



**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
1936 Carlotta Drive - Concord, CA 94519 - Phone (925) 682-8000  
**AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT  
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 12th day of September 2022, by and between the Mt. Diablo Unified School District (hereinafter "District") and Focus Care Inc. dba FEV Tutor Inc. hereinafter "Contractor").

**RECITALS**

**WHEREAS**, District is a school district in the County of Contra Costa, State of California, and has its principal place of business at 1936 Carlotta Drive, Concord, CA 94519. District desires to engage the services of Contractor and to have said Contractor render services in accordance with the terms and conditions provided in this Agreement.

**WHEREAS**, District is authorized to enter into this Agreement pursuant to Government Code section 53060 or Public Contract Code section 20111, or both, as further set forth below.

**NOW, THEREFORE**, District hereby engages Contractor to render services under the terms and conditions of this Agreement.

**AGREEMENT**

1. **Performance of Services.**

- (a) Contractor agrees to perform the services described on **Exhibit A** (hereinafter "Services"), attached hereto and incorporated herein, as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the Services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's Services and the manner in which they are performed.

- 2. **Compensation.** District agrees to compensate Contractor for the performance of the Services on the basis set forth below. Contractor shall be responsible for all expenses incurred in association with the performance of the Services. This Agreement is **NOT TO EXCEED \$ 54,230.00**. The basis of the fee for Services shall be as follows:

**District staff to check the applicable box.**

\$ 29.00 per hour       \$ \_\_\_\_\_ per day       \$ \_\_\_\_\_ per engagement

**District Staff to enter the complete Budget Code(s).**

- (a) 01 - 5634 - 1110 - 1000 - 30340 - 000 - 533 - 017 - 5800 \$ 25,000.00
- (b) 01 - 5634 - 1110 - 1000 - 30340 - 000 - 533 - 017 - 5100 \$ 29,230.00
- (c) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ \$ \_\_\_\_\_

3. **Payment Schedule.** The Contractor shall submit to the District an invoice as further set forth below. The District shall review the payment request and, as soon as practical, shall: (i) pay the requested amount; or (ii) inform the Contractor that all or some part of the request is disputed.

Contractor shall submit invoices in accordance with the following schedule:

**District staff to check the applicable box.**

- Partial Payments.** Contractor shall invoice District on a monthly basis for work performed in the preceding month pursuant to this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.
- Scheduled Payments.** District shall submit payment to the Contractor per the schedule detailed in “Exhibit A” see page 8 of this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed in accordance with the relevant timeline.
- Payment in Full.** Contractor shall invoice District on completion of the Services. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.

4. **Term and Termination.**

- (a) **Term.** This Agreement will become effective on September 1, 2022. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.
- (b) **Termination for Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.
- (c) **Termination for Convenience.** The District may terminate this Agreement at any time by giving thirty (30) days written notice to the Contractor. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

5. **Relationship of the Parties.** Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers’ compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District’s employees, including, without limitation, workers’ compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor’s expense, and in the Contractor’s name, disability, workers’ compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor’s compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

The parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor’s personnel shall only perform work that is outside the usual course of the District’s business; and (3) Contractor’s personnel

shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

- 6. **Fingerprinting and Criminal Records Check of Contractor’s Employees.** Contractor shall comply with the provisions of California Education Code section 45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the Contractor and/or its employees. To the extent, Section 45125.1 is applicable; Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the Board of Education of the District that such employee has not been convicted of a felony, as defined in Section 45125.1. If required by District, Contractor shall provide to District the fingerprinting certification attached hereto as **Exhibit B** prior to commencing work under this Agreement.
- 7. **Rules and Regulations.** All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education, including any rules and regulations related to COVID-19 or other global pandemics, and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor during the performance of Services pursuant to this Agreement.
- 8. **Indemnification.** Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor’s performance of the Services hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
- 9. **Insurance.** Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the District.

