

Multiple Offerings Course Agreement

This agreement (hereafter referred to as “Agreement”) is entered into between Ector County Independent School District (“Organization”) and TPR Education, LLC d/b/a The Princeton Review (“TPR”). TPR agrees to provide services to the students and/or teachers of Organization in accordance with the following standard terms and conditions, as amended:

Term: 8/01/2013 to 6/30/2014 (the “Term”).

Type of Program (e.g., live, online, professional development)	Live		Live		Live	
Course Led by	TPR		TPR		TPR	
Course Name/Type (e.g., PSAT, SAT, ACT, Smarts)	Semester-Long College and Career Readiness Course at Permian High School		Semester-Long College and Career Readiness Course at Odessa High School		Semester-Long College and Career Readiness Course at New Tech High School	
Class Size	Max 25	Min	Max 25	Min	Max 20	Min
Tests	# Up to 3		Up to 3		Up to 3	
Total Instructional Hours For Length Of Contract	2 class periods per day for Fall & Spring Semester		2 class periods per day for Fall & Spring Semester		3 class periods per day for Fall & Spring Semester	
Total Hours Per Class Session						
Class Fee	\$9,000 per class		\$9,000 per class		\$9,000 per class	
Student Materials Included	<i>SAT or ACT Student Manual, 11 Practice Tests for the SAT or 1,296 Practice Questions for the ACT, and up to 3 diagnostic practice tests</i>		<i>SAT or ACT Student Manual, 11 Practice Tests for the SAT or 1,296 Practice Questions for the ACT, and up to 3 diagnostic practice tests</i>		<i>SAT or ACT Student Manual, 11 Practice Tests for the SAT or 1,296 Practice Questions for the ACT and up to 3 diagnostic practice tests</i>	
Minimum Class Commitment	2 class sections per semester (4 per year)		2 class sections per semester (4 per year)		3 class sections per semester (6 per year)	
Total Contract Fee	\$126,000 per year					

See Exhibit A for specific materials and online tools included with each program listed above, if applicable. See Exhibit B for additional programs, if applicable.

All Classes and materials will be provided subject to the attached “Standard Terms and Conditions – Multiple Offerings Course Agreement.”

Organization Billing Information

Organization agrees to provide payment to TPR for services delivered to the students and/or teachers of Organization in accordance with the following provisions:

Is a Purchase Order Required?

Yes

If yes, what is the Purchase Order Number?

No

Billing Options:

i) Net 30 from Date Contract Signed

ii) Net 30 from Each Course Run Date

iii) Customized Payment Terms (must be approved by TPR and Organization)

Ector County Independent School District
Rebecca Mull, Director of Purchasing
802 N. Sam Houston
Odessa, TX 79761

TPR Education, LLC
Name:
Title:

Date _____

Ector County Independent School District
Name: _____
Title: _____

Date _____

- Signed agreement should be returned to:
Contracts Administrator
The Princeton Review
111 Speen Street, Suite 550, Framingham, MA 01701
OR
Emailed to Jennifer Blevins at jblevins@review.com
- Failure to return signed Agreement promptly may result in delay of delivery of services and/or materials.

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STANDARD TERMS AND CONDITIONS – MULTIPLE OFFERINGS COURSE AGREEMENT (MODIFIED)

