

**OLD DOMINION UNIVERSITY
STANDARD CONTRACT
CONTRACT NO. 20-ODU-03-JNH**

This contract entered into by and between Tutor.com Inc. hereinafter called the “CONTRACTOR”, and **Old Dominion University**, hereinafter called the “University”.

WHEREAS the CONTRACTOR was selected by the University to enter into an agreement FOR THE SPECIFIED GOODS/SERVICES.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein contained, the CONTRACTOR and University agree as follows:

I. PERIOD OF PERFORMANCE:

- A. The contract shall commence on January 1, 2020, and will be in effect through December 31, 2020, unless earlier cancellation/termination;
- B. Upon mutual consent, Contractor and University shall reserve the right to renew this agreement annually for up to five (5) additional one-year periods; and
- C. Any necessary amendments or modifications to the terms and conditions of said agreement shall be in writing as a modification to this agreement, and enforceable as though written herein.

II. ENTIRE CONTRACT AGREEMENT:

The following documents, by inclusive and/or reference, shall constitute the *Contract Documents* for this Agreement, as follows:

- a. This fully executed agreement;
- b. The Request for Proposals #20-ODU-03-JNH dated August 14, 2019;
- c. The Contractor’s proposal response dated September 17, 2019, excluding Page 58, Section Tutor.com – Legal Requirements, Proposed Deviations and Exceptions;
- d. The Contractor’s Best and Final Offer (BAFO) dated November 20, 2019;

III. AUTHORIZED CONTRACT PARTICIPATION: In accordance with the *University’s Rules Governing Procurement of Goods, Services, Insurance and Construction (“Rules Document”)*, specifically §6, Cooperative Procurement, it is the intent of this contracts to allow any public body, public or private health or educational University’s, or **Old Dominion University’s** affiliated agencies and/or corporations, access and use of any subsequent contract(s), as authorized by the Contractor(s).

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), any resultant contract(s) may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. The Contractor(s) shall notify **Old Dominion University** in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor(s) will provide semi-annual usage reports for all entities accessing the contract(s). Participating entities shall place their own orders directly with the Contractor(s), and shall fully and independently administer their use of the contract(s), including contractual disputes, invoicing and payments, without direct administration from **Old Dominion University**. **Old Dominion University** shall not be held liable for any costs or

damages incurred by any other participating entity as a result of any authorization by the Contractor(s) to extend participation and use of the contract(s). It is understood and agreed that **Old Dominion University** is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract(s) no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

IV. SCOPE OF WORK

A. General:

The selected Offeror will work with the Center for High Impact Practices to design, develop, and provide maintenance and support for an online tutoring platform.

B. Specific:

Contractor shall, at a minimum, be responsible for providing the following:

- a. Capable of integration with shibboleth, and Blackboard.
- b. Integration compatible with the current version of Blackboard Ultra and Canvas LMS systems (version as of the time of proposal submission) and must conform to LTI 2.0 standards (if used). Solution should make provisions for the access and use of API's by Old Dominion University to gather usage data based on the IMS Caliper v1.1 standard.
- c. 1:1 tutoring; one tutor with one student in one session. Tutors must not toggle between multiple tutoring sessions.
- d. On-demand tutoring – no appointment necessary – and demonstrate the scale of tutoring supply to cover 24 hours, 7 days a week with low wait times.
- e. Real-time and on-demand reports that generate data and analytics to flag students who may need more support.
- f. 24/7 on-demand tutoring availability for subject areas across Math, Sciences, Social Sciences, Business, Technology, World Languages and Nursing topics.
- g. Maintain a high student satisfaction rate and a recommendation rate.
- h. Have wait times averaging under two minutes for live, on-demand tutoring.
- i. Have tutors who undergo a rigorous vetting process that validates subject matter expertise and tutoring ability.
- j. Conducting a criminal background check of all employees, including tutors
- k. Only charge for actual session time used – without minimum and incremental charges.
- l. Should not use a “greeter model” where students are required to wait again in the classroom while a tutor finishes up with another student.
- m. Future development of the platform during the next 2-3 years.
- n. Tutor mentoring program and professional development for their tutors.
- o. Easy access to learning analytics data for faculty and administrators through a custom dashboard and on demand reporting.
- p. An in-house technology team.
- q. Should not charge for an agreed upon number of no shows of scheduled sessions.
- r. Record and archive all student sessions for no additional fee.

- s. Maintain all audio transcripts must also be recorded and available for review as well as transcribed.
- t. Services must allow for accessibility for students with unique needs and learning challenges.
- u. Must facilitate student feedback at the end of every session.
- v. Platform classroom must possess whiteboard capabilities including a graphing calculator, a code editor and a text editor.
- w. Students must be able to share and upload documents in multiple formats (PDF, word document, Excel, PowerPoint etc.)
- x. Should have a team of professionals dedicated to client support and access to a training resource library.