(a) **Coverage minimums shall be at least as broad as:**

**District staff to check the applicable box.**

(b) **Commercial General Liability (CGL).**

Agreements under \$25,000. Insurance Services Office Form CG 0001 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$2,000,000**).

Agreements of \$25,000 or More. Insurance Services Office Form CG 0001 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$4,000,000**).

(c) **Automobile Liability.**

ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.

**For sole proprietors and small businesses** using personal vehicles, evidence of personal auto insurance may be accepted by the District as an alternative provided that such personal auto insurance provides coverage for business uses of the insured vehicle

(d) **Workers' Compensation.**

As required by the State of California, with Statutory Limits, and **Employer's Liability** Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. All California employers must provide workers' compensation benefits to their employees under California Labor Code Section 3700.

**If the Contractor is a sole proprietor with no employees**, it may be exempt from this requirement provided the Contractor is self-insured as certified in **Exhibit C**. If the Contractor employs one or more employees, it must provide this type of insurance coverage. The District shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees.

(e) **Other Coverages When Applicable.** (District staff to check applicable box(es)).

**Professional Liability/Errors & Omissions Liability.** \$1,000,000/occurrence, \$2,000,000/aggregate. **Applicable for contractors with professional training providing a specialized advanced service, physicians, accountants, architects, engineers, and brokers**

**Sexual Abuse and Molestation Coverage.** \$3,000,000/occurrence. **Applicable if the Contractor will be alone with students**

**Cyber Insurance.** Not less than \$2,000,000 per claim to be maintained for the duration of the Agreement and three years following its termination. **Applicable if the Contractor will be using, storing, or accessing, the District's private, confidential, or protected information**

(f) The District reserves the right to require that Contractor maintain and provide evidence of additional insurance coverages as may be necessary or desirable given the nature of the Services. If the Contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

(g) **Additional Insured Status.** The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy and to the Sexual Abuse and Molestation policy, if applicable, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

(h) **Primary Coverage.** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as it respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(i) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the District.

<b>INSURANCE REQUIREMENTS</b>			
No waiver will be granted to eliminate the insurance requirements out lined in this agreement. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance Section 9 are hereby modified as follows. Note, a waiver for one (1) type of insurance does not constitute a waiver for all. Limits: <b>Modify Sexual Abuse &amp; Molestation requirement to \$1,000,000 per occurrence/victim.</b>			
Other:			
Initials of the Superintendent or Designee and the General Counsel or Designee, are <b>REQUIRED</b> to waive or modify any insurance in this Agreement.			
Superintendent or Designee	Date	General Counsel or Designee	Date

10. **Originality; Ownership of Designs and Plans.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
  
11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Contractor agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District’s administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor’s right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
  
12. **Limitation of District Liability.** Other than as provided in this Agreement, District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on Agreement or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
  
13. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:
  - i. Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**DISTRICT**

Mt. Diablo Unified School District  
 1936 Carlotta Drive  
 Concord, CA 94519-1397  
 Attn: Superintendent

**CONTRACTOR**

Business Name:	Focus Care Inc. dba FEV Tutor Inc.
Attn:	Parisa Moradi, Sr. Strategic Partnerships Executive
Address	500 West Cummings Park, Ste. 2700
City/State/Zip	Wobrun, MA 01801
Phone:	(925) 998-4258
Fax:	
Email:	parisa.m@fevtutor.com
Tax ID #:	03-0428625

14. **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.
15. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
16. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
17. **Equal Employment Opportunity.** It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.
18. **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. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
19. **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.
20. **Incorporation of Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated herein by reference.
21. **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.
22. **Conflicts of Interest.** Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services under this Agreement. Contractor is aware of Government Code section 1090 and the Political Reform Act and will disclose any potential conflicts and/or submit a Form 700 as applicable.
23. **Required Documents.** Prior to the commencement of the Services, Contractor shall provide to District evidence of the required insurance coverages as set forth above, a W-9 Form, and executed copies of the following Exhibits:
  - (a) Exhibit A – Description of Services, Timelines, and Partial Payment Schedule
  - (b) Exhibit B – Fingerprinting Certification
  - (c) Exhibit C – Workers’ Compensation Certification
  - (d) Exhibit D – Data Privacy Addendum (if applicable)

The District reserves the right to require the Contractor to provide additional documents that may be necessary or desirable in light of the nature of the Services.

PURCHASE REQUEST # \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last written below.

**MT. DIABLO UNIFIED SCHOOL DISTRICT**

Focus Care Inc. dba FEV Tutor Inc.

\_\_\_\_\_  
Name of Company/Organization or Independent Contractor/Consultant

By: \_\_\_\_\_  
Signature of Principal/Budget Administrator

Date

By:  \_\_\_\_\_  
Signature of Contractor/Consultant

9.16.2022  
Date

Title: Felicia Stuckey-Smith, Director, Student Services  
Print Name and Title

Title: Ryan Patenaude: EVP  
Print Name and Title

By: \_\_\_\_\_  
Signature of District Administrator (if applicable) Date

Title: \_\_\_\_\_  
Print Name and Title

**THIS AGREEMENT IS AUTHORIZED AND APPROVED:**

By: \_\_\_\_\_  
Signature of Superintendent or Designee Date

Title: Wendi S. Aghily, Chief, Pupil Services & Special Education  
Print Name and Title

**AGREEMENT ORIGINATOR.** Prior to commencement of the services, sign and forward completed original agreement packet to Purchasing.

By: \_\_\_\_\_  
Signature of Originator Date

Title: Felicia Stuckey-Smith, Director, Student Services  
Print Name and Title

Student Services

\_\_\_\_\_  
Site/Department Originating this Agreement

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, and PFC:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF SERVICES, TIMELINES,  
AND PARTIAL PAYMENT SCHEDULE (if applicable)**  
*(Note that all payments are generated from an invoice.)*

Contractor to provide live 1:1 online tutoring services by license at a rate of \$29.00 per hour per student (1,870 hours).

License includes: professional development and training; license activation and maintenance; dedicated academic program manager; 24/7 data and reporting access; academic impact data analysis; 24/7 support; initial student and administration license set-up; unlimited student, teacher, and admin licenses (no limit on number of students enrolled, time is interchangeable amongst students); targeted tutoring content (all grades and core subjects); development of personalized tutoring plans; access to FEV Tutor Student & Family Engagement Team.

Time used is pro-rated based on usage with no charge for absences.

Upon receipt of the signed contract and Purchase Order, contractor will invoice the full license fee and activate the license, set up the program, and start professional development and training. Once activated, license is non-refundable.

Additional hours can be added to the license at a rate of \$29.00 per hour per student.

Upon a signed renewal contract, unused instructional hours will roll over to the following fiscal/academic year. Without a signed renewal contract, unused hours will expire December 31, 2023.

Total contract not to exceed \$54,230.00

2022-2023 Fiscal Year



**EXHIBIT B**  
**FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION**  
*(Contractor REQUIRED to complete)*

1. One of the boxes below **must be checked**, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”).

Contractor’s employees will have **NO CONTACT or interaction with District pupils** outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor’s services under this Agreement.  
*(Reflects changes in the law that limit waivers of fingerprint requirements only those who will have no contact with students. This certification should be required for all contracts, even those where the services will be conducted online).*

Contractor’s employees **will have contact or interaction with District pupils** outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor’s services under this Agreement, and Contractor certifies its compliance with these provisions as follows: *“Contractor certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may have unsupervised interaction with District pupils during the course and scope of the Agreement is attached hereto.*

WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

2. **Megan’s Law (Sex Offenders).** Contractor shall verify and continue to verify that the employees of Contractor that will be on the project site and the employees of the subcontractor(s) that will be on the project site are **NOT** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

**MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE**

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

**CONTRACTOR**

By:  9.16.2022  
\_\_\_\_\_  
Signature of Contractor or Authorized Representative Date

Title: Ryan Patenaude - EVP  
\_\_\_\_\_  
Print Name and Title

**EXHIBIT C**  
**WORKERS' COMPENSATION CERTIFICATION**  
*(Contractor REQUIRED to complete.)*

Labor Code section 3700 (workers' compensation and insurance) in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:


- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. I certify I will comply with all California workers' compensation insurance requirements before commencing the performance of the Services of this Contract. Alternatively, I certify that I am a sole proprietor, have no employees, and am self-insured. I understand the District will not obtain workers' compensation insurance on my behalf or on behalf of my employees or subcontractors.

**MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE:**

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

**CONTRACTOR**

By:  9.16.2022  
 Signature of Contractor or Authorized Representative Date

Title: Ryan Patenaude - EVP  
 Print Name and Title

In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Services under this Agreement.

**EXHIBIT D**  
**DATA PRIVACY ADDENDUM**

*(Contractor REQUIRED to Complete; Applicable when AGREEMENT involves access to Pupil/Employee Data)*

This Data Privacy Addendum (“**Data Privacy Addendum**”) to the Agreement Between Mt. Diablo Unified School District and Independent Contractor (“**Independent Contractor Agreement**”) is entered into by and between Contractor and Mt. Diablo Unified School District (“**District**”). To the extent that any term or condition set forth in this Addendum conflicts with the Independent Contractor Agreement, the provisions of this Addendum will control.

**WHEREAS**, in order to provide the services described in the Agreement, the Contractor may receive or create, and the District may provide documents or data related to students (“**Student Data**”) that are covered by several state and federal privacy laws, including: the Family Educational Rights and Privacy Act (FERPA), the Children’s Online Privacy Protection Act (COPPA), Education Code section 49073.1, and the Student Online Personal Information Protection Act (SOPIPA). The District and Contractor desire to ensure compliance with applicable state and federal laws, school policies, procedures and regulations.

**NOW, THEREFORE**, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Use.** Contractor shall not use any information in a Student Data<sup>1</sup> for any purpose other than those required or specifically permitted by the Independent Contractor Agreement, and shall comply with all applicable state and federal laws pertaining to Student Data privacy and security. Contractor shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Data Privacy Addendum. Contractor shall not sell or otherwise derive a benefit from sharing information in a Student Data with a third party. Contractor shall enter into written agreements with all subcontractors performing functions pursuant to the Independent Contractor Agreement, whereby the subcontractors agree to protect Student Data in manner consistent with the terms of this Data Privacy Addendum.
2. **Ownership.** All Student Data obtained by Contractor from District continues to be the property of and under the control of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes.
3. **Export.** Contractor shall provide a means by which its employees, when so authorized, can search and export Student Data through reasonable procedures such that the District can respond to a parent, legal guardian or eligible student who seeks to review personally identifiable information on the pupil’s records or correct erroneous information.
4. **Disposition.** The Contractor agrees that upon expiration or termination of services under this Agreement, Contractor shall dispose or delete all Student Data obtained under the Independent Contractor Agreement. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Independent Contractor Agreement authorizes Contractor to maintain Student Data obtained under the Independent Contractor Agreement beyond the time period reasonably needed to complete the disposition.

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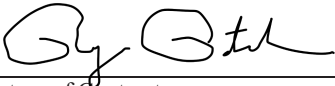
<sup>1</sup> “Student Data” includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Pupil Records do not include de-identified information (information that cannot be used to identify an individual pupil) used: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