1. **Classes Generally:** (a) The Organization will provide a coordinator for the course program. The Organization shall be solely responsible for registering students for classes and must deliver class rosters, preferably in an electronic format, no later than seven (7) calendar days before the start of each class. For The Princeton Review ("TPR")-led courses, the Organization must also deliver student and parent contracts to TPR no later than seven (7) calendar days before the start of each class. (b) The Organization shall provide reasonable classroom facilities and security at no cost to TPR. (c) For TPR-led courses, the Organization will host a parents' event at least seven (7) calendar days before the start of the first class and at a time that is convenient for the Organization/community at which TPR will introduce the purpose and nature of TPR programs as well as set expectations for student and parent commitment, student attendance, homework completion, etc. Organization is required to have each student and his or her parent sign TPR contracts, regarding commitment to the class. (d) The Organization shall be solely responsible for distributing online user ID and passwords to contract-specified persons (e.g. students, teachers) for all online resources. TPR may disable access to any online resource for any person who fails to comply with TPR rules and procedures applicable to the resource and no credit or refund will be issued for such person. (e) If applicable, any Organization teacher to be certified to teach the TPR program must sign the standard TPR instructor Agreement.
2. **Fees:** TPR shall invoice the Organization on a periodic basis no more frequently than monthly, except that the Organization shall pay invoiced instructor training fees not less than seven (7) calendar days prior to the commencement of each training session. The Organization shall make payment to TPR within thirty (30) days of invoice receipt. Prices set forth on the preceding page do not include sales tax. Sales tax, if applicable, will be included in the invoice sent by TPR to Organization, unless Organization provides evidence of tax exemption.
3. **Reporting Requirements:** TPR may provide the Organization with final reports concerning the program after completion of all classes. The Organization shall provide TPR with periodic reports such as the number of students enrolled in classes or other information reasonably requested by TPR, including requests for information in electronic format where available. To the extent that individual student data is shared with TPR, as an agent of the Organization, TPR shall keep such information confidential and only use it to the extent necessary to provide educational and other services within the Organization. The Organization shall maintain such books and records as are necessary to substantiate amounts paid to TPR pursuant to this Agreement, which shall be made available to TPR for examination on request.
4. **Intellectual Property:** (a) The Organization acknowledges and agrees that (i) all right, title and interest in and to TPR written materials including materials downloadable from TPR's online resources and to ECOS, as well as all updates, upgrades, enhancements and modifications thereto, including any and all patents, copyrights, trade secret rights, trademarks, trade names, and other proprietary rights embodied therein or associated therewith (collectively, the "TPR Intellectual Property"), are and will remain TPR's, and this Agreement in no way conveys any right, title or interest in the TPR Intellectual Property other than the limited licenses set forth below, (ii) the Organization will not modify or alter the TPR Intellectual Property without the prior written consent of TPR, and (iii) the TPR Intellectual Property embodies valuable confidential and secret information of TPR, the development of which required the expenditure of considerable time and money. (b) Upon the expiration or termination of this Agreement for any reason, the Organization shall deliver to TPR any and all TPR-owned equipment and supplies and all TPR Intellectual Property, or copies thereof, in electronic format or otherwise, in the Organization's possession or under its control. Within ten (10) business days of a request by TPR, the Organization shall deliver to TPR an affidavit stating that to the best of its knowledge and information all TPR Intellectual Property required to be delivered under this Agreement have been delivered and copies that have not been delivered have been deleted or destroyed.
5. **Confidentiality:** (a) The Organization acknowledges that it has been informed that the TPR Intellectual Property and its instructional methods are confidential (except such TPR Intellectual Property as are published by or on behalf of TPR) (the "Confidential Information"). The Organization (i) shall not divulge, and will prevent each of its employees, teachers and agents from divulging, directly or indirectly, any Confidential Information and (ii) shall not use or authorize anyone to use, and will prevent each of its employees, teachers and agents from using or authorizing anyone to use, any Confidential Information, except to teach a TPR class for which TPR receives a fee. TPR may revoke the certification of any Teacher: (i) who fails to maintain the confidentiality of the Confidential Information or (ii) who uses the Confidential Information, except to teach a TPR class for which TPR receives a fee. (b) The Organization agrees that any breach or threatened breach by it of this Section and any other provision related to protection of the Confidential Information will, because of the unique and proprietary nature of this information entrusted as aforesaid, cause irreparable harm to TPR and shall entitle TPR, in addition to any other legal remedies available to it, to apply to any court of competent jurisdiction to enjoin such breach or threatened breach.
6. **License:** TPR hereby grants to the Organization a nonexclusive, non-transferable license (the "License") to use its TPR Intellectual Property solely for the classes. The grant of the License is conditioned upon: (i) the Organization shall not copy, modify, alter, or excerpt, and shall prevent others from copying, modifying, altering, or excerpting the TPR Intellectual Property; (ii) the Organization shall not use, and shall prevent others from using, the TPR Intellectual Property and other Confidential Information to teach any class or course, except classes for which TPR receives a fee.
7. **Disclaimer; Limitation of Liability:** (a) Except as explicitly set forth in this Agreement, TPR hereby disclaims all warranties, representations and guaranties, express or implied, including, without limitation, any representation of results for students, such as any improvement in test scores. Such results are dependent on factors out of TPR's control, including, without limitation, the quality of instruction provided by the Organization. (b) TPR shall not be liable to the Organization 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, arising out of or in connection with this Agreement, even if TPR has been advised of the possibility of such damages. TPR's total aggregate liability arising from or related to this Agreement will not exceed the aggregate amount received by TPR from the school or district under this Agreement during the twelve (12) month period preceding a claim.
8. **Indemnification:** The Organization shall indemnify and defend TPR, and its officers, employees, consultants and trainers against any costs, expenses (including reasonable attorneys' fees whether arising out of a third-party claim or in enforcing this indemnification), claims, judgments, settlements and damages (including all damages awarded to third parties payable by TPR, but in all cases only TPR's direct damages) arising out of, or related to instruction or supervision by Organization personnel of the Organization's students.
9. **Termination:** This Agreement (including any licenses) may be terminated thirty (30) days after the delivery by a party of a notice containing a description of a material breach of this Agreement by the other party, provided such breach is not cured within such thirty (30) days of notification of such breach.

STANDARD TERMS AND CONDITIONS – MULTIPLE OFFERINGS COURSE AGREEMENT (MODIFIED) (CONT.)

10. **Cancellation:** TPR reserves the right to cancel any classes where fewer than the minimum number of students enroll. In the event of a cancellation because of under-enrollment, TPR will not be deemed to have breached the terms of this Agreement and the Organization will in no way penalize the TPR for such class cancellation. For purposes of this section, the term "enroll" means an eligible student for whom TPR has received a purchase order fully approved by the Organization.
 11. **Force Majeure:** Neither party hereto shall be deemed to be in default for failure to comply with any provision hereof, if such failure results from acts or events beyond the reasonable control of such party, other than payment of money.
 12. **Entire Agreement; Amendments; Order of Precedence:** This Agreement contains the entire understanding between the parties and supersedes any prior agreement between such parties, whether written or oral, and may only be amended or waived in a writing signed by both parties. To the extent that the terms of this Agreement conflict with the terms of any purchase order or other agreement submitted by the Organization, the terms of this Agreement shall take precedence.
 13. **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, provided that the Organization may not assign this Agreement, the License or the right to use the TPR Intellectual Property or any part thereof. The License shall not be assigned or made assignable, or become an asset of licensee in bankruptcy, whether by operation of law or any bankruptcy, insolvency or similar proceedings or otherwise.
 14. **Governing Law; Jurisdiction/Waiver of Jury Trial:** INTENTIONALLY OMITTED,
 15. **Designations and Notices:** Any notices or other communications hereunder, except as may otherwise be provided in this Agreement, will be deemed given and delivered when delivered personally, or on the date signed for, or rejected by, addressee if mailed by certified mail, return receipt requested, postage prepaid, or the next business day if sent by nationally recognized courier service providing for a signature on delivery, in each case, delivery prepaid, addressed to the Organization to the address provided on the execution page of this Agreement and to TPR to the attention of General Counsel at 111 Speen Street, Suite 550, Framingham, MA 01701 or via fax to (508) 663-5115 or to such other address as either party shall designate by notice to the other, effective ten (10) days after such notice.
 16. **Survival:** The rights and obligations arising relating to protection of TPR's Intellectual Property and other Confidential Information, and any other provisions of this Agreement that by their nature should survive, shall survive termination or expiration of this Agreement.
 17. **Severability:** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such a case, the parties shall replace the invalid provision with a legally admissible arrangement, which comes nearest to the intended purpose of the invalid provision.
 18. **Counterparts and Facsimiles:** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Facsimile signatures shall be considered original signatures.
 19. **Authorized Signature:** The undersigned hereby certifies that he/she has the authority to execute, deliver, and cause the Organization to perform its obligations under this Agreement.
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