Varsity Tutors for Schools LLC
101 S. Hanley Rd
Suite 300
St. Louis, MO 63105

ORDER FORM

Effective Date: October 5, 2021

CUSTOMER INFORMATION	BILLING INFORMATION
Customer: **San Leandro Unified School District** **Address:** 835 E. 14th Street, Ste 200 San Leandro, CA 94577	**Contact Name:** Joanne Clark **Billing Address:** 835 E. 14th Street, Ste 200 San Leandro, CA 94577 **Email Address:** JOANNECLARK@SLUSD.US **Phone Number:** (510) 667-3500 ext. 3552 **Purchase Order Required:** ☐ Yes ☒ No

OFFERING	TOTAL HOURS	LEARNERS	PRICE
K-12 1:1 TUTORING	TBD	TBD	$60 / hour
K-12 5:1 SMALL GROUP TUTORING	TBD	Up to 5 Learners per Group	$175 / hour

PAYMENT TERMS
Varsity shall provide monthly invoices based upon the Educational Offerings received during each month. Customer shall make payments NET30 from the date of invoice. **Total amount payable by Customer shall not exceed $100,000.**

ADDITIONAL TERMS
Initial Term: October 5, 2021 – October 4, 2022 This Order Form is entered into by and between the Customer, identified above, and Varsity Tutors for Schools LLC, a Missouri limited liability company ("Varsity") as of the Effective Date. This Order Form will only be valid and binding upon execution by both parties. The Terms for Education Offerings attached hereto constitute a part of this Order Form and are incorporated herein.

ACCEPTED & AGREED	
Customer	**Varsity Tutors for Schools LLC**
Signature:	Signature:
Name:	Name: Christopher C. Swenson
Title:	Title: Chief Legal Officer
Date:	Date

Terms for Education Offerings

***IMPORTANT - PLEASE READ CAREFULLY**. THESE TERMS FOR EDUCATION OFFERINGS ("**TERMS**") CREATE A BINDING LEGAL AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, YOU CANNOT USE THE SERVICES (AS DEFINED BELOW) AND YOU SHOULD NOT ACCEPT OR EXECUTE AN ORDER FORM OR ANY OTHER AGREEMENT THAT INCORPORATES THESE TERMS.*

If you are accepting these Terms on behalf of a School, you represent that (i) you are capable of entering into binding contracts, and (ii) you have the right, authority, and capacity to enter into these Terms on behalf of the School.

***PLEASE NOTE**: THESE TERMS LIMIT OUR LIABILITY IN SECTION 11, BELOW.*

1. **Definitions**.

"**Administrators**" means the users authorized by School to access the administrator accounts that will manage the Education Offerings on behalf of School.

"**Education Offerings**" means the tutoring services, courses, and other offerings provided by Professionals to School through use of the Platform.

"**End Users**" means Administrators and Learners.

"**Initial Term**" means the initial term for the Services as specified in the Order Form.

"**Learners**" means the learners and students authorized by School to use the Platform to receive Education Offerings.

"**Order Form**" means an order form or other agreement for Education Offerings executed by School and Varsity which incorporates these Terms.

"**Platform**" means Varsity's platform, websites, applications, and other services provided by Varsity in connection with the Education Offerings.

"**Professionals**" means the tutors, instructors, experts, educators, and other professionals providing Education Offerings to Learners through use of the Platform.

"**School**" means the entity or individual that has accepted these Terms in order to receive Education Offerings.

"**School Data**" means all personal data of Learners that, alone or in combination, is linked or is linkable to a specific Learner.

"**School Materials**" means the materials and content provided or transmitted through the Platform by School and its End Users.

"**Varsity**" means Varsity Tutors for Schools LLC, a Missouri limited liability company with offices at 101 South Hanley Road, Suite 300, St. Louis, MO 63105.

2. **The Services**.

Varsity facilitates the connection between Professionals and Learners through a variety of Education Offerings on a curated Platform as further described herein. These Terms govern the use of the Platform and the Education Offerings (collectively, the "**Services**") by School and its End Users pursuant to an Order Form. During the Initial Term, Varsity shall provision the Services in accordance with the Order Form and these Terms. In the event of any conflict or inconsistency between these Terms and an Order Form, the Order Form shall control.

Each Order Form shall include, as applicable, a description of the Education Offerings, the number of Learners authorized to use the Services, the prices for the Education Offerings, and the fees payable by School for the Education Offerings (the "**Service Fee**"). School shall be responsible for its allocation of the Education Offerings to Learners in accordance with the Order Form. During the Initial Term, School may reallocate unused Education Offerings at School's discretion in accordance with the pricing provided in the Order Form, provided that any changes to previously-scheduled Education Offerings must be made at least twenty-four (24) hours prior to such Education Offering.

When Varsity provides general updates to the Services, Varsity agrees to provide such updates to School. Varsity may make reasonable enhancements and modifications to the Services at any time and without notice, provided that Varsity will use reasonable efforts to notify School of material changes and changes that Varsity reasonably anticipates will negatively impact School's use of the Services.

3. School's Responsibilities.

School may only use the Services in accordance with the Order Form and these Terms. School is responsible for the activities of End Users, including, without limitation, any School Materials provided by such End Users. School will promptly notify Varsity upon learning of any unauthorized use or access of the Services. School shall ensure that its End Users abide by the Terms and all applicable laws.

School and the End Users shall not use the Services: (a) to transmit or upload material that (i) infringes upon the intellectual property rights of any third party, or (ii) is obscene, defamatory, or illegal; (b) in a manner which is illegal or otherwise violates any applicable law or regulation; (c) to knowingly or negligently cause harm to the Platform, compromise the security or integrity of the Platform, or exceed the authorized use or access of the Platform, including, without limitation, the transmission or use of bots, viruses, worms, and malware; (d) for unauthorized or competitive purposes, including, without limitation, reverse engineering, modifying, or copying the Services or creating derivative works of the Services. School understands that Varsity may suspend an End User's access if Varsity reasonably believes such End User is in violation of the Terms.

To the extent School uses the audio and video recording capabilities of the Platform, School is responsible for ensuring that its use of such recording capabilities complies with all applicable laws and School will be responsible for providing all necessary disclosures and obtaining all necessary consents for such recordings.

4. Fees and Payment.

Payment of the Service Fee is due in accordance with the Order Form. Varsity may suspend School's access to the Services in the event that any Service Fee remains past due five (5) business days after Varsity provides written notice of such past due amount to School. The Service Fee does not include taxes. School shall be responsible for all taxes applicable to School's use of the Services, excluding taxes based upon Varsity's income. If School is exempt from taxes, School will provide an exemption certificate upon request.

If the Order Form includes optional rates for additional purchases of Education Offerings, such additional purchases may be made at any time during the Initial Term through the execution of a mutually agreeable additional Order Form. Varsity agrees to honor any rates for additional purchases by School that are specified in the Order Form for the duration of the Initial Term of such Order Form.

Once an Education Offering is scheduled, it may only be cancelled by School by providing Varsity with notice of cancellation at least twenty-four (24) hours in advance of the scheduled time for such Education Offering. In the event School cancels a previously-scheduled Education Offering on less than twenty-four (24) hours' notice or the Learner does not attend such Education Offering, School is required to pay the Service Fee for such previously-scheduled Education Offering. School is not required to pay for Education Offerings that are cancelled by the Professional and School will receive a credit for any prepaid Education Offerings cancelled by the Professional.

Except in the event of School's termination for Varsity's breach in accordance with Section 5, the payment obligations of School and the Service Fee are non-refundable and non-cancelable.

5. Term and Termination.

Each Order Form hereunder shall remain in place for the duration of the Initial Term. Either party may terminate these Terms or an Order Form hereunder in the event that the other party is in breach of its obligations thereunder and such breach is not cured within thirty (30) days from receipt of written notice.

Upon termination or expiration of the Order Form, (a) Learners will no longer be able to access or receive the Education Offerings, and (b) School will no longer have access to the Platform. Sections 3, 4, 6, 7, and 9 through 12 of the Terms shall survive any termination or expiration of an Order Form.