- 5. **Security.** Contractor shall maintain adequate administrative, physical, and technical data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized access, disclosure or acquisition by unauthorized persons, and shall not copy, reproduce or transmit data obtained pursuant to the Agreement except as necessary to fulfill the purpose of the Agreement. Where applicable, the Contractor will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.
- 6. **Prohibited Use.** Contractor shall not use Student Data, or any data derived from Student Data, to perform or deliver targeted advertising to students, and is prohibited from selling or providing Student Data to third parties for any purpose without District’s written consent.
- 7. **Breach Protocol.** Upon becoming aware of any unlawful or unauthorized access to Student Data stored on equipment used by Contractor or in facilities used by Contractor, Contractor will take the following measures:
  - (a) promptly notify the District of the suspected or actual incident within a reasonable amount of time of the incident, not to exceed forty-eight hours, and shall present the information under the following headings: “What Happened,” “What Information was Involved,” “What We are Doing,” “What You Can Do,” and “Persons to Contact for More Information”; and
  - (b) promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; and
  - (c) and assist the District in notifying affected users, affected parents, legal guardians of commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. Upon request from District, Contractor shall reimburse District for actual costs associated with notifying affected parties.
- 8. **Entire Agreement.** This Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter herein. It supersedes, and the terms of this Data Privacy Addendum govern, any and all previous oral and written communications between the parties, their Affiliates, and their respective employees and representatives regarding these matters.
- 9. **Successors Bound.** This Data Privacy Addendum is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

**MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:**

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this Data Privacy Addendum on behalf of Contractor.

**CONTRACTOR**

By:  9.16.2022  
 \_\_\_\_\_  
 Signature of Contractor Date

Title: Ryan Patenaude - EVP  
 \_\_\_\_\_  
 Print Name and Title



🏠 500 West Cummings Park,  
Woburn, MA 01801

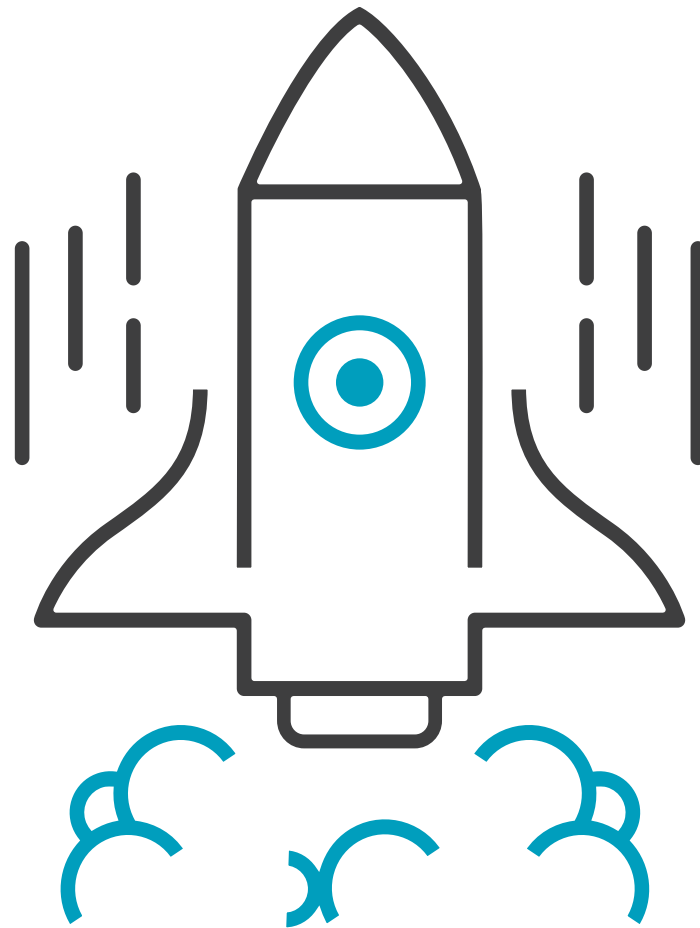
☎ +18557632607

💻 edu@fevtutor.com  
www.fevtutor.com

# FEV TUTOR

## LIVE 1:1 ONLINE TUTORING

### PROPOSAL



Accelerating Learning Outcomes

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#### Prepared For:

District:

Department:

Address:

Proposal Issued:

Proposal Expires:

Academic Year:

Proposal #:

# // About Us



Live 1:1 Online Tutoring

## // Vision: Effecting Change in K-12 Education

FEV Tutor partners with K-12 school districts nationally to provide 1:1 online tutoring services that operate as a natural extension of each student's core learning environment. Our ESSA-approved programs are strategically designed in close collaboration with each partner district to accelerate learning for every student.

