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Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, NH 03301
TEL. (603) 271-6133
FAX (603) 271-1953

November 3, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Education, Division of Learner Support to amend the existing contract with TPR Education, LLC (TPR) (vendor code #384099) New York, NY to provide access to all eligible New Hampshire Students to the Tutor.com Software as a Service (SaaS) based learning system, by modifying the scope of services to include New Hampshire resident students who would be eligible to be enrolled in at least 4th grade at a Local Education Agency (LEA) or in a New Hampshire Adult Education Program with no change to the price limitation or completion date, effective upon Governor and Council approval through August 31, 2025. The original contract was approved by Governor and Council on August 17, 2022 (Item #63). 100% Federal Funds

EXPLANATION

TPR Education, LLC provides unlimited access to all eligible New Hampshire students to TPR's on-line learning and tutoring platform called Tutor.com. Tutor.com currently includes: a student facing on-demand tutoring service. Asynchronous and Synchronous Writing Review service; SAT/ACT Essentials Course and Test Prep; online resources through Skills Center Resources Library, Armed Services Vocational Aptitude Battery (ASVAB) practice quizzes.

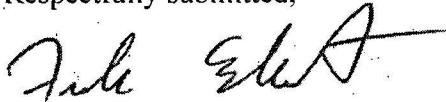
TPR partners with colleges and universities, K-12 schools and districts, public and state libraries, employee benefits programs, and the U.S. military to provide 24/7, on-demand, 1-to-1 tutoring and homework help in more than 250 subjects. Since its inception in 1998, Tutor.com has delivered nearly two million tutoring homework help, and test preparation sessions per year.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council.

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The purpose of the existing contract is to provide online tutoring support in core subjects to increase academic performance of students with individualized high-leverage academic tutoring. This amendment will expand those services to include any New Hampshire resident student who would be eligible to be enrolled in at least 4th grade at a Local Education Agency (LEA) or in a New Hampshire Adult Education Program.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank Edelblut". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Frank Edelblut
Commissioner of Education

**AMENDMENT TO
PROFESSIONAL SERVICES CONTRACT**

Now come the New Hampshire Department of Education, Division of Learner Support, hereinafter "the Agency," and TPR Education, LLC (TPR) New York, NY, hereinafter "the Contractor", and pursuant to an agreement between the parties that was approved by Governor and Council on August 17, 2022 (Item #63) hereby agree to modify same as follows:

1. Amend Exhibit B, Paragraph 1, b. by removing the first sentence and replacing with: "Tutoring will be available to any New Hampshire resident student who would be eligible to be enrolled in at least 4th grade at a Local Education Agency (LEA) or enrolled in a New Hampshire Adult Education Program (hereinafter referred to as NHED Eligible Students).
2. All other provisions of this agreement shall remain in full force and effect as originally set forth; and
3. This amendment shall commence upon Governor and Council approval and shall terminate on August 31, 2025.

This modification of an existing agreement is hereby incorporated by reference to the existing agreement by the parties and must be attached to the said agreement.

IN WITNESS WHEREOF, the parties, hereto have set their hands as of the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Education
(Agency)

Division of Commissioner's Office

By:  11/08/2023
Frank Edelblut, Commissioner of Education Date

TPR Education, LLC
Name of Corporation (Contractor)

By: Joshua Park 11 / 03 / 2023
Joshua Park, Chief Executive Officer Date

Approved as to form, substance and execution by the Attorney General this 08 day of November, 2023.


Elizabeth Brown, Attorney General's Office

Approved by the Governor and Council this _____ day of _____, 20__

By: _____

Certificate of Authority

I, John Calvello, hereby certify that I am a duly appointed representative of TPR Education, LLC. I hereby certify that Joshua Park, Chief Executive Officer, is authorized to execute contracts on behalf of TPR Education, LLC and may bind the organization thereby.