6. Confidential Information.

Each party acknowledges that it may receive information of a confidential or proprietary nature disclosed by the other party in connection with the Services ("**Confidential Information**"). The party receiving the Confidential Information (the "**Receiving Party**") shall use reasonable efforts to maintain as confidential the Confidential Information disclosed by the other party (the "**Disclosing Party**") and will only use and disclose such Confidential Information as necessary in connection with the Services. The Receiving Party may only disclose the Confidential Information to its employees, agents, and contractors who are obligated to abide by obligations of confidentiality and have a need to know such information in connection with the Services.

Confidential Information excludes any information to the extent such information: (a) is or becomes available to the public; (b) is disclosed to the Receiving Party by a third party without an obligation of confidentiality; (c) is independently developed by or for the Receiving Party without use of the Disclosing Party's Confidential Information; or (d) is required to be disclosed pursuant to applicable laws or regulations, rules of any stock exchange, or by order of a court or other government authority, provided that the Receiving Party will use reasonable efforts to provide the Disclosing Party with prior notice of such requirement unless such notice is prohibited by law.

7. **School Data**.

As between the parties, School owns all School Data. School and Varsity shall process School Data in compliance with all privacy laws applicable to School Data, which may include, without limitation, the Children's Online Privacy Protection Act and the Family Educational Rights and Privacy Act (collectively, "**Privacy Laws**"). In accordance with the requirements of the Family Educational Rights and Privacy Act, Varsity shall be considered a school official with a legitimate educational interest in the School Data. Varsity shall only collect and use School Data for purposes of providing the Services to School and for no other commercial purpose, and School hereby consents to the foregoing. School represents and warrants that it has obtained and provided all necessary consents and notices that are required under Privacy Laws in order to allow the use of the Services by Learners, including, without limitation, the use and disclosure of School Data as contemplated herein, which may include parental consent for children under age thirteen (13), where applicable.

Varsity will ensure the security of School Data by using commercially reasonable electronic and physical safeguards that are appropriate for the School Data. In the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, School Data (a "**Security Incident**"), Varsity shall notify School without undue delay upon learning of such Security Incident. Except to the extent that the Security Incident arises from the acts or omissions of School, Varsity will, at School's request or direction, provide reasonable assistance and cooperation to School as may be required under Privacy Laws to investigate and remediate a Security Incident.

The use of the Services is governed by Varsity's Privacy Policy, available online at: https://www.varsitytutors.com/privacy, (the "**Privacy Policy**"). To the extent of any conflict between these Terms and the Privacy Policy, the Terms shall control. The Privacy Policy includes a listing of the categories and types of School Data that may be provided by School. The parties agree that School Data excludes (a) anonymized or aggregated data, and (b) information collected by Varsity outside of the Education Offerings, and School understands that Varsity may use and maintain such data for its own purposes, including, without limitation, analytics and development purposes, and in accordance with its Privacy Policy.

Within ninety (90) days from expiration or termination of the Order Form, Varsity will delete all School Data from Varsity's systems except to the extent Varsity is required to retain School Data under applicable law. School shall be responsible for maintaining any School Data that it is required to maintain after termination or expiration of the Order Form.

8. **Intellectual Property**.

Except as expressly stated herein, neither party transfers any intellectual property rights to the other party. As between the parties, Varsity owns all intellectual property rights in the Services. If School provides its logo, trademarks, or other intellectual property for purposes of branding the Services, School permits Varsity to use such materials provided by School for the purpose of providing the Services. Neither party may use the name, logo, or trademarks of the other party in any marketing materials or advertising without such party's prior consent.

9. **Disclaimer of Warranties**.

VARSITY MAKES NO WARRANTY OR REPRESENTATION THAT THE ACCESS TO OR USE OF THE SERVICES WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. VARSITY HEREBY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, NON-INTERFERENCE, NON-INFRINGEMENT, AND QUALITY, UNLESS PROHIBITED BY LAW. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. VARSITY DOES NOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM THE USE OF THE SERVICES.