# // Program Overview

## // Collaborative Academic Program Design

FEV Tutor believes that strategic partnerships are the common denominator for successful initiatives. This principle is central to our program model to help districts reach goals and drive key learning initiatives. We've found that our collaborative approach ensures that partners have unparalleled support across planning and implementation, buy-in and usage, and analysis and growth. We work closely with educators to design an effective program that allows for rapid deployment. This approach empowers teachers to activate scalable, data-driven support services quickly and easily. Across our core teams, we help support student learning and drive student success.

### **Our Academic Success Coaches combine their educational expertise and your data to:**

- Identify targeted populations and recommend program models to fit within the existing learning ecosystems
- Analyze data to inform planning and align our programs with your instructional strategies
- Create personalized learning plans for each student for maximum impact
- Actively communicate and adjust services to ensure effective program outcomes

### **Our programs are flexible to all student schedules, and we actively participate in program adoption:**

- 24/7 Access: Available from any internet-connected device for homework help, or coursework support
- Our multilingual Family & Student Engagement team drives adoption with frequent family updates, notifications, and check-ins
- 24/7 flexibility across scheduled sessions allows at-home learning on nights and weekends

### **We provide services for all student populations and programs:**

- At-risk students and intervention programs
- ELL, migrant, and dual language students
- Special education students
- Homeless and foster youth students
- Near-proficiency student
- Low-performance students
- RTI Tier II & III students
- Enriched classroom programs (GATE)
- College & career readiness programs (SAT/ACT)
- After-school program support
- Distance/remote learning programs

### **We provide data and reports to empower educators to make the most informed learning decisions**

- An internal Data Analytics team to develop reports across multiple stakeholder levels
- Ongoing, easy-to-read student achievement reports, with commentary from tutors, raw data, snapshot summaries, and recent trends
- Academic impact analysis report to explore FEV Tutor usage vs. outcomes/gains on state and benchmark assessments and provide transparency into Return on Investment and program efficacy

# // FEV Tutor Pricing Model

## // School/District Software Licenses

FEV Tutor offers School, District and Program Site Licenses which include Banks of Live 1:1 Instructional Hours; along with several other wrap around services (listed below). Our licenses are purchased just like a software license, with one purchase order issued for the licenses so that FEV Tutor can keep the purchasing process streamlined and allow for 100% of license purchased to go to direct Live 1:1 direct instruction for students.

 <p>Live 1:1 Instruction (Your Bank of Hours)</p>	 <p>Professional Development &amp; Training</p>	 <p>Progress Monitoring</p>	 <p>Targeted Content For Instruction</p>	 <p>24/7 Support</p>
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## // How to Calculate Your 'School/District License'

**\$29**

per hour/per student  
**INSTRUCTIONAL HOURLY COST**

### How to Calculate License Cost?

XXXXXX Number of Instructional Hours x \$29 hour/student = Your License Cost

- Districts/schools can add hours at any time \$29/hour/student via an additional purchase order.
- Unused hours will roll over to the following academic year upon signature of renewal contract.
- Unused hours expire without the renewal contract.
- For intervention and/or test prep, FEV Tutor recommends 8-10 hours of tutoring per semester.
- For targeted tutoring services, dosage should be 10-22+ hours per student per academic year.