I hereby certify that said authority has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30) days**. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

11 / 03 / 2023

Dated: _____

John Calvello

Attest: _____
John Calvello, Vice President of Institutional Sales

State of New Hampshire

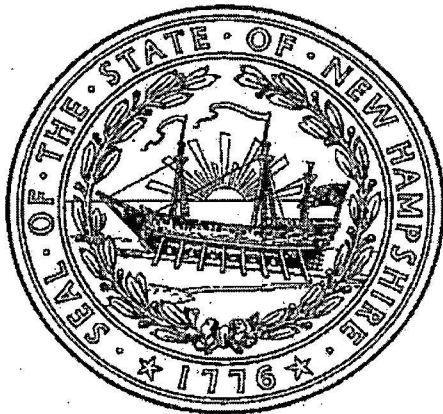
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that TPR EDUCATION, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on April 27, 2012. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 669932

Certificate Number: 0006332760



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 11th day of October A.D. 2023.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/12/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, LLC. 800 Market Street, Suite 1800 St. Louis, MO 63101	CONTACT NAME: Marsh U.S. Operations
	PHONE (A/C, No, Ext): 866-966-4664 FAX (A/C, No): 212-948-0811
E-MAIL ADDRESS: StLouis.CertRequest@Marsh.Com	INSURER(S) AFFORDING COVERAGE
INSURED TPR Education, LLC 110 E. 42nd Street, 7th Floor New York, NY 10017	INSURER A: Charter Oak Fire Insurance Company NAIC # 25615
CN103000606-STND-GAWUR-23- NO	INSURER B: N/A N/A
	INSURER C: N/A N/A
	INSURER D: Travelers Property Casualty Company of America 25674
	INSURER E:
	INSURER F:

COVERAGES **CERTIFICATE NUMBER:** CHI-010109352-03 **REVISION NUMBER:** 2

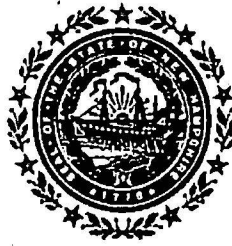
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			03/31/2023	03/31/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	03/31/2023	03/31/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	PROPERTY Other deductibles may apply			03/31/2023	03/31/2024	PERSONAL PROPERTY 4,840,455 BUSINESS INCOME 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER New Hampshire Education Department 101 Pleasant St Concord, NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA LLC</i>
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Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, NH 03301
TEL. (603) 271-3495
FAX (603) 271-1953

July 15, 2022

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Education to enter into a contract with TPR Education, LLC d/b/a The Princeton Review ("TPR") (vendor code TBD), of New York, NY in the amount of \$4,800,000 to provide access to all eligible New Hampshire students, to the Tutor.com SaaS based learning system, from September 1, 2022 through August 31, 2025, with the option to renew for two additional one-year extensions, upon Governor and Council approval. 100% Federal Funds.

Funds to support this request are available in the account titled ESSER III – ARP 2021, in FY23, and anticipated to be available in FY24 and FY25, upon the availability and continued appropriation of funds in the future operating budget with the ability to adjust encumbrances amongst fiscal years within the price limitation through the Budget Office without further Governor and Council approval if needed and justified.

	FY23	FY24	FY25
05-56-56-562010-24370000-102-500731 Contracts for Prog. Svcs.	\$1,600,000	\$1,600,000	\$1,600,000

EXPLANATION

TPR will provide access to all eligible New Hampshire students with unlimited access to TPR's on-line learning and tutoring platform (Tutor.com) designed for K-12 Students. Tutor.com currently includes: a student facing on-demand tutoring service, Asynchronous and Synchronous Writing Review service; SAT/ACT Essentials Course and Test Prep; online resources through

Skills Center Resources Library, ASVAB practice quizzes, Diagnostic Quizzes and Academic Videos. Also, available to New Hampshire Students as a separate service will be AP Strategy Sessions for math, English, science, and social studies.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council

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Tutoring will be available to any New Hampshire resident student who would be eligible to be enrolled in 6th grade at a Local Education Agency (LEA). This is inclusive of students enrolled in an approved education program in New Hampshire, including public school (traditional or charter), non-public school, home education program or Education Freedom Account program.

A Request for Proposals (RFP) was advertised on the Department of Education and the State procurement websites on March 21, 2022. Eleven proposals were received. A review committee consisting of four staff members of the Department of Education reviewed the proposals: (Attachment A). The team recommended TPR Education, LLC d/b/a The Princeton Review ("TPR") for funding this initiative.

In the event Federal Funds no longer become available, General Funds will not be requested to support this program.

