

Online Assessment Services Agreement

Between

The Princeton Review, Inc.

And

The School Board of Palm Beach County, Fl.

This Agreement entered into this 27th day of July, 2005 between The School Board of Palm Beach County, Florida, a political subdivision of the State of Florida, (hereinafter referred to as the "School Board") and The Princeton Review, Inc. 160 Varick Street, 11th Floor, New York, NY 10013 (hereinafter referred to as "TPR") to provide Online Assessment Services.

Section I – Term of Contract

The term of this Agreement shall commence on the Effective Date and, unless terminated earlier, shall continue until TPR's completion of the entire Project and the Board's Acceptance of all Deliverables.

Section II – Services

TPR shall provide Online Assessment Services per specifications of ITN 05C-011E including Addendum #1 and the corresponding proposal submitted by TPR, which by reference herein becomes part of this Agreement.

The School Board engages TPR to render all of the services described in this Agreement or in "Statements of Work" executed by the Parties in accordance with this Agreement and to provide all the deliverables described in the Statements of Work. TPR accepts such engagement and agrees to perform all such services and provide all deliverables in accordance with this Agreement and all applicable Statements of Work. As used herein a "Statement of Work" means a document that specifically references this Agreement and declares that it is a Statement of Work under this Agreement and has been executed by both parties. To the extent that any Statement of Work conflict with the other portions of this Agreement, the terms of such Statement of Work shall take precedence over the other terms of this Agreement.

TPR shall be the prime contractor hereunder and, subject to the terms and conditions of this Agreement and the Statements of Work executed hereunder, shall possess or obtain all software, hardware and other equipment and resources necessary and appropriate for TPR to perform all of the Services. TPR shall provide the School

Board with adequate notice, in a timely manner, so that the School Board can obtain all necessary software, hardware and other equipment and resources that TPR will not provide under the applicable Statements of Work. Such services shall include all licenses, tasks, activities and services necessary for the planning, validation, development, implementation, configuration and tuning of a comprehensive, integrated online assessment project that meets the School Board's requirements as specified in the respective Statements of Work and is suitable and appropriate for an organization of the size, nature and complexity of the School Board.

Section III – Cost of Services

TPR shall be paid for services as negotiated and identified in each Statement of Work(s) that become a part of this Agreement.

Section IV – Terms and Conditions

TPR shall have the option to terminate the Agreement upon written notice to the authorized representative of the School Board. Such notice must be received at least 90 days prior to the effective date of termination. The School Board shall have the option to terminate the Agreement without cause upon written notice to the authorized representative of TPR. Such notice must be received at least 30 days prior to the effective date of termination and TPR shall only be entitled to compensation up to the date of termination. TPR shall not be entitled to lost profits.

Early termination of the contract by TPR may prohibit TPR from submitting proposals for a period of three years from the date of completion of the contract. The School Board shall establish the expiration date of the contract for use thereof.

There shall be no assignment of the contract or compensation to be derived therefrom by TPR

SECTION V – Indemnification/ Hold Harmless Agreement

TPR shall, in addition to any other obligation to indemnify the Palm Beach County School District and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;

- A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of TPR, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or
- B. violation of law, statute, ordinance, governmental administration order, rule or regulation by contractor in the performance of the work; or
- C. liens, claims or actions made by TPR or any subcontractor or other party performing the work.

The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for TPR of any subcontractor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

This article will survive the termination of this Agreement

SECTION VI - Insurance

Insurance will be required as stated in ITN 05C-011E. The School Board of Palm Beach County shall be named as additional insured.

SECTION VII – Cancellation of Award/Termination

In the event any of the provisions of this Agreement are violated by TPR, the Superintendent or designee will give written notice to TPR stating the deficiencies and unless the deficiencies are corrected within ten (10) days, recommendation will be made to the School Board for immediate cancellation. Upon cancellation hereunder, the School Board may pursue any and all legal remedies as provided herein and by law. In the event that it is subsequently determined that a cancellation under this paragraph was incorrect, the termination shall be converted to a termination for convenience pursuant to the next paragraph.

The District, reserves the right to terminate any contract resulting from this ITN, at any time and for no reason, upon giving 30 days prior written notice to the other party. If said contract should be terminated for convenience as provided herein, the District will be relieved of all obligations under said contract. The District will only be required to pay to the responder(s) that amount of the contract actually performed to the date of termination.

The awardee(s) will have the option to terminate the contract upon written notice to the Director of Purchasing. Such notice must be received at least 90 days prior to the effective date of termination.

Cancellation of contract by awardee may result in removal from bidders/responder list for a period of three years.

SECTION VIII - Funding Out, Termination, Cancellation

The School Board may, during the contract period, terminate or discontinue the services covered in this ITN for lack of appropriated funds upon the same terms and conditions as set forth in Section VII Cancellation of Award / Termination.

Such prior written notice will state:

- A. That the lack of appropriated funds is the reason for termination, and
- B. Agreement not to replace the services being terminated with services similar to those covered in this ITN from another vendor in the succeeding funding period.

“This written notification will thereafter release the School Board of all further obligations in any way related to such equipment covered herein”.

SECTION IX - Default

In the event that the awarded responder(s) should breach this contract the District reserves the right to seek remedies in law and/or in equity.

SECTION X - Debarment

The Board shall have the authority to debar a person / corporation for cause for consideration or award of future contracts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

SECTION XI – Federal and State Tax

The School Board is exempt from federal and state taxes for tangible personal property. TPR will not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the District, nor will TPR be authorized to use the District's Tax Exemption Number in securing such materials.

SECTION XII - Amendment

This contract shall only be amended or modified in writing executed by both parties.

SECTION XIII - Strict Performance

The failure of either party to insist on strict performance of any covenant or conditions herein shall not be construed as a waiver of such covenants or conditions for any instance.

This contract shall be construed in accordance with the laws of the State of Florida.

If any litigation shall result from this agreement, venue shall lie in Palm Beach County, Florida.

This agreement shall not be construed against the party who drafted the same as both parties have had experts of their choosing review the same.

This agreement is binding on the parties hereto, their heirs, successor and/or assigns.

Section XIV – Notices

All notices, consents and approvals given by a Party under this Agreement shall be in writing and shall be delivered in person, by first class or express mail, overnight carrier or receipted facsimile, addressed as follows:

If to TPR:

Mr. Rob Cohen, General Manager

K-12 Services

160 Varick Street

11th Floor

New York, NY 10013

If to School Board:

Mr. Joseph Moore, Chief Operating Officer

3300 Forest Hill Blvd., Suite C-306

West Palm Beach, Fl. 33406

(561) 434-8584 Phone

(561) 434-7585 Fax

Section XV – Fingerprinting and Background Checks

Fingerprinting and Background Checks will be required as stated in ITN 05C-011E.

Section XVI – Acceptance Testing

All Deliverables and Work Product shall be provided to the School Board by TPR in conformance with all requirements, specifications, acceptance criteria, and time schedules set forth or referenced in this Agreement or in the applicable Statement of Work. TPR and the School Board shall at all times utilize complete and thorough acceptance testing procedures, and appropriate acceptance criteria, all of which shall be subject to review and approval by the School Board, and no such activities shall be deemed completed until all applicable acceptance criteria have been successfully met.

Section XVII – Confidentiality

TPR acknowledges that School District records may contain confidential information. TPR shall be subject to all School Board obligations relating to compliance with student records confidentiality laws and the confidentiality of protected health information. TPR acknowledges and agrees to comply with the Family Educational Rights and Privacy Act (“FERPA”) and all state and federal laws relating to the confidentiality of student records and the requirements of Health Insurance Portability and Accountability Act (“HIPAA”), which are incorporated herein by reference and made a part of this contract, as if they were printed in full herein. These laws include but are not limited to 20 U.S.C. § 1232g; 34 C.F.R. Part 99; 34 C.F.R. § 300.572(a); 20 U.S.C. § 1417(c); 20 U.S.C. § 1412(a)(8); Fla. Stat. § 1002.22; F.A.C. r. 6A-1.0955; and 45 C.F.R. § 160.301. TPR shall comply with 34 C.F.R. § 99.33(a)(1) and shall not disclose protected student information to any other party without the prior consent of the parent or eligible student. TPR acknowledges that they have read and understand the laws mentioned in this paragraph. TPR shall ensure that each affected employee of its company is trained in the substance and importance of complying with the laws mentioned above, including the duty to avoid viewing the stored materials except as expressly necessary to carry out legitimate job duties.

TPR recognizes that any confidentiality requirement on the School Board is subject to the Florida Public Records Act, Chapter 119, Florida Statutes.

