services contemplated by this Agreement. OUSD agrees that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables shall not constitute or be deemed "work made for hire" for OUSD under this Agreement. Subject thereto, VENDOR hereby grants OUSD a non-exclusive and non-sublicensable right and license to use such Deliverables, without additional consideration. All other rights in and to the Deliverables are expressly reserved by the VENDOR.

b. VENDOR and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all intellectual property rights therein. The term "Pre-Existing Materials" means all documents, curricula, data, know-how, methodologies, software, source code, object code and other materials, including computer programs, reports and specifications, provided by or used by the VENDOR in connection with performing the Services, in each case developed or acquired by VENDOR at any time, including prior to the commencement of this Agreement, independently of this Agreement or in conjunction with this Agreement but not exclusively for OUSD. VENDOR hereby grants OUSD a non-exclusive and non-sublicensable right and license to use such Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables solely to the extent reasonably required in connection with OUSD's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by the VENDOR.

c. OUSD and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the OUSD Materials, including all intellectual property rights therein. The term "OUSD Materials" means the tangible manifestations of the documents, data, know-how, methodologies, software and other materials provided to the VENDOR by OUSD, including computer programs, reports and specifications. VENDOR shall have no right or license to use any OUSD Materials except solely during the term of the Agreement to the extent necessary to provide the Services to OUSD. All other rights in and to OUSD Materials are expressly reserved by OUSD.

8. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily performing Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A.**

- a. The compensation under this Agreement shall not exceed:  
\$800,000.00

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.

- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A.**

c. Payment for Services shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed. OUSD shall notify the VENDOR in writing within forty-five (45) days of receiving an invoice if it disputes the performance of any Services. If OUSD fails to dispute any charges within the 30-day timeframe, the Parties agree that OUSD shall pay the invoice in full.

d. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the responsibility of VENDOR to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR's performance does not conform to the requirements of this Agreement, VENDOR agrees to correct its performance without delay.

e. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the performance of such services.

f. VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement. As this Agreement is for Services less than \$800,000, the Agreement shall be validly and properly executed by the OUSD Superintendent or authorized designee. Following execution of the Agreement, OUSD shall use best efforts to obtain ratification of this Agreement by the OUSD Governing Board within sixty (60) days.

9. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement. However, OUSD shall provide VENDOR and its employees with access to and the ability to use printing and copying equipment.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.

a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were performed, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).

b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.

c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. OUSD reserves the right to refuse to pay untimely invoices.

d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory within thirty (30) days of receipt by VENDOR of such notice.

e. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.

f. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email. The AP/Billing Department Contact responsible for processing invoices issued by VENDOR under this Agreement shall be:

NAME: \_Alina Chow

Email Address: Alina.Chow@ousd.org

Phone Number: 510-879-5003

Mailing Address: 915 54<sup>th</sup> Street, Oakland, CA 94608

11. **Termination and Suspension.**

a. Due to Unforeseen Emergency or Acts of God. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

b. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

c. Within thirty (30) days of termination, VENDOR shall provide OUSD with all OUSD materials produced, maintained, or collected by VENDOR pursuant to this Agreement.

d. If OUSD, at its sole discretion, develops health and safety concerns related to the VENDOR's provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend the Agreement, in which case VENDOR shall stop providing Services under the Agreement until further notice from OUSD. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of suspension.

12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent: (i) via email to the email address set forth below, (ii) personally delivered during normal business hours or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

**OUSD**

Name: Joshua R. Daniels  
Site/Dept: Office of General Counsel  
Address: 1000 Broadway, Suite 440  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: ousdlegal@ousd.org

**VENDOR**

Name: Patrick McClure, COO  
Jennifer Sheffield, Chief Legal Officer  
Address: 21700 Oxnard Street, Suite 1540  
City, ST Zip: Woodland Hills, CA 91367  
Phone: (855) 661-3688  
Email: patrick@heytutor.com  
Jennifer.S@heytutor.com

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

**13. Status.**

a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.

b. If VENDOR is a natural person, VENDOR verifies all of the following:

- (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
- (ii) VENDOR's work is outside the usual course of OUSD's business; and
- (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.