V. FEES AND PRICING

- A. The following fee schedule shall remain in effect during the entire term of the contract agreement, including any and all associated renewal period options.
- B. Upon mutual agreement by and between the Contractor and the University, stated parties may faithfully negotiate new initiatives, programs, and/or services related to providing an on-going and successful program as described herein, and associated costs for same.
- C. Negotiations may be conducted at any time during the contract term, and may also be conducted multiple times during any twelve-month period, as deemed necessary by either party.

Description	Cost
Per Hour, Live, One to One Tutoring Service – Per Hour	\$26
Integration Fee (Blackboard, Shibboleth) – One Time Fee	\$500
*Optional Feature - Meeting Spaces License (unlimited users) – Annual Fee	\$5,000
*Optional Feature - Meeting Spaces Training and Support – Annual Fee	\$1,000

VI. REPORTING AND DELIVERY REQUIREMENTS

UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

- A. Periodic Progress Reports/Invoices: The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.
- B. Final Actual Involvement Report: The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison

of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the bid, and the actual percent of the total estimated contract value.

VII. GENERAL TERMS AND CONDITIONS

- A. ADVERTISING: Contractor agrees that no indication of such sales or services to the University will be used in product literature or advertising.
- B. APPLICABLE LAWS AND COURTS: This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The University and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 23-38.90). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations and policies of the University.
- C. APPLICABLE LEGISLATION AND MANUAL: This contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated Rules Governing the Procurement of Goods, Services, Insurance and Construction (“the Rules”) and the Purchasing Manual for Universities of Higher Education and their Contractors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at www.odu.edu/procurement under “Information for Contractors”.
- D. ASSIGNMENT OF CONTRACT: This contract shall not be assignable in whole or in part without the written consent of the University.
- E. AVAILABILITY OF FUNDS: The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.
- F. AUDIT: The Contractor shall retain all books, records, and other documents relative to any resulting contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- G. CHANGES TO THE CONTRACT: During the term of any resulting contract, including any and all applicable extensions and/or renewals, changes may be made to the contract in any of the following ways:
 - a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written contract to modify the scope of the contract.
 - b. The University may request and issue change orders within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include,

but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the University's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the University with all vouchers and records of expenses incurred and savings realized. The University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the University within thirty (30) days from the date of receipt of the written order from the University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Purchasing Manual for Universities of Higher Education and their Contractors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the University or with the performance of the contract generally.

H. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the University may have.

I. DISCOUNTS:

- a. **Prompt Payment Discounts**: The University will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment of (20) calendar days or longer will be calculated in determining net low proposal.
- b. **Special Educational Or Promotional Discounts**: The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

J. DRUG-FREE WORKPLACE: (*the Rules §11.*)

During the performance of any resulting contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

K. EMPLOYMENT DISCRIMINATION: (the Rules §10.)

During the performance of any resulting contract, the Contractor agrees to:

- a. Not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, and to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the above nondiscrimination clause.
- b. State in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that such Contractor is an equal opportunity employer.
- c. Certify all notices, advertisements and solicitations shall be placed in accordance with federal law, rule or regulation deemed sufficient for the purpose of meeting these requirements.
- d. Include the provisions of foregoing paragraphs 1., 2., and 3. in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

L. EXCLUSIVITY: The University reserves the right to procure goods or services covered under any resulting contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.

M. GURANTEE OF WORK:

- a. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.
- b. If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or

workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:

- a. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - b. Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
 - c. Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
- c. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
 - d. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the University may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
 - e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
 - f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the contract documents. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this contract.
 - g. In the event the work of the Contractor is to be modified by another Contractor, either before or after the final inspection, the first Contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

- N. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any third party claims, damages and actions of any kind, whether at law or

in equity, arising from or caused by i.) the infringement by Contractor or any third party trade secret, copyright or patent; or ii) breach by Contractor of any obligations or representations under this Agreement, except in any case to the extent such action or claim is based on the negligence or intentional misconduct of the University.