## // FEV Tutor License Includes:

- ✓ Professional Development and Training
- ✓ License Activation and Maintenance
- ✓ Dedicated Academic Program Manager
- ✓ 24/7 Data and Reporting Access
- ✓ Academic Impact Data Analysis
- ✓ 24/7 Support
- ✓ Initial Student and Administration License Set Up
- ✓ Unlimited Student, Teacher, and Admin Licenses  
No limit on number of students enrolled - time is interchangeable among students
- ✓ Targeted Tutoring Content  
(all grades and core subjects)
- ✓ Development of Personalized Tutoring Plans
- ✓ Access to FEV Tutor Student & Family Engagement Team
- ✓ Time Used is Prorated Based on Usage  
(No Charge for Absences)

# // Quote:

**PREPARED FOR:**

School/District:

Address:

**CONTACT INFO:**

Name

Title:

Email:

**FEV TUTOR CONTACT:**

Name:

Phone Number:

Email:

**Live 1:1 Online Tutoring School/District Software License**

Academic Year/Duration:

Program Type:

Number of Students (approx):

Instructional Hours Included:

**License Cost:**

Upon a signed renewal contract, unused instructional hours will roll over to the following academic year. Without a signed renewal contract, unused hours will expire at 12/31/2023. Additional hours can be added to the license in blocks at \$29 per hour/student.



# // Terms and Conditions

## // Term 1

School/District Software Licenses include:

- ✓ Professional Development and Training
- ✓ Targeted Tutoring Content (all grades and core subjects)
- ✓ License Activation and Maintenance
- ✓ Dedicated Academic Program Manager
- ✓ 24/7 Data and Reporting Access
- ✓ Academic Impact Data Analysis
- ✓ Initial Student and Administration License Set Up
- ✓ Unlimited Student, Teacher, and Admin Licenses  
No limit on number of students enrolled - time is interchangeable among students
- ✓ Development of Personalized Tutoring Plans
- ✓ Access to FEV Tutor family and Student Engagement Team
- ✓ Time Used is Prorated Based on Usage (No Charge for Absences)
- ✓ 24/7 Support

## // Term 2

Upon the receipt of Purchase Order, FEV Tutor will invoice the full license fee\* (flat fee for the entire academic year) and then FEV Tutor will activate the license, set up the program, and start professional development and training. Software license is available on demand. Once activated, license are non-refundable.

\*additional hours can be added to the license in blocks at \$29hour/student

## // Term 3

GRANT HOURS (expire on [date] and do not roll over):







Focus Care Inc. dba FEV Tutor Inc.

**Focus Care Inc. dba FEV Tutor Inc (Service Provider) & CLIENT (School/District Partner) FERPA and Data Sharing Commitment:**