Respectfully submitted,



Frank Edelblut
Commissioner of Education

Attachment A
Bid Summary Scoring Sheet
Online Tutoring for NH Elementary and Secondary Students

Proposal Criteria in the RFP

Absolute Priority #1 Online Tutoring service requirement	25
Absolute Priority #2 Tutor qualifications and requirements	12
Absolute Priority #3 Technical requirements	15
Competitive Priority #1: Training and Outreach	15
Competitive Priority #2: Additional Items	15
Competitive Priority #3: Cost Summary	<u>18</u>
Total	100

Proposals Received (Listed Alphabetical)

1. Axiom Learning
2. Bright Thinker, Inc.
3. Intervene K-12
4. Net Tutor of Link-Systems, International
5. GradeSlam America, Inc (Paper)
6. NCS Pearson, Inc.
7. Puleo Education
8. Revolution Prep
9. School Tutoring Academy
10. Studentnest
11. TPR Education, LLC d/b/a The Princeton Review

Reviewer Scores

Listed Highest to Lowest Score	Anne W.	Danielle P.	Mary S.	Wendy P.	Average Score
TPR Education LLC d/b/a Princeton Review	100	92	93	100	96.3
Net Tutor of Link Systems, International	94	88	96	98	94
GradeSlam America Inc (Paper)	97	94	90	87	92
NCS Pearson, Inc.	73	100	77	87	84.3
Axiom Learning	68	58	84	70	70
Revolution Prep	54	74	59	45	58
Bright Thinker, Inc.	34	54	60	49	49.3
School Tutoring Academy	33	39	52	45	42
Puleo Education	39	35	54	27	38.8
Studentnest	18	41	31	27	29
Intervene K-12	19	29	24	24	24

Review Process

Scoring review occurred on April 26, 2022. The proposal review panel consisted of the following employees from the Department of Education:

Attachment A
Continued

Reviewer Qualifications

Anne W: Anne has been a Mathematics/Science and Technology Consultant in the Office of Academics and Assessment for 2 years. Prior to coming to the Department, she was a Teacher for Grades PreK to secondary (private and public schools), math instructional curriculum coordinator, data team, building assessment administrator, presented Professional Development locally, state-wide, regionally, and nationally for 20 years. Additionally, she was an Adjunct Faculty in teacher prep programs at NHTI-Concord, Saint Anselm, and UNH-Durham for 15 years. Education: BBA Accounting, MEd Curriculum and Instruction (focus Middle-level Mathematics), Post-Master's Certificate Curriculum and Instructional Strategies, and CAGs Educational Leadership

Danielle P: Danielle is an Education Consultant in the Bureau of Special Education Support and has been in this position for almost 2 years. She has nearly 17 years of experience in the special education field, working as a special education case manager/teacher, paraeducator, and behavioral health technician. Danielle received her BA in Psychology as well as her Master's in Education, with an endorsement in General Special Education. Danielle is passionate about education for all students.

Mary S: Mary received her Bachelor of Arts in Studio Art at Coastal Carolina University in 2013 and her Masters of Education in Special Education at Southern NH University in 2018. Mary has worked as a substitute teacher, paraprofessional, registered behavior technician, and special education case manager/teacher in a variety of settings throughout the state of New Hampshire. Mary began working as an education consultant at the NH Department of Education in February 2022.

Wendy P: Wendy is an Education Consultant III, supporting programs for English learners and Title III. Wendy has 15 years of experience working students and families with limited English proficiency, including experience developing and implementing intervention plans to accelerate the academic achievement of English learners.


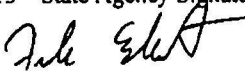
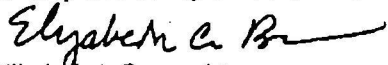
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 25 Hall Street, Concord, NH 03301	
1.3 Contractor Name TPR Education, LLC		1.4 Contractor Address 110 E 42 nd Street, 7 th Floor, New York, NY 10017	
1.5 Contractor Phone Number 347-362-7865	1.5 Account Number See Exhibit C	1.6 Completion Date August 31, 2025	1.7 Price Limitation \$4,800,000
1.9 Contracting Officer for State Agency Melissa White, Administrator, Academics & Assessment		1.10 State Agency Telephone Number 603-271-3855	
1.11 Contractor Signature <div style="text-align: center;">  </div> Date: 7/21/22		1.11 Name and Title of Contractor Signatory Joshua Park, Chief Executive Officer	
1.13 State Agency Signature <div style="text-align: center;">  </div> Date: 7/28/2022		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)			
By:		Director, On:	
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)			
By:  Elizabeth A. Brown, Attorney		On: 7/28/2022	
1.17 Approval by the Governor and Executive Council (if applicable)			
G&C Item number:		G&C Meeting Date:	

Contractor Initials J.P.
 Date 7/21/22

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A

Special Provisions

Additional Exhibits D-G

Subject to Governor and Council approval, authorize the Department of Education to include a renewal option on this contract for two (2) additional one-year extensions through 2027, subject to the contractor's acceptable performance and identified ongoing need.