- c. If **VENDOR** is a business entity, **VENDOR** verifies all of the following:
- (i) **VENDOR** is free from the control and direction of **OUSD** in connection with the performance of the work;
  - (ii) **VENDOR** is providing services directly to **OUSD** rather than to customers of **OUSD**;
  - (iii) the contract between **OUSD** and **VENDOR** is in writing;
  - (iv) **VENDOR** has the required business license or business tax registration, if the work is performed in a jurisdiction that requires **VENDOR** to have a business license or business tax registration;
  - (v) **VENDOR** maintains a business location that is separate from the business or work location of **OUSD**;
  - (vi) **VENDOR** is customarily engaged in an independently established business of the same nature as that involved in the work performed;
  - (vii) **VENDOR** actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from **OUSD**;
  - (viii) **VENDOR** advertises and holds itself out to the public as available to provide the same or similar services;
  - (ix) **VENDOR** provides its own tools, vehicles, and equipment to perform the Services;
  - (x) **VENDOR** can negotiate its own rates;
  - (xi) **VENDOR** can set its own hours and location of work;
- and
- (xii) **VENDOR** is not performing the type of work for which a license from the Contractors State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

**14. Qualifications and Training.**

- a. **VENDOR** represents and warrants that **VENDOR** has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of **OUSD**. **VENDOR** will perform the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All **VENDOR** employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. **VENDOR** represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the

Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

15. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. **Insurance.**

a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. **Testing and Screening.**

a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at

OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.

b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD.

Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.

c. VENDOR shall use Live Scan, California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services.

d. VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18. **Incident/Accident/Mandated Reporting.**

a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of Services. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.

b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code

section 11165.7, **VENDOR** agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. **Coronavirus/COVID-19.**

a. Through its execution of this Agreement, **VENDOR** declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

b. To the extent that **VENDOR** provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), **VENDOR** agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent **VENDOR** from providing Services in person.

c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), **VENDOR** agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.

d. In addition to the requirements of subparagraph (c), **VENDOR** agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

e. **VENDOR** shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

20. **Assignment.** The obligations of **VENDOR** under this Agreement shall not be assigned by **VENDOR** without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

22. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

23. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.

24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

25. **Conflict of Interest.**

a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any

information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.

**26. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

**27. Indemnification.**

a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR’s performance of this Agreement and caused by VENDOR’s intentional, willful or negligent acts or omissions. The indemnification obligations of this provision do not apply in the event the claim or cause of action is the result of OUSD’s sole or contributory negligence. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement.

b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“VENDOR Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s performance of this Agreement and caused by OUSD’s intentional, willful or negligent acts or omissions. The indemnification obligations of this provision do not apply in the event the claim or cause of action is the result of VENDOR’s sole or contributory negligence.

**28. Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD,

its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

29. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

30. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

31. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.

32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

34. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.

35. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.

36. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

37. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.

38. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

39. **Signature Authority.**

a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.

b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.

a. Notwithstanding Paragraph 11, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the

Board declines to ratify it. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination.

40. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD’s Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

**VENDOR**

Name: Enter Vendor signatory name  
Ivan Bercovich

Signature:  FCCFD2B27A3C4A4...

Position: Enter Vendor signatory position  
Chief Executive Officer

Date: Enter date of signature 9/21/2022

*One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.*

**OUSD**

Name: Gary Yee

Signature: 

Position: President, Board of Education

Date: 9-29-2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

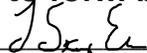
Name: Sondra Aguilera

Signature: 

Position: Acting Secretary, Board of Education

Date: 9-29-2022

Approved as to form by OUSD Staff Attorney Sterling Elmore on 09/21/2022 (date).

Signature:  \_\_\_\_\_

**EXHIBIT A**

1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*

VENDOR will render the services as set forth in this Exhibit A for sourcing tutors (the “**Tutoring Services**”) in accordance with this Agreement and the Terms of Use (the “**ToU**”) set forth on the HeyTutor website located at <https://heyttutor.com/terms/> (the “**Platform**”). In the event of a conflict or inconsistency between this Agreement and the ToU, the Agreement and this Exhibit A shall govern, control and prevail.

Also, the Vendor will render the following services to District as District may from time to time request:

- In Person, small group tutoring utilizing OUSD-adopted multisensory literacy intervention curricula at sixteen OUSD elementary school campuses with mild-moderate Special Day Class programs, which includes one tutor for each campus for half of the school day each day of the regular instructional year.

Tutors shall work on at least 20-hour block schedules and the Vendor will reserve 16 tutors on the Vendor’s payroll to be deployed on a rolling basis beginning 4-6 weeks after executing the Agreement and receiving the purchase order. The District shall pay for the aggregate hours of reserved time for the tutors (e.g., if a District wants 10 tutors, the District shall pay for 200 hours weekly), whether their students show up to all sessions or not. The total number of tutors can be adjusted monthly, but there must be a contract minimum (75% of the District’s total initial ask).

A purchase order must be issued for the full amount of tutoring services rendered at each site over the term of the agreement. In-person tutoring programs typically require four to six weeks to begin receiving Tutor Candidates on campus after contract execution and receipt of the following details: (i) purchase order, (ii) schedule, (iii) group size, (iv) subjects tutored, (v) grade levels tutored and (vi) background check information, including ORI #, Mail Code, Service Agency #, Live Scan form, waivers and any other required forms. In-person programs are fulfilled on a rolling basis. All costs associated with printing curricula and materials are absorbed by the district and printed on school sites. If choosing to use Vendor’s curriculum on site, Tutors must have access to paper and printers at each school site. 1 hour of paid training will be invoiced to the District for all Tutors hired. If any additional training is required, this can be negotiated at the contracted hourly rate. The district-wide hourly bill rate will be charged at the highest rate based on the largest group size.

**1B. Description of Services to be Provided During School Closure or Similar**

**Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

- No, services would not be able to continue.
- Yes, services would be able to continue as described in 1A.
- Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

**1C. Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*

- Hourly Rate: \$55.00 per hour
- Daily Rate: \$Click or tap here to enter text. per day
- Weekly Rate: \$Click or tap here to enter text. per week
- Monthly Rate: \$Click or tap here to enter text. per month

\$55 per hour up to a cumulative total of \$800,000.00 for all hours of service across all sites.

**2. Specific Outcomes:** *(A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..." C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."*

Students will be provided high-dosage in person tutoring to attempt to close the unfinished learning gaps as brought on by the pandemic.

**3. Alignment with School Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the appropriate option below:*

- Action Item included in Board Approved SPSA (no additional documentation required) – Item Number:  
Click or tap here to enter text.
- Action Item added as modification to Board Approved SPSA – School site must submit the following documents to the Strategic Resource Planning for approval through the Escape workflow process:

- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

4. **Waivers:** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

Commercial General Liability Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)

Corporal Punishment Insurance Coverage. (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person or virtual) with OUSD students.)

Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)

Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)

Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**)

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# Terms of Use

Welcome to HeyTutor (“Website” and/or “Company”), an online marketplace where Tutors and Students can connect. This Terms of Use (“Agreement”) binds you to the terms and conditions set forth herein when you access the Website or any of our other services (“Services”). If you wish to use our Services, then you must review, comply, and agree to be bound by the terms and conditions of this Agreement.

## 1. ACCEPTANCE OF THE TERMS OF USE AGREEMENT

This Agreement sets out the legally binding terms of use of our Services, including our Privacy Policy and any other terms incorporated herein by reference. This Agreement may be modified by HeyTutor on occasion, and such modifications shall be effective when provided in writing or upon posting.

## 2. ELIGIBILITY

Use of our services is void where prohibited. Access or use of our Services by anyone under the age of majority is prohibited and requires consent to this Agreement by a responsible adult, parent, or legal guardian.

By using our Services, you represent that you have not been involved or been the subject to any criminal or legal action, including but not limited to: 1) misdemeanor or felony criminal convictions; 2) civil or criminal restraining orders; 3) registration as a sex-offender; 4) or any pending legal action involving violence or moral turpitude offenses.

Students under the age of majority shall not participate in a tutoring session, unless a responsible adult, parent, or legal guardian is present. Likewise, Tutors shall not provide lessons to Students under the age of majority unless a responsible adult, parent, or legal guardian is present.

## 3. HOW THE SERVICE WORKS

### **Overview**

HeyTutor is an online marketplace where Tutors and Students can connect. At HeyTutor, Tutors are independent contractors hired by Students. Students are free to access a large database of Tutors filtered by location and subject, and Tutors are able to create a custom profile, set their own rates and policies, and browse for nearby jobs. After each session Tutors are reviewed by HeyTutor Students, creating an online marketplace built on trust and driven by positive results. HeyTutor cuts out the middleman and allows Students and Tutors to connect with each other.

### **HeyTutor Courses**

Tutors may submit a series of pre-recorded lessons, quizzes, worksheets, and notes designed to cover all aspects of a core subject (each, a **"HeyTutor Course"**, collectively, the **"HeyTutor Courses"**). HeyTutor Courses must cover certain academic and professional subjects, and will be available to all students who use HeyTutor for a separate subscription. HeyTutor shall have no obligation to accept or approve a HeyTutor Course or to accept or approve any modifications, changes or alterations of a HeyTutor Course, and all decisions to accept or approve any HeyTutor Course shall be reserved for HeyTutor's sole, exclusive, absolute and unfettered discretion. HeyTutor reserves the right not to make the HeyTutor Course available to the public and, after the HeyTutor Course has been made available to the public, the right to discontinue the HeyTutor Course for any reason at its sole, exclusive, absolute and unfettered discretion. For any HeyTutor Course that HeyTutor solicited Tutor to provide or deliver to HeyTutor, Tutor agrees not to remove such HeyTutor Course prior to the expiration of the twelve month anniversary of its availability on the HeyTutor platform.

### **License to HeyTutor Courses**

If HeyTutor accepts and approve any HeyTutor Course, Tutor hereby grants a non-exclusive, irrevocable, royalty-free, worldwide, perpetual right and license, with the right to sub-license (including through multiple tiers), to reproduce, distribute, transmit, create derivative works of, publicly display and publicly perform HeyTutor Courses or any other materials or information (including, without limitation, ideas for new or improved products or services) Tutor delivers or communicates to HeyTutor by all means and in any media now known or hereafter developed.

### **License to Tutor's Name and Likeness**

Also, Tutor hereby grants HeyTutor an irrevocable, nonexclusive, sublicensable (including through multiple tiers), assignable, transferable and worldwide right and license to use, disclose, publicly perform, commercialize, incorporate (without attribution), exploit, modify and create derivative works from Tutor's name, voice, personal data and identifying information, photograph, likeness and other biographical data (**"Name and Likeness"**) in and in connection with the production, distribution, advertising, publicity, promotion, merchandising, exhibition and other exploitation of all versions and formats of any HeyTutor Course and the businesses, services, programs and/or products of Company, and their licensees, sublicensees and assigns (including all advertising, publicity and promotion and materials associated therewith) and in or in connection with any portion of a HeyTutor Courses in which Tutor does not appear, including without limitation in billing, cast credits, advertising, promoting or publicizing any such episode, in any manner, in any and all media and by any means now known or hereafter devised (including, but not limited to, use in and in connection with publishing, by- products, tie-ins, merchandise, commodities and services of every kind, as well as in connection with or on materials which package or enclose any such items) and no additional payment shall be required for any such uses, unless otherwise specified in a written agreement with HeyTutor. HeyTutor may include photographs or other images or depictions of the likeness of tutor in or in relation to any exploitation of any HeyTutor Course and all documentation, promotional films and videos of any HeyTutor Course in any manner and by any means throughout the universe. Tutor acknowledges and

agrees that any product placement(s) (or Tutor's use of any product or verbal mention of any product) within any HeyTutor Course and any advertisements within or connected to any HeyTutor Course shall not constitute any endorsement or sponsorship by Tutor of such product or service.

### **Tutor's Representations and Warranties for HeyTutor Courses**

Tutor represents and warrants that: (a) HeyTutor Courses are and will be an original work of Tutor, Tutor shall be the sole author, artist, writer, composer, lyricists and performer of any HeyTutor Courses, and no person or entity other than the Course Creator shall have any exclusive rights, including copyrights, in or to the HeyTutor Courses; (b) Tutor has the right and unrestricted ability to grant the license and rights for the HeyTutor Course to HeyTutor (c) neither the HeyTutor Course nor any element thereof will infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law, and (d) Tutor will comply with all applicable federal, state, local and foreign laws governing self-employed individuals, including laws requiring the payment of taxes, such as income and employment taxes, and social security, disability, and other contributions. Tutor agrees to indemnify and hold HeyTutor harmless from any and all damages, costs, claims, expenses or other liability (including reasonable attorneys' fees) arising from or relating to the breach or alleged breach by Tutor of any term or condition hereof and any negligent or more culpable action or inaction.

### **Specific Rules for Tutors**

When a Tutor provides or delivers a HeyTutor Course for HeyTutor, Tutors acknowledges and agrees that:

1. Tutor shall honor any enrollments through heytutor.com (the "**Platform**") at the price and time listed by HeyTutor, and Tutor shall not to refuse enrollments or participation by any student for any discriminatory or illegal reason. Tutor understands and agrees that the Company has sole, exclusive, absolute and unfettered discretion with respect to the terms and conditions, including as to price, free-trial or tier-levels, by which any HeyTutor Course is publicly offered for sale or license.
2. Tutor grants HeyTutor the right to place advertisements on all of the content submitted by Tutor (including the HeyTutor Courses) to HeyTutor for inclusion on or hosting by HeyTutor, including through the Platform (the "**Content**") at HeyTutor's sole, exclusive, absolute and unfettered discretion.
3. Tutor owns or has the necessary licenses, rights, consents (including, as applicable, all moral rights and/or consents, or have obtained waivers in respect of all moral rights and similar rights) and permissions, and the authority to authorize HeyTutor to reproduce, distribute, publicly perform, publicly display, communicate to the public, promote, market and otherwise use and exploit any and all of the Content Tutor submits on and through the Platform.

4. Any Content Tutor provides to HeyTutor will not infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law.
5. Tutor represents and warrants to HeyTutor that Tutor has the required qualifications, credentials and expertise, including without limitation, education, training, knowledge and skill sets to teach and offer the services Tutor offers on any HeyTutor Courses and through the Platform.
6. Tutor agrees to conduct himself or herself in a professional manner and in compliance with all applicable laws at all times.
7. Tutor understands that by teaching a HeyTutor Course Tutor's students will have the ability to post a review of this course. HeyTutor cannot control the contents of any such review and will not be held responsible for any information or opinions that a user may include in any such review.
8. Tutor may choose to remove Content from Tutor's HeyTutor Course and HeyTutor may, in its sole, exclusive, absolute and unfettered discretion, continue to provide it to students who have paid for or enrolled in Tutor's accepted HeyTutor Course.
9. Tutor grants HeyTutor full ownership of any video content that Tutor has filmed for Tutor. It is at HeyTutor's sole, exclusive, absolute and unfettered discretion to remove, add, or edit that video content.
10. Tutor will not submit Content to HeyTutor that violates HeyTutor's Terms of Service and other rules and guidelines HeyTutor has or may produce.
11. HeyTutor reserves the right to, but is under no obligation, to delete any HeyTutor Course at any time for any reason.

## **HeyTutor's Rights**

Additionally, HeyTutor reserves these rights:

- We can make changes to the HeyTutor website and Platform without notice or liability.
- We have the right to terminate Tutor's membership, account, payment, or other affiliation with HeyTutor at any time for any reason. We can change our eligibility criteria at any time. If these things are prohibited by law where Tutor lives or performs services, then we revoke Tutor's right to use the Platform in that jurisdiction.
- We cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in investigating suspected criminal violations.
- We have the right to remove a Tutor from a HeyTutor Course at any time, without prior notice, at our sole, exclusive, absolute and unfettered discretion, should we identify that Tutor's account is associated with behavior that we deem to be in violation of our rules or guidelines or rules or guidelines we may add in the future.

- We have the right to reject, cancel, interrupt, remove, or suspend any HeyTutor Course, comment, or other posted comment at any time and for any reason.

**HeyTutor is not liable for any damages as a result of these actions, and it is our policy not to comment on the reasons for any such action.**

### **Limitation of Liability**

IN NO EVENT WILL HEYTUTOR BE LIABLE TO COURSE CREATOR FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE AGGREGATE LIABILITY OF HEYTUTOR ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, STATUTE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, IS LIMITED TO, AND WILL NOT EXCEED, THE AMOUNTS ACTUALLY PAID TO COURSE CREATOR.

### **4. INDEPENDENT CONTRACTOR STATUS**

HeyTutor's services are separate and distinct from the services of the Tutors. You acknowledge that Tutors are not employees or agents of HeyTutor, but are independent contractors who operate as a distinct entity from HeyTutor. As such, we do not endorse the Tutors, their manner of service to you, exercise no control over your relationship with the Tutor, and do not warrant your safety or service of any Tutor. Students are responsible for carefully hiring Tutors.

### **5. CODE OF CONDUCT**

We endeavor to keep HeyTutor safe and useful for everyone. Users must comply with all applicable laws, terms of use, and posted rules, including but not limited to:

- Use our Services for any unlawful purpose;
- Transmit any content, language, imagery, or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes on our or any third party's intellectual property rights;
- Transmit any material, non-public information about companies without the express authorization to do so;
- Transmit any advertisements, solicitations, or any other unsolicited commercial communication except as otherwise expressly permitted by HeyTutor;

- Engage in spamming or flooding;
- Be disruptive in any tutoring lesson;
- Engage in any communication related to sexual conduct or profanity;
- Transmit any software that contains any viruses, malware, Trojan horse, or any other material that disrupts and causes harm;
- Solicit any Tutor for work with or for another company for employment and independent contractor services;
- Modify, adapt, sublicense, translate, sell, reverse engineer, decompile, or disassemble any portion of the Website or our Services;
- Use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, “data mine,” or in any way reproduce or circumvent the navigational structure or presentation of the Website or its contents;
- Permit anyone whose account was terminated to use our Services through your account or transfer your account to another party without our consent
- Use of our Services may be revoked at any time, for any reason, in our sole discretion. Illegal and/or unauthorized uses of our Services may be referred for criminal prosecution.