XIV. LICENSES.

(a) **SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, TPR HEREBY GRANTS TO THE SCHOOL DISTRICT A FULLY PAID, NON-EXCLUSIVE, NONTRANSFERABLE RIGHT AND LICENSE DURING THE TERM TO SUBLICENSE TPR’S ONLINE, BRANDED STUDENT ASSESSMENT SOLUTION (“HOMEROOM”) TO SUCH REQUISITE NUMBER OF TEACHERS, STUDENTS AND ADMINISTRATORS WITHIN THE SCHOOL DISTRICT RECEIVING THE SERVICES SOLELY IN CONNECTION WITH THE PROVISION OF THE SERVICES AND IN ACCORDANCE WITH TPR’S TERMS OF SERVICE FOR HOMEROOM (“HOMEROOM TOS”) AS SET FORTH AT [HTTP://WWW.HOMEROOM.COM/ABOUT/TERMS.ASP](http://www.homeroom.com/about/terms.asp).**

(b) **THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTING USER IDS AND PASSWORDS FOR ALL ONLINE RESOURCES MADE AVAILABLE TO TEACHERS, STUDENTS AND ADMINISTRATORS. 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.**

(c) **SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, TPR HEREBY GRANTS TO THE CUSTOMER A FULLY PAID, NON-EXCLUSIVE, NONTRANSFERABLE RIGHT AND LICENSE DURING THE TERM TO USE AND SUBLICENSE THE MATERIALS TO SUCH REQUISITE NUMBER OF TEACHERS, STUDENTS AND ADMINISTRATORS WITHIN THE SCHOOL DISTRICT**

RECEIVING THE SERVICES SOLELY IN CONNECTION WITH THE PROVISION OF THE SERVICES IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

Section XIV– Intellectual Property

1. TPR will indemnify and hold harmless, the School Board from liability of any nature or

kind, including costs and expenses for or on account of any copyrighted, service marked,

trademarked, patented or un-patented invention, process, article or work manufactured or

used in the performance of the contract, including its use by the School District. If TPR

uses any design, device, materials or works covered by letters, service mark, trademark,

patent, copyright or any other intellectual property right, it is mutually agreed and

understood without exception that the proposal prices will include all royalties of costs

arising from the use of such design, device, or materials in any way involved in the work.

2. The School District acknowledges and agrees that (i) all right, title and interest in and to the materials, equipment and supplies and to Homeroom, 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, (ii) the TPR Intellectual Property consists of works protected by the copyright and other laws of the United States, (iii) the School District will not modify or alter the TPR Intellectual Property without the prior written consent of TPR, and (iv)

the TPR Intellectual Property embodies valuable confidential and secret information of TPR, the development of which required the expenditure of considerable time and money. TPR Intellectual Property shall not include original test questions provided by the School District to TPR

3. Upon the expiration or termination of this Agreement for any reason, the School District shall deliver to TPR any and all Materials, or copies thereof, in electronic format or otherwise, in the School District's possession or under its control. Within ten (10) business days of a request by TPR, the School District shall deliver to TPR an affidavit stating that to the best of its knowledge and information all Materials required to be delivered under this Section 7(b) have been delivered and copies that have not been delivered have been deleted or destroyed.
4. Each party retains all rights in its trade name, trademarks, service marks, logos, and other proprietary designations and those of its subsidiaries, parents, affiliates and other related parties. Neither party has the right to use the other party's marks without the mark owner's prior written approval. All goodwill arising from the use of the other party's mark will inure to the benefit of the mark owner.


Section XIX – Breach of Agreement

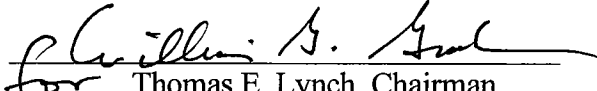
Should either party breach this agreement, the non-breaching party shall be entitled to all remedies as provided by law and equity.

In witness whereof, this contract has been executed on the day and year first above written.