10. **Indemnification**.

Varsity will defend, indemnify, and hold harmless School from any claims, actions, suits, losses, costs, liabilities, and expenses (including reasonable attorneys' fees) relating to or arising out of any third party claim or action brought against School alleging that the Platform infringes the intellectual property rights of any third party. The foregoing obligations in this Section 10 shall not apply to the extent (a) the infringement arises from: (i) School's breach of the Terms or the Order Form, or (ii) School Materials; or (b) School fails to provide prompt written notice of the claim, provided that such failure shall only relieve Varsity of its obligations to the extent of actual prejudice, if any.

Except to the extent prohibited by law, each party shall be responsible for any claims, actions, suits, losses, costs, liabilities, and expenses (including reasonable attorneys' fees) directly caused by the actions of such party, its employees, and (with respect to School) its End Users.

11. **Limitation of Liability**.

IN NO EVENT WILL VARSITY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THE PLATFORM, OR SERVICE INTERRUPTIONS) ARISING OUT OF OR IN CONNECTION WITH THE PLATFORM, THE SERVICES, OR THESE TERMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF VARSITY FOR ALL DAMAGES, LOSSES, CAUSES OF ACTION

(WHETHER IN CONTRACT OR TORT, INCLUDING BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THESE TERMS EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID BY SCHOOL UNDER THE APPLICABLE ORDER FORM OVER THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. Miscellaneous.

(a) Neither party shall be responsible for any delay, default, or failure to perform to the extent arising from circumstances beyond its control, including, without limitation, acts of God, natural disasters, the action or inaction of a third party government authority, changes to laws or regulations, labor or contractor strikes or shortages, or acts of civil disobedience, terrorism, or war.

(b) Except where prohibited by applicable law: (a) these Terms and any Order Form hereunder shall be governed by the laws of the State of Missouri without regard to any conflict of law provisions, and (b) the parties hereby consent to the exclusive jurisdiction and venue of the Circuit Court of the County of St. Louis, Missouri, or the United States District Court for the Eastern District of Missouri, for all disputes arising between the parties hereunder.

(c) If any provision herein is or becomes invalid or non-binding, the parties shall remain bound by all other provisions of these Terms and the parties shall negotiate in good faith a new provision to replace the invalid or non-binding provision that has, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the content and purpose of the Terms.

(d) These Terms and the Services shall not constitute a joint venture, partnership, or agency between the parties and the parties agree that Varsity is acting as an independent contractor hereunder. Neither party shall have the right to make any warranty or representation to such effect or to otherwise bind the other party. In addition, School understands that Professionals on the Platform are independent contractors and Professionals have their own teaching styles, manner, means, and methods of tutoring and/or instruction. Each Professional is responsible for coordinating with School to determine the curriculum, content, lesson plans, and scheduling or coordination of the Education Offerings. Neither Varsity nor School will be responsible for the conduct of any Professional and neither will be liable for any claim, injury, or damage arising in connection with any Education Offering provided by a Professional to Learner. If a Learner is unsatisfied with the results, outcomes, or the particular services provided by the Professional, the Platform allows the Learner to engage with another Professional.

(e) School acknowledges and agrees that these Terms and the Services do not confer any benefits to any third party and there are no third party beneficiaries hereto.

(f) The delay or failure of either party in exercising any right or obligation herein shall not be construed as a waiver thereof. The Terms may only be waived in writing signed by the parties hereto.

(g) These Terms constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and any and all prior agreements, understandings, and representations related to the subject matter hereof, are hereby terminated and canceled in their entirety and are of no further force and effect.

(h) Any and all notices provided hereunder shall be in writing or by electronic transmission. Notices to School may be sent by email to Administrators. Notices to Varsity may be sent by email to corporate@varsitytutors.com or in writing to Varsity Tutors for Schools, 101 S. Hanley Rd., Suite 300, St. Louis, MO 63105, Attn: Chief Legal Officer.

(i) School acknowledges that these Terms and the Order Form are not assignable by School without Varsity's prior written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment in violation of these Terms shall be null and void.