Federal Certification 2 CFR 200.415

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Requests for Changes to General P37 Provisions by Vendor:

Section 8.1.1: Delete "satisfactorily" and replace it with "in accordance with the specifications of this agreement, the RFP and the Contractor's proposal."

Add Section 25 (Intellectual Property): "State recognizes and agrees that all trade-marks, inventions (whether patentable or not), patent applications, patents, industrial designs, works protected by copyright, trade secrets, know-how or other intellectual property in or related to the Services, (the "Intellectual Property") are, as between the parties, the exclusive property of Contractor. Upon the request of Contractor, State shall provide any reasonable documentation required to confirm Contractor's ownership in the Intellectual Property. All rights, titles and interests that are not specifically addressed in this Agreement are expressly reserved by the Contractor."

EXHIBIT B

Scope of Services

TPR Education, LLC d/b/a The Princeton Review ("TPR") will provide access to all eligible New Hampshire students, through the New Hampshire Department of Education ("NHED"), the Tutor.com SaaS based learning system, from September 1, 2022 through August 31, 2025.

1. **Access to TPR's Tutor.com Platform New Hampshire Eligible Enrolled Students**
 - a. TPR agrees to provide access to all eligible New Hampshire students (as defined by paragraph 1(c) contained herein) with unlimited access to TPR's on-line learning and tutoring platform (Tutor.com) designed for K-12 Students. Tutor.com currently includes: a student facing on-demand tutoring service (Tutor.com), Asynchronous and Synchronous Writing Review service; SAT/ACT Essentials Course and Test Prep; online resources through SkillsCenter Resources Library, ASVAB practice quizzes, Diagnostic Quizzes and Academic Videos (herein collectively defined as the ("Tutor.com Platform"). Also, available to New Hampshire Students as a separate service will be AP Strategy Sessions for math, English, science and social studies. TPR agrees to provide all eligible New Hampshire students access to the Tutor.com platform as it exists on the effective date of the agreement and including any enhancement to the Tutor.com tutoring service during the term of the agreement.
 - b. Tutoring will be available to any New Hampshire resident student who would be eligible to be enrolled in 6th grade at a Local Education Agency (LEA) (hereinafter referred to as "NHED Eligible Students"). This is inclusive of students enrolled in an approved education program in New Hampshire, including public school (traditional or charter), non-public school, home education program or Education Freedom Account program.

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- c. TPR agrees to provide NH Students 24/7 access to the Tutor.com services. Tutoring will be performed by qualified subject matter experts and aligned to New Hampshire academic standards. TPR will use commercially reasonable efforts to make real-time and responsive online resources available 24 hours a day, 7 days per week, subject to reasonable downtime for maintenance and related activities. Some subjects may be available for more limited hours.
- d. Services provided through the Tutor.com platform shall include, but not limited to, the following functionalities:
- i. Online classroom that allows students to real time interaction with tutors, either by text-based chat or live-voice 24/7;
 - ii. Prompt and real-time access to tutors with minimized wait times for access to available tutors and the ability to advance schedule selected tutors for assistance;
 - iii. Easy to navigate user interface;
 - iv. Accessible through both web-based and mobile devices adaptable to compatibility mode and assistive technology;
 - v. Comprehensive content subjects appropriate for grades K-12;
 - vi. Diagnostic quizzes through an Online Classroom that enable students to test themselves and determine where prerequisite knowledge is lacking;
 - vii. Personal interaction with students using a Socratic method designed to drive student engagement;
 - viii. On-line classroom with two-way interactive whiteboard, file sharing, and shared text editor;
 - ix. Ability for students to share account or transcripts of sessions with parents and teachers;
 - x. Shared Web browsing, where both the student and the tutor can simultaneously view a web page;
 - xi. Safe, secure, and anonymous learning environment;
 - xii. Specialized tools for advanced applications such as two-way graphing calculators and code editors; and

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xiii. Two-way text editor for active brainstorming in composition sessions.

e. TPR agrees to provide NHED Eligible Students 24/7 access to the Tutor.com's Writing Services which provides both live synchronous tutoring sessions and asynchronous drop-off support writing support. Tutors shall be able to provide detailed commentary geared towards both content development, grammar, and mechanics of writing. Also available to students is Tutor.com's Writing Center with proprietary writing resources www.tutor.com/writing-center.