## 6. FINANCIAL TERMS

HeyTutor collects payment from Students and distributes it to Tutors. Students must maintain a valid and verified form of payment with HeyTutor in order to facilitate payment to Tutors. Tutors must comply with the payment terms as provided for the Independent Contracting Agreement.

Students must maintain a valid form of payment with HeyTutor in order to facilitate payment to Tutors.

As for HeyTutor Courses, HeyTutor shall pay Tutor only for those accepted HeyTutor Courses and for which HeyTutor has actually generated revenue. HeyTutor shall compensate the Tutor for accepted HeyTutor Courses as follows:

**Pooling of Subscription Revenue.** The Company will, on a monthly basis, allocate thirty percent (30%) of the revenue actually received by HeyTutor from monthly subscriptions (less any applicable deductions such as payment processing fees and user refunds) to the collective of all accepted HeyTutor Courses from all the tutors on the HeyTutor Platform (the “Subscription Content”) into a shared revenue pool (“Subscription Revenue Pool”). Course Creator acknowledges and agrees that Company shall have no liability in excess of the Subscription Revenue Pool.

**Compensation from Subscription Revenue Pool.** Each Tutor’s compensation (the “Monthly Subscription Payment”) shall be equal to the product derived from multiplying (1) the Subscription Revenue Pool (2) by the quotient derived from dividing (a) the total number of minutes watched by all

users subscribed to the Course Creator's Accepted Courses during each calendar month (the "Total Individual Accepted Course Minutes") by (b) the total number of minutes watched by all users subscribed to Subscription Content during each calendar month ("Total Subscription Minutes"). The Monthly Subscription Payment will be calculated by HeyTutor on a good faith basis. For illustrative purposes only, if the revenue generated from subscriptions for Subscription Content equaled \$100,000 for a calendar month, the Total Individual Accepted Courses Minutes thereof was 100,000, and the Total Subscription Minutes thereof was 500,000, then (x) Subscription Revenue Pool would equal \$30,000 (assuming no payment processing fees therefor), (y) and the Course Creator would have earned compensation equal to \$6,000  $((100,000/500,000) * \$30,000)$ .

**Timing of Payments; Disputes.** HeyTutor shall pay the Tutor its Monthly Subscription Payment in arrears on the first (1st) day of each month, subject to a three-day payment processing period, beginning on the month following the month in which Tutor publishes its first accepted HeyTutor Course and has been watched by users subscribed to the Tutor's accepted HeyTutor Course for a minimum of thirty (30) total minutes ("Monthly Subscription Payment Commencement"); provided however, that HeyTutor shall have no liability to pay the Tutor the Monthly Subscription Payment for any particular month following Monthly Subscription Payment Commencement, unless and until the Total Individual Accepted Course Minutes for each such month is at least thirty (30) total minutes. Tutor shall provide written notice to HeyTutor of any disputed amounts within 30 days of the date of which a payment was or should have been made, or Tutor waives any right to challenge, contest or object to such calculation or to dispute any payment.

## 7. BACKGROUND CHECK

HeyTutor does not confirm nor deny the validity of information and content provided by Students and Tutors, including their eligibility. It is the User's responsibility to conduct any background check of other Users.

Students can purchase background checks on Tutors through our partner GoodHire ([www.goodhire.com](http://www.goodhire.com)), which checks the National Criminal Records, Social Security Number Trace, Address History Trace, Sex Offender Watch List, and Terrorist Watch List, amongst others. Tutors must consent to a background check or be removed from Company's site. After review of the background report, Company may remove Tutor from the site.

Users must comply with GoodHire's terms of use. HeyTutor is not liable for the accuracy of GoodHire's information.

## 8. MOBILE TEXT (SMS) NOTIFICATIONS

Company offer Tutors a chance to enroll in text message alerts to receive a text notifications regarding various items, including messages from Students. You will have an opportunity to confirm the service by providing your phone number and replying YES to the message received. You may cancel the service by texting STOP or opting out in the website.

HeyTutor does not charge separately for this service; however, message and data rates may apply from your mobile carrier. Subject to the terms and conditions of your mobile carrier, you may receive text messages sent to your mobile phone.

## 9. GENERAL DISCLAIMER

HeyTutor disclaim all, and assume no responsibility for, evaluating or verifying the accuracy, suitability, truthfulness or authenticity of any information contained within information posted or provided by Users. We assume no responsibility for ensuring compliance with any applicable laws, rules and regulations or this Agreement. We have not inspected the location where any instruction will be provided. We are not responsible for the conduct, whether online or offline, of any user of our Services. Under no circumstances will we or any of our employees, officers, agents, advertisers or affiliates be responsible for any loss or damage, including personal injury or death, resulting from anyone's use of the Website or our Services, any content posted on the Website or transmitted to Members, or any interactions between users of our Services, whether online or offline. We cannot guarantee and do not promise any specific results from use of our Services.