(CONTRACTOR NAME)

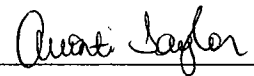
THE SCHOOL BOARD OF PALM BEACH COUNTY,
FLORIDA

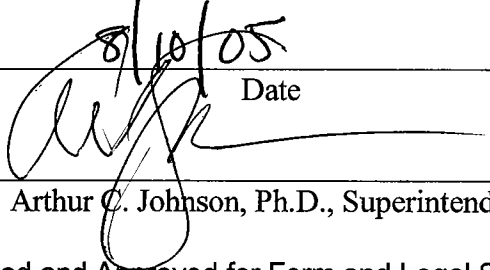
BY: 
Mark Chernis President & COO 8/25/05

BY: 
for Thomas E. Lynch, Chairman

WITNESS: 

8/10/05
Date

WITNESS: 

Attest: 
Arthur C. Johnson, Ph.D., Superintendent

Reviewed and Approved for Form and Legal Sufficiency:

DATE: 7/27/05

BY: 
Attorney

BENEFICIAL INTEREST AND DISCLOSURE OF OWNERSHIP AFFIDAVIT

STATE OF _____ COUNTY OF _____

Before me, the undersigned authority, personally appeared, _____, ("Corporate Representative") this _____ day of _____, 200____, who, first being duly sworn, as required by law, subject to the penalties prescribed for perjury, deposes and says:

- 1) Corporate Representative has read the contents of this Affidavit, has actual knowledge of the facts contained herein, and states that the facts contained herein are true, correct, and complete.
- 2) The following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes to include individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups and combinations) holding 5% or more of the beneficial interest in the disclosing entity: (If more space is needed, attach separate sheet)

A. Persons or corporate entities owning 5% or more:

Name	Address	Percentage

Name	Address	Percentage

Name	Address	Percentage

B. Persons or corporate entities who hold by proxy the voting power of 5% or more:

Name	Address	Percentage

Name	Address	Percentage

Name	Address	Percentage

C. Stock held for others and for whom held:

Name	Address	Percentage

For Whom Held	Address	Percentage

Name	Address	Percentage

For Whom Held	Address	Percentage

CORPORATE REPRESENTATIVE

By: _____

SWORN TO and subscribed before me this _____ day of _____, 200____, by _____. Such person(s). (Notary Public must check applicable box):

[] is/are personally known to me. [] produced a current driver license(s). [] produced _____ as identification.

(NOTARY PUBLIC SEAL)

Notary Public

STATEMENT OF WORK

THE SCHOOL DISTRICT OF PALM BEACH COUNTY FORMATIVE ASSESSMENT PILOT PROVIDED BY THE PRINCETON REVIEW, INC

Overview

The objective of this Statement of Work is to identify and define all key tasks, services and deliverables (the “Services”) to be provided by The Princeton Review, Inc. (“TPR”) to The School District of Palm Beach County (“Palm Beach”) in connection with the provision of assessment services, products, training, and project management to support the delivery of a Formative Assessment Program Pilot (“the Program”).

The key components of the program include:

- A pilot for 3 schools (1 elementary school, 1 middle school, and 1 high school)
- Upload of district created assessments in reading, mathematics, and science for grades 3-10 to support 7 test administrations per subject
- Homeroom Assessment Center
- Technology Services
- Content Services
- Full time account manger
- Project management and professional development

Specifically, this Statement of Work encompasses time period beginning on August 1, 2005 and ending February 28, 2005.

Below is a schedule of Program milestones and the associated payment terms for Palm Beach:

Key Deliverables

1. Upload of District Content
 - a. Item file formats
 - i. Princeton Review reserves the right to adjust formatting and exclude non-material graphics as required to conform to the requirements of our test tunnel.
 - ii. Understood that Palm Beach is delivering test forms and items in MS Word format
 - iii. Understood that test forms and answer keys will be separate documents
 - iv. Answers will all be multiple-choice with no alternating answer formats (e.g. answers must be A, B, C, or D)
 - v. Palm Beach will provide items that have one correct answer choice
 - vi. Palm Beach will provide all items and assessments in the agreed upon formats by July 27th, 2005
 - vii. TPR will make assessments available based on the sequence provided by Palm Beach
 - b. TPR will upload item content provided by Palm Beach ‘as is’. TPR will not provide quality assurance practices on the items provided by Palm Beach.
 - c. Upload of district created mathematics assessments to support 7 administrations for grades 3-10 (56 test forms)
 - d. Upload of district created reading assessments to support 7 administrations for grades 3-10 (56 test forms)
 - e. Upload of district created science assessments to support 7 administrations for grades 3-10 (56 test forms)
 - f. Complete upload by August 29th, 2005 this includes 5 reading, 5 math, and 5 science tests at each grade level loaded into the system and ready for delivery
 - g. First test administration August 29th, 2005
 - h. Remaining assessments will be loaded and ready for delivery no later than September 15, 2005. (2 reading, 2 math, and 2 science)