2. **Background Checks:** TPR shall perform, at TPR's sole expense, a criminal background screening for each employee, subcontractor, or agent intended to perform work or services pursuant to the terms of this agreement (referred to herein as "TPR Tutor"). The background screening will have been performed no less frequently than twice per year. Such background check shall include screening of at least the following information:

- i. County criminal record search (for all of the places the applicant has resided in the last seven years);
- ii. Education verification;
- iii. National criminal record search;
- iv. Sex offender search;
- v. SSN trace; and
- vi. Global Watchlist search

All background checking services performed by TPR are included in the license fee.

3. **Limitations on Tutor.com Employees, Subcontractors and Agents.** TPR shall not knowingly assign any TPR employee, subcontractor, agent or tutor to provide tutoring services under the terms of this agreement who has a history of violent or sexual offenses nor any criminal conduct unacceptable for engagement with minors. TPR shall assign its employees, or independent contractors within the United States and Canada managed by TPR, to provide services pursuant to this Agreement.

4. **TPR Platform Launch and Implementation of Services Provided under Agreement.**
- a. TPR will set up the Tutor.com services for launch on a date mutually agreeable to the parties, but no later than September 1, 2022. NHED will provide TPR with all information and other cooperation needed to set up and launch the Tutor.com services. Launch shall mean that the Tutor.com is available to eligible users.
 - b. NHED will provide TPR with assistance needed to set up and launch the Services, including but not limited to:
 - i. Assistance with enrollment and utilization of the services and platform for any New Hampshire school or district that agrees to enroll the school or district's student body for participation for services under this Agreement.
 - ii. Reasonable classroom facilities, at any NHED facility, at no cost to TPR, for delivery of any in-person training or other services to be provided pursuant to the terms of this agreement.
 - c. TPR will provide NHED with all necessary assistance needed to set up, launch and administer the services pursuant to the terms of this Agreement, including but not limited to:
 - i. Development of a comprehensive and targeted marketing campaign aimed at the encouraging New Hampshire schools and NHED Eligible Students to enroll and participate in TPR's programs including but not limited to Tutor.com.
 - ii. Development of or provide access to Tutor.com webinars and other training to familiarize NHED Eligible Students and NH schools with Tutor.com services to increase engagement and utilization of the TPR Platform and Tutor.com services.
 - iii. Assist NHED to develop a website outlining the services available to NHED Eligible Students pursuant to the terms of this agreement, including granting NHED limited use of training and other videos or

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media for the TPR Platform for use on the NHED website or upon the website of any New Hampshire eligible school.

- iv. Provide NHED with dashboard reporting of utilization of the TPR Platform, no less frequently than once a month, including at least the following information:
 1. Program utilization data including the number of sessions, time, total time of all sessions, average time of sessions, and number of NHED Eligible Students utilizing the services, etc.
 2. Program utilization data indicating the top sessions by subject matter and grade level.
 3. Student feedback on sessions.
- v. Provide technical support for NHED Eligible Students, parents, and personnel at New Hampshire schools, with technical support for TPR programs and Tutor.com services via phone and email available Monday—Friday from 9 a.m. 12 am. EST and Saturday—Sunday from 2:00 p.m. - 10 p.m. EST.

5. Confidential Data

- a. "Confidential Information" means the terms of this Agreement and all information, materials, or technology provided by a party to the other party that is marked as "Confidential" or "Proprietary," or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential, including but not limited to all NHED Eligible Student records containing Personally Identifiable Information, as defined below. "Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of the breach of this Agreement by the receiving party, (ii) is independently developed by the receiving party, (iii) was rightfully within the receiving party's possession prior to disclosure by the disclosing party, (iv) is received from a third party which was not bound by a confidentiality obligation with respect to such information, or (v) is legally required to be disclosed, such as through a public Right-to-Know request.

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"Personally Identifiable Information" means any information that identifies or that could be used to identify any individual, including but not limited to, any individual student or parent name, address, personal identifiers such as school- or district-issued student identification numbers, and any other information or combination of information that would make the identity of the student or parent easily traceable.

- b. Except as otherwise provided in this Agreement, each party will retain the other party's Confidential Information in strict confidence, will use the other party's Confidential Information only for purposes of this Agreement, and will not disclose the other party's Confidential Information without the other party's prior written consent, provided that (i) the receiving party may disclose the disclosing party's Confidential Information to the receiving party's or its affiliates' personnel and contractors who need to know such Confidential Information and who are bound by confidentiality obligations at least as restrictive as those in this Agreement, and (ii) TPR may disclose NHED's Confidential Information or a NHED Eligible Student's PII only if TPR believes, at its sole discretion, that an immediate disclosure is necessary to protect a student's or a third party's physical safety. If there is a breach of this Section, the disclosing party may suffer irreparable harm and will therefore be entitled to obtain injunctive relief in addition to any other available rights and remedies.

6. Student Data

- a. Without limitation of its obligations under Section 5 above, TPR will take commercially reasonable measures to protect NHED Eligible Students' personally identifiable information (hereinafter referred to as "PII") as defined by Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) consistent with FERPA and all applicable privacy laws.
- b. NHED Eligible Student data collected by TPR in performing its obligations under this Agreement will be the property of NHED. NHED grants TPR a

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limited license to use such NHED Eligible Student data, including practice test scores, actual test scores and score improvements, (i) in connection with the performance by TPR of its obligations to NHED, (ii) to help TPR analyze the efficacy of its programs, and (iii) for use in the marketing and promotion of TPR's programs; provided, that TPR will not disclose any PII contained in such data and will otherwise use such data in compliance with TPR's confidentiality obligation.

7. Intellectual Property Rights

- a. TPR, on behalf of itself and its affiliates, hereby grants to NHED a nonexclusive, non-transferable license to use, and to permit its eligible students and, if applicable, parents, teachers and administrators to use, the TPR Intellectual Property during the term of this Agreement solely in connection with the Services.
- b. All marketing and other communications by NHED and NHED web pages that refer to Tutor.com services must include the Tutor.com logo as provided by TPR or the words "Powered by Tutor.com, a Service of The Princeton Review®." Except as set forth in the preceding sentence, neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.
- c. NHED acknowledges and agrees that (i) TPR and its affiliates retain all right, title and interest in and to the TPR Intellectual Property, and this Agreement conveys no rights to the TPR Intellectual Property other than the limited licenses set forth in the Agreement, and (ii) the TPR Intellectual Property embodies valuable confidential and secret information of TPR and its affiliates, the development of which required the expenditure of considerable time and money. "TPR Intellectual Property" means TPR's and its affiliates' copyrights, moral rights, patent rights (including patent applications and disclosures), trademarks, rights of priority, publicity rights, and trade secret rights, documentation, specifications, designs, instructional methods, strategies, techniques and methodologies, and software programs and other technology, survey data and usage information.

8. Certain Obligations and Restrictions

- a. NHED will not: (i) copy, modify, alter, excerpt, create derivative works of, decompile, disassemble or otherwise reverse engineer the TPR Intellectual Property; (ii) delete or in any manner alter the copyright, trademark or other proprietary notices of TPR or its affiliates, if any, appearing on the TPR Intellectual Property, (iii) use the TPR Intellectual Property and other TPR Confidential Information to teach any class or course or for any other purpose, except in connection with Services, and (iv) disclose, reproduce, sell or distribute the TPR Intellectual Property to any third party. NHED will notify TPR of any known or suspected infringement of the TPR Intellectual Property of which NHED becomes aware.
- b. On an annual basis, NHED will notify NHED Eligible Students and teachers using the platform of their obligation to not: (i) copy, modify, alter, excerpt, create derivative works of, decompile, disassemble or otherwise reverse engineer the TPR Intellectual Property; (ii) delete or in any manner alter the copyright, trademark or other proprietary notices of TPR or its affiliates, if any, appearing on the TPR Intellectual Property, (iii) disclose, reproduce, sell or distribute the TPR Intellectual Property to any third party. NHED will notify TPR of any known infringement of the TPR Intellectual Property of which NHED becomes aware.
- c. NHED will notify TPR promptly if NHED becomes aware of unauthorized use of services under this Agreement. If there is unauthorized use of a password or the Services that is not cured by NHED in a reasonable time, TPR may disable the NHED Eligible Student's account. TPR reserves the right, at its sole discretion, to disable access to any online resource for any NHED Eligible Student who fails to comply with TPR rules and procedures applicable to the resource, including the Terms of Use on TPR's website.
- d. NHED will not upload to or distribute or publish through online resources provided under this Agreement any content (i) which is defamatory, threatening, abusive, or otherwise unlawful, (ii) which is vulgar, obscene or