Our Services may give you access to links to third-party websites ("Third Party Sites"), either directly or through Providers. We do not endorse any of these Third Party Sites and do not control them in any manner. Accordingly, we do not assume any liability associated with Third Party Sites. You need to take appropriate steps to determine whether accessing a Third Party Site is appropriate, and to protect your personal information and privacy on such Third Party Site.

Please carefully select the type of information that you post on the Website or release to others using our Services. We cannot guarantee that each Member is at least the required minimum age, nor do we accept responsibility or liability for any content, communication or other use or access of our Services by persons under the age of majority in violation of this Agreement. Also, it is possible that Users may post or transmit offensive or obscene materials using our Services and that you may be involuntarily exposed to such offensive and obscene materials. It also is remotely possible for others to obtain personal information about you due to your use of our Services, and that the recipient may use such information to harass or injure you. We are not responsible for the use of any personal information that you disclose using our Services.

We disclaim all liability, regardless of the form of action for the acts or omissions of Users, whether such acts or omissions occur during the use of the website, our services or otherwise.

Our website, content, submitted content, courses, and any other materials made available on or through the use of our services are provided "As Is," without any warranties of any kind and, to the fullest extent permissible under applicable law, we hereby disclaim all such warranties, express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement, accuracy, freedom from errors, suitability of content, or availability.

## 10. ARBITRATION AND GOVERNING LAW

You and HeyTutor agree that any claim or dispute at law or equity that has arisen or may arise between us relating in any way to or arising out of this or previous versions of the Terms of Use, your use of or access to our Services, or any products or services sold or purchased through our Services, will be resolved in accordance with the provisions set forth in this Section (“Agreement to Arbitrate”).

### A. Applicable Law

You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and HeyTutor, except as otherwise stated in this Agreement.

### B. Agreement to Arbitrate

You and HeyTutor each agree that any and all disputes or claims that have arisen or may arise between you and HeyTutor relating in any way to or arising out of this or previous versions of the Terms of Use, your use of or access to HeyTutor’s Services, or any products or services sold, offered, or purchased through HeyTutor shall be resolved exclusively through final and binding arbitration, rather than in court. Alternatively, you may assert your claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

### I. Prohibition of Class and Representative Actions and Non-Individualized Relief

You and HeyTutor agree that each of us may bring claims against the other only on an individual basis and not as a plaintiff or class member in any purported class or representative action or proceeding. Unless both you and HeyTutor agree otherwise, the arbitrator may not consolidate or join more than one person’s or party’s claims, and may not otherwise preside over any form of consolidated, representative, or class proceeding. Also, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party’s individual claim(s). Any relief awarded cannot affect other users.

### II. Arbitration Procedures

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual. An

arbitrator should apply the terms of this Agreement as a court would. All issues are for the arbitrator to decide, except as prohibited by law.

The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by this Agreement to Arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The use of the word "arbitrator" in this provision shall not be construed to prohibit more than one arbitrator from presiding over an arbitration: rather, the AAA's rules will govern the number of arbitrators that may preside over an arbitration conducted under this Agreement to Arbitrate.

A party who intends to seek arbitration must first send to the other, by certified mail, written Notice of Dispute ("Notice"). The Notice must include a description of the nature and basis of the claims the party is asserting and the relief sought. The Notice to HeyTutor should be sent to HeyTutor, Attn: Litigation Department, Re: Notice of Dispute, HeyTutor LLC, 12327 Santa Monica Blvd. Los Angeles, CA 90025. HeyTutor will send any Notice to you to the physical address we have on file associated with your HeyTutor account; it is your responsibility to keep your physical address up to date.

If you and HeyTutor are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or HeyTutor may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's site at [www.adr.org](http://www.adr.org). In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. You may send a copy to HeyTutor at the following address: HeyTutor LLC, 12327 Santa Monica Blvd. Los Angeles, CA 90025. In the event HeyTutor initiates an arbitration against you, it will send a copy of the completed form to the physical address we have on file associated with your HeyTutor account. Any settlement offer made by you or HeyTutor shall not be disclosed to the arbitrator.

The arbitration hearing shall be conducted at a location which is reasonably convenient to both parties. If the value of the relief sought is \$10,000 or less, you or HeyTutor may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and HeyTutor subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or HeyTutor may attend by telephone, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different users, but is bound by rulings in prior arbitrations involving the same HeyTutor user to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### III. Costs of Arbitration.