- 1. Confidentiality and Use.** Service Provider agrees (i) to maintain the confidentiality of all “CLIENT” Data and to safeguard “CLIENT” Data from unauthorized access; (ii) to use the “CLIENT” Data solely for the purpose of performing the Services; (iii) to limit disclosure of and access to the information solely to Service Provider employees who need to access the information to perform the Services; (iv) to inform these employees of their obligation under this Agreement to maintain the confidentiality of “CLIENT” Data; and (v) to not disclose any “CLIENT” Data to a third party, except as strictly necessary to perform the Services under the Agreement or otherwise required by law, but only after reasonable prior notice to “CLIENT”. Other than as required to perform the Services or its obligations under the Agreement, Service Provider shall not contact any individual associated with “CLIENT” directly through email or other means, nor shall Service Provider cooperate in any way to permit any third party make such contact. Within 60 days of termination of the Agreement, Service Provider shall destroy the “CLIENT” Data or, if “CLIENT” requests within this 60 day period, return the “CLIENT” Data to “CLIENT”.
- 2. Security.** Service Provider shall utilize all appropriate administrative, physical and technical security measures to ensure the confidentiality, integrity, and security of “CLIENT” Data, including, without limitation, industry-accepted fire walls, encryption, current security patches, virus protection measures and access controls. Service Provider shall abide by any security measures reasonably requested from time to time by “CLIENT” Information Technology Services. “CLIENT” reserves the right to modify any “CLIENT” information resource, including any software, hardware, or network configuration, in order to protect “CLIENT” Data against any security vulnerabilities.
- 3. FERPA.** Service Provider acknowledges that “CLIENT”, as an educational institution, is subject to legal obligations with respect to the privacy of student information. Service Provider acknowledges that the “CLIENT” Data may include personally identifiable student education records (“Education Records”), as such term is defined under the Family Educational Rights and Privacy Act and regulations promulgated under the Act (“FERPA”). To the extent that “CLIENT” Data includes Education Records, Service Provider acknowledges and agrees that (i) Service Provider shall be deemed to be a “School Official” under “CLIENT”’s Student Education Records Policy and must abide by the terms and conditions of this Policy and FERPA with respect to Service Provider’s use and handling of Education Records; (ii) Service Provider shall be under “CLIENT”’s direct control with respect to use and maintenance the handling of Education Records; and (iii) without limiting any other provision of this Agreement, Service Provider may not disclose the information to any third party without the prior written consent of the student as required by FERPA. Service Provider shall also take any action reasonably requested by “CLIENT” to adhere to its obligations under FERPA or otherwise protect the privacy and confidentiality of Education Records.
- 4. Breaches.** If any Service Provider has any reason to believe that a breach of this Agreement has occurred or that the security, confidentiality or integrity of any “CLIENT” Data could have been compromised or subject to unauthorized access, Service Provider shall (a) immediately notify “CLIENT”; (b) in cooperation with “CLIENT”, take prompt action to thoroughly investigate the incident or potential incident and mitigate any harm flowing from the incident in conjunction with “CLIENT”; (c) in cooperation and consultation with “CLIENT”, make any required notifications to third parties at Service Provider’s expense; and (d) take prompt action to prevent any similar incidents from occurring, including, without limitation, the installation of appropriate patches or software within 24 hours of Service Provider’s discovery of the incident. In the event of material breach of this Agreement by Service Provider or a security breach for which Service Provider is responsible, “CLIENT” shall have the right to terminate the Agreement without penalty upon written notice to Service Provider. In the event of either breach, Service Provider shall cooperate with “CLIENT” in responding to the breach and shall reimburse “CLIENT” for any out-of-pocket expenses “CLIENT” incurs in its response, including, without limitation, expenses incurred in notifying individuals affected by the breach and/or costs incurred in procuring or providing alternative services.
- 5. Compliance with Laws.** Service Provider shall comply with all applicable laws, regulations and rules in connection with its access to or handling of “CLIENT” Data, including, without limitation, those that are specifically described in this Agreement (collectively, “Applicable Laws”). Service Provider shall indemnify and hold “CLIENT”, and its trustees, employees, and agents, harmless from any claims, damages, costs, and expenses (including, without limitation, reasonable attorneys’ fees) arising out of any failure by Service Provider to be in compliance with Applicable Laws.

Focus Care Inc. dba FEV Tutor Inc | 500 W. Cummings Park #2700, Woburn, MA 01801

[www.fevtutor.com](http://www.fevtutor.com) | [edu@fevtutor.com](mailto:edu@fevtutor.com)

# // Payment Method

// Please email any Purchase Orders, Contracts and any other Purchasing Documentation to be processed to **Billing@fevtutor.com**. **If you need to reach us by phone please contact: 781-376-6925**

// FEV Tutor invoices full license fee (flat fee for entire academic year) upon receipt of Purchase Order and will then activate licenses, set program up and start Professional Development and Training.



# // Acceptance

// Please Sign

Focus Care Inc., dba FEV Tutor Inc.  
Tax ID: 03-0428625

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

*PMoradi*

\_\_\_\_\_  
Full Name (Print)

\_\_\_\_\_  
Full Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Please complete this section to help ensure timely program launch:**

**Contact Person for Billing:**

**Contact Person for Student Rosters and/or Data:**

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Email