sexually explicit, (iii) which violates any person's privacy or publicity rights, or (iv) which violates the intellectual property or other proprietary rights of any person.

- e. NHED, including its NHED Eligible Students and teachers, will treat TPR's tutors and instructors with respect. Failure to do so may result in the suspension of access to the Platform.
- f. NHED will not and will notify students and teachers using the TPR services provided under this agreement of their obligation to not, (i) interfere with or disrupt the online resources provided under this agreement or (ii) upload to or distribute through such online resources any viruses, Trojan horses, worms, or other similar programs.

9. Representations and Warranties.

- a. Each party represents and warrants to the other that (i) it will comply with all applicable laws and regulations in connection with its performance under this Agreement and (ii) the individual signing this Agreement on its behalf has the authority to do so.
- b. TPR represents and warrants that it will perform the Services in a professional manner in accordance with industry standards. NHED's sole remedy for a breach of this warranty is re-performance of the particular services that breached the warranty at no additional charge.
- c. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" AND TPR, ON BEHALF OF ITSELF AND ITS AFFILIATES, EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND GUARANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION OF RESULTS FOR STUDENTS, SUCH AS ANY IMPROVEMENT IN TEST SCORES. SUCH RESULTS ARE DEPENDENT ON FACTORS OUTSIDE OF TPR'S CONTROL. EXCEPT AS EXPRESSLY

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SET FORTH IN THIS AGREEMENT, TPR MAKES NO WARRANTY OR REPRESENTATION THAT THE SERVICES WILL MEET NHED'S REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR APPLICATIONS PROVIDED BY THIRD PARTIES, THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, THAT ANY SERVICE HEREUNDER OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES, TROJANS, MALWARE OR OTHER HARMFUL COMPONENTS OR THAT ALL DEFECTS IN THE SERVICES WILL BE CORRECTED.

10. Limitation of Liability.

- a. TPR AND ITS AFFILIATES WILL NOT BE LIABLE TO NHED OR TO ANY OTHER PERSON FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY CHARACTER, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE, RELATING TO THIS AGREEMENT, EVEN IF TPR OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TPR'S AND ITS AFFILIATES' AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY TPR UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING SUCH CLAIM.

11. Notices.

- a. All notices relating to this Agreement must be in writing. Such notices must be sent by postage prepaid first-class mail, receipted courier service, facsimile, or email at the address below or to such other address as specified in writing and will be effective upon receipt.

The Princeton Review	New Hampshire Department of Education
Attn: Legal Department 110 E. 42nd St., 7th Floor New York, NY 10017	Melissa White 25 Hall Street Concord, NH 03301
Email: Legal@review.com	Email: Melissa.A.White@doe.nh.gov

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EXHIBIT C

Method of Payment

Pricing will be based on the number of NHED Eligible Students, based on the below step matrix. The agreement will become effective upon the Governor and Council's approval of the contract and extend through August 31, 2025, or as permitted under federal regulations associated with the funding source for this agreement.

Tutor.com will waive all implementation fees.

The annual student license fee shall be calculated annually based on the prior year enrollments in the following categories

- A) the enrollments by grade reported for each of the following categories: public elementary, middle/junior high and high schools, public academies, public charter, nonpublic schools, and Education Freedom Account students in grades five through eleven, plus
- B) a proportional share by percentage of category of the of total reported home education students.

For the 2022-23 school year, the total number of eligible students is 103,877.

Students	Annual Price Per Student
500 to 2,400 Students	\$34.00/student
2,500 to 4,999 Students	\$30.00/student
5,000 to 9,999 Students	\$27.00/student
10,000 to 49,999 Students	\$23.00/student
50,000 to 99,999 Students	\$19.00/student
100,000+ Students	\$15.00/student

Prices will be fixed at the above rates through the term of the contract and any renewal terms. Renewal terms will be at the option of the NHED with the approval of Governor and Council. Automatic contract renewals are prohibited.

Limitation on Price: Upon mutual agreement between the state contracting officer and TPR, line items in this budget shall not exceed the price limitation of \$4,800,000. TPR will monitor activity and not exceed the price limitation.

Source of Funding: Funds to support this request are available in the account titled ESSER III – ARP 2021, in FY23, and anticipated to be available in FY24 and FY25, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances amongst fiscal years within the price limitation through the Budget Office without further Governor and Council approval if needed and justified.

	FY23	FY24	FY25
05-56-56-562010-24370000-102-500731 Contracts for Prog. Svcs.	\$1,600,000	\$1,600,000	\$1,600,000

Method of Payment: TPR will invoice NHED no more frequently than annually. Payments will be net 30 from the date of issuance. Invoices shall be submitted to:

Jessica Lescarbeau
 NHED
 25 Hall Street
 Concord, NH 03301
jessica.l.lescarbeau@doe.nh.gov
 603-271-0058

EXHIBIT D

Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Breach

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Fraud and False Statements

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

Environmental Protection

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

Procurement of Recovered Materials

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Revised 6-25-21

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Exhibit E

Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
 2. Does not have a proposed debarment pending;
 3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Revised 6-25-21

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Exhibit F

Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions

<https://www.gsa.gov/forms-library/disclosure-lobbying-activities>

- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Revised 6-25-21

Contractor Initials **J.P.**
Date 07/21/2022

Exhibit G

Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Revised 6-25-21

J.P.

Contractor Initials _____
Date 07/21/2022

State of New Hampshire

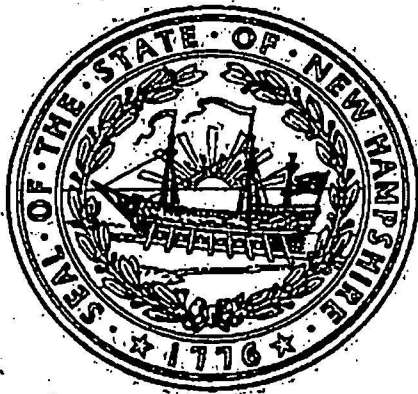
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that TPR EDUCATION, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on April 27, 2012. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 669932

Certificate Number: 0005831509



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of July A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

Certificate of Attestation

I, Juwon Lee, hereby certify that I am a duly appointed representative of
(Name)

TPR Education, LLC d/b/a The Princeton Review

I hereby certify that Joshua Park, Chief Executive Officer, is duly
(Name of Business) (Name & Title of person who signed contract)

authorized to execute contracts on behalf of TPR Education, LLC d/b/a The Princeton Review and may bind the
(Name of Business)

organization thereby.

I further certify that it is understood that the State of New Hampshire will rely on this attestation as evidence that the person listed above currently occupies the position indicated and that he/she has full authority to bind the organization.

Dated: 07 / 19 / 2022

Juwon Lee

Attest: _____
(Name & Title)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/20/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. 800 Market Street, Suite 1800 St. Louis, MO 63101	CONTACT NAME: Marsh U.S. Operations PHONE (A/C, No., Ext): 866-966-4664 FAX (A/C, No.): 212-948-0811 E-MAIL ADDRESS: StLouis.CertRequest@Marsh.Com
	INSURER(S) AFFORDING COVERAGE
CN103000606-STND-GAWUR-22- NO	INSURER A: Charter Oak Fire Insurance Company NAIC # 25615 INSURER B: N/A N/A INSURER C: N/A N/A INSURER D: Travelers Property Casualty Company of America 25674 INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** CHI-010109352-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		[REDACTED]	03/31/2022	03/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		[REDACTED]			COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		[REDACTED]			EACH OCCURRENCE \$ AGGREGATE \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N/A		[REDACTED]	03/31/2022	03/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	PROPERTY		[REDACTED]	03/31/2022	03/31/2023	PERSONAL PROPERTY 5,696,218 BUSINESS INCOME 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks, Schedule, may be attached if more space is required)
New Hampshire Education Department, 101 Pleasant St, Concord NH 03301 is/are included as Additional Insured where required by written contract with respect to General Liability.

CERTIFICATE HOLDER New Hampshire Education Department 101 Pleasant St Concord, NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA Inc.</i>
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