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse HeyTutor for all fees associated with the arbitration paid by HeyTutor on your behalf that you otherwise would be obligated to pay under the AAA's rules.

#### IV. Severability

With the exception of any of the provisions in Section 1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply. If an arbitrator or court decides that any of the provisions in Section 1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief") is invalid or unenforceable, then the entirety of this Agreement to Arbitrate shall be null and void. The remainder of the Agreement will continue to apply.

#### V. Future Amendments to the Agreement to Arbitrate.

Notwithstanding any provision in this Agreement to the contrary, you and we agree that if we make any amendment to this Agreement to Arbitrate (other than an amendment to any notice address or site link provided herein) in the future, that amendment shall not apply to any claim that was filed in a legal proceeding against HeyTutor prior to the effective date of the amendment. The amendment shall apply to all other disputes or claims governed by the Agreement to Arbitrate that have arisen or may arise between you and HeyTutor. We will notify you of amendments to this Agreement to Arbitrate by posting the amended terms on the Website or within Terms of Use at least 30 days before the effective date of the amendments. If you do not agree to these amended terms, you may close your account within the 30-day period and you will not be bound by the amended terms.

#### C. Judicial Forum for Legal Disputes.

Unless you and we agree otherwise, in the event that the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute, either as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and HeyTutor must be resolved exclusively by a state or federal court located in Los Angeles County, California. You and HeyTutor agree to submit to the personal jurisdiction of the courts located within Los Angeles, California for the purpose of litigating all such claims or disputes.

## 11. RELEASE AND INDEMNIFICATION

In the event that you have a dispute with one or more members or other users of our services or any third party website that may be linked to or from or otherwise interact with our services, including without limitation any social media site, you hereby agree to release, remise, and forever discharge HeyTutor and our respective agents, directors, officers, employees, and all other related persons or entities from any and all manner of rights, claims, complaints, demands, causes of action, proceedings, liabilities, obligations, legal fees, costs, and disbursements or any nature whatsoever, whether known or unknown, which now or hereafter arise from, relate to, or are connected with such dispute and/or your use of the website and our services.

Unless otherwise prohibited by law, you waive California Civil Code Section 1542, which provides, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

You hereby agree to indemnify, defend and hold HeyTutor and our respective agents, directors, officers, employees, and all other related persons or entities (collectively, the "indemnified parties") harmless from and against any and all liability and costs incurred by the indemnified parties in connection with any claim arising out of your use of the website, our services or otherwise relating to the business we conduct (including, without limitation, any potential or actual communication, transaction or dispute between you and any other member or third party), any content posted by you or on your behalf or posted by other users of your account to the website, any use of any services or service provided by a third party provider, any use of a tool or services offered by us that interacts with a third party website, including without limitation any social media site or any breach by you of these terms or the representations, warranties and covenants made by you herein, including without limitation, attorneys' fees and costs. You shall cooperate as fully as reasonably required in the defense of any claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without our written consent. This section survives termination of this agreement.

## 12. RIGHT TO USE YOUR CONTENT

HeyTutor may use contents submitted users, including pictures, profile content, and reviews, among other things in a number of different ways, including to use, copy, publicly perform and display, reproduce, distribute, modify, translate, remove, analyze, commercialize, and prepare derivative works. You agree to irrevocably grant us world-wide, perpetual, non-exclusive, royalty-free, assignable, sublicensable, transferable rights to use your content for any purpose. As such, you irrevocably waive, and cause to be waived, against HeyTutor any claims with respect to your content.

## 13. COPYRIGHT POLICY

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. Copyright law. You may not post, distribute, or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights.

#### 14. PROPRIETARY INFORMATION

HeyTutor contains information which is proprietary to us, our partners, and our users. We assert full copyright protection in the Service. Information posted by us, our partners or users of the Service may be protected whether or not it is identified as proprietary to us or to them. You agree not to modify, copy or distribute any such information in any manner whatsoever without having first received the express written permission of the owner of such information.

#### 15. ENTIRE AGREEMENT

If either party does not enforce any right or remedy available under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party. Our waiver of any requirement in any one instance is not a general waiver of that requirement and does not amend this Agreement. If any part of this Agreement is held invalid or unenforceable, that part is interpreted consistent with applicable laws as nearly as possible to reflect the original intentions of the parties and the rest of this Agreement remains in full force and effect. This Agreement, including the documents referenced herein, contains the entire agreement between you and us regarding the use of the Website and/or our Services. This Agreement is binding on the parties hereto and their successors and assigns.

Approved as to form by  
OUSD Staff Attorney J. Sterling Elmore on 09/22/22.