2. Content Services

- a. Creation of item explanations for two mathematics assessments at each grade level for tests that will be administered after October 5th. Tests will be 15 items in length.
- b. Palm Beach must identify the mathematics assessments for which TPR will create explanations by August 1st, 2005
- c. Provide PDF versions of constructed response items and rubrics available on the online system

3. Homeroom Assessment Center and Technology Services

- a. Homeroom Assessment Center license to support all students, teachers, and administrators in 3 pilot schools
 - i. Palm Beach must identify the pilot schools by August 1st, 2005.
- b. Account creation information will be transmitted via our auto import process. Student accounts will import district ID numbers for log-in.
- c. Data for account creation will be provided to The Princeton Review by August 15th, 2005
- d. Student information updates will occur once per week for the duration of the pilot
- e. Customization will include:
 - i. Co-branding
 - ii. Further discussions to clarify changes in report presentations and/or user interface
- f. Palm Beach secure item bank-all items and assessments for the Palm Beach program shall be secure with only access available to Palm Beach students and educators

4. Operational Deliverables

- a. Palm Beach will scan tests locally, using their own scanning equipment
 - i. TPR will provide ReviewScan software to all pilot schools by August 24th, 2005.
 - ii. TPR will provide student IDs for use with ReviewScan software, as well as instructions and training on use of ReviewScan as a part of trainings outlined in 5.a.
 - iii. ReviewScan will operate only with currently supported scanners
 - iv. Palm Beach will provide TPR with information about their scanner models and other relevant technical information by August 1st, 2005.
 - v. Palm Beach will provide all scan sheets for student use

5. Training and Professional Development

- a. Palm Beach will provide pilot school contact people by August 1st, 2005
- b. Up to fourteen (14) 90-minute training sessions per group (teachers and administrators)
 - i. Two 90 minute training sessions in elementary schools
 - ii. Six 90 minute training sessions in middle schools by subject area (2 math, 2 reading, and 2 science)
 - iii. Six 90 minute training sessions in high schools by subject area (2 math, 2 reading, and 2 science)
- c. Training dates to be determined and delivered prior to August 29th, 2005, as possible
- d. Up to seven (7) 90-minute follow-up professional development sessions
 - i. PD session content to include:
 - a. Data differentiated instruction
 - b. Report interpretation
 - ii. One 90 minute training sessions in elementary schools
 - iii. Three 90 minute training sessions in middle schools by subject area (1 math, 1 reading, and 1 science)
 - iv. Three 90 minute training sessions in high schools by subject area (1 math, 1 reading, and 1 science)

6. Project Management

- a. Dedicated, on-site support to the District with respect to implementation of the Formative Assessment Program pilot.
- b. Dedicated account manager will provide support until the end of pilot on February 28, 2006
- c. Dedicated account manager will provide additional follow up professional development as mutually agreed by Palm Beach and The Princeton Review
- d. Program user guide
- e. Ongoing support
 - i. Help Desk

Program Cost

\$ 194,400

Roles & Responsibilities

1. Palm Beach will deliver to TPR all operational requirements and details. This includes information on the participating schools, teachers, and students in the required format for account creation and configuration of Homeroom Assessment Center.
2. TPR and Palm Beach will work collaboratively to ensure the upload of district created assessment forms
3. Palm Beach will determine which assessments will be uploaded and delivered per the schedule listed in this Statement of Work and provide those assessments to The Princeton Review in the proper sequence.
4. The Princeton Review will provide training and professional development.
5. TPR will configure a localized ReviewScan solution for the district's scanners

Key Terms and Conditions

1. A project Work Plan will be developed and approved by both The Princeton Review and Palm Beach. The Work Plan will outline specific timeframes for each of the deliverables listed here. The Work Plan that is mutually agreed upon will serve as the ruling document for timelines and deliverable specifics
2. Any additional content or technical requirements requested that are not addressed in the original project work plan may result in incremental costs and additional time to complete deliverables for the entire program.
3. The Princeton Review will bill Palm Beach as follows:
 - a. August 31, 2005: 25% of contract value
 - b. October 31, 2005: 50% of contract value
 - c. December 31, 2005: 25% of contract value