O. PAYMENT PROVISIONS:

a. By the University:

a. Prompt Payment: **(the Rules §42.)**

- i. The University shall promptly pay for the completely delivered goods or services by the required payment date.
- ii. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.
- iii. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

b. Defect Or Impropriety In The Invoice Or Goods And/Or Services Received: **(the Rules §43.)**

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the University shall notify the Contractor of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

c. Date Of Postmark Deemed To Be Date Payment Is Made: **(the Rules §44.)**

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

d. Interest Penalty; Exceptions: **(the Rules §44.)**

- i. Interest shall accrue, at the rate determined pursuant to subsection ii., on all amounts owed by the University to a Contractor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.
- ii. The rate of interest charged the University pursuant to subsection i. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.
- iii. Notwithstanding subsection i., no interest penalty shall be charged when payment is delayed because of disagreement between the University and a Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

- iv. This section shall not apply to retainae on construction contracts that provides for progress payments, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a Contractor from receiving interest on such funds under an approved escrow agreement.
 - v. Notwithstanding subsection i., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection 2. on amounts withheld that remains unpaid after seven days following the payment date.
- b. To Contractor:
- Contractor is hereby obligated:
- i. To submit all invoices for goods/services ordered, delivered and accepted directly to:
 - a. Old Dominion University
Finance Office
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
 - b. invoice@odu.edu
 - ii. All invoices shall include:
 - a. Vendor Name, 'Remit To' Address, FEIN, or Social Security Number (Individual Contractor);
 - b. Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
 - c. Purchase Order Number;
 - d. University Contact;
 - e. Description of provided goods/services;
 - f. Quantity Delivered per line item;
 - g. Unit and Extended Cost per line item; and
 - h. Total Amount Due
 - iii. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.
 - v. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until

a settlement can be reached. Upon determining that invoiced charges are not reasonable, the University shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the University of its prompt payment obligations with respect to those charges which are not in dispute.

- vi. When applicable, Contractor shall deliver to the University, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or University, or other appropriate penalties may be assessed in lieu of withholding such payment.

c. To Subcontractors: **(the Rules §45.)**

Under any resulting contract, Contractor shall be obligated:

- i. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- ii. To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- iii. To pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the University, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the University.

- A. **SEVERABILITY:** The provisions of any resulting contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

B. **TERMINATION WITH CAUSE:**

- 1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University shall give Contractor written notice and reasonable opportunity to cure such default by certified mail/return receipt requested.
- 2. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor.

3. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
 4. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.
 5. Contractor may, upon written notice to University terminate the Agreement if the University materially breaches the Agreement and fails to cure within 30 days.”
- C. TERMINATION FOR NON-APPROPRIATION OF FUNDS: The University may terminate this Agreement upon thirty (30) days written notice given by the University if sufficient funds are not provided or allotted in future approved budgets of the University at the time the University’s payment obligation may be required to continue this Agreement. Notwithstanding the foregoing, if access to the Subscribed Products was provided but not yet paid for prior to termination, Contractor will be entitled to receive a pro rata portion of the Fees attributable to the period of time that access was provided.
- D. TERMINATION BY UNIVERSITY FOR CONVENIENCE: The University may terminate any resulting contract at any time for convenience, in whole or in part, upon giving the Contractor notice of such termination.
- E. TESTING AND INSPECTION: The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- F. WAIVER: No failure of the University to exercise any right or power given to it by law or by any resulting contract, or to insist upon strict compliance by Contractor with any of the provisions of any resulting contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the University’s right to demand strict compliance with the terms of any resulting contract.

VIII. SPECIAL TERMS AND CONDITIONS

- A. CONTRACT AND RENEWAL TERM:
- a. The initial term of this contract shall commence upon final acceptance and execution, and expire on December 31, 2020;
 - b. Any resulting contract may be renewed by the University for five (5) successive one-year periods under the terms and conditions of the original contract except as stated in 2a. and 2.b. below. Cost considerations may be negotiated only at the time of renewal. Written notice of the University’s intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
 - a. If the University elects to exercise the option to renew the contract for an additional one-year period *after the initial term*, the contract price(s) for the additional one year shall not exceed the contract price(s) of the initial contract term by the lesser of (1) the

percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

- b. If during any subsequent renewal periods, the University elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

B. COMPANY PERSONNEL STANDARDS:

- a. Contractor shall provide trained personnel who shall be qualified to properly maintain/performance/test for services specified herein. If any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the University, the Contractor shall remove any such personnel and replace them with satisfactory personnel.
- b. Contractor shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The University retains the right to require the Contractor to halt all work activities until such conditions are resolved.

- C. INSURANCE: By signing this contract the Contractor certifies it will have the following insurance coverage at the time the contract is awarded and through the term of each contract renewal period.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The University must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- e. Professional Error & Omission - \$1,000,000
- f. Crime/Fidelity - \$1,000,000
- g. Data Breach - \$1,000,000

- D. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or gross negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement. NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT FOR CLAIMS DUE TO PERSONAL INJURY OR WILLFUL MISCONDUCT, CONTRACTOR'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE WILL NOT EXCEED 3 TIMES FEES PAID OR COMING DUE UNDER THIS AGREEMENT.

IX. ADDITIONAL SPECIAL TERMS AND CONDITIONS

A. DEFINITIONS:

- a. "Contract" includes the contract, this addendum and any additional addendums and attachments to the contract.
- b. "Equipment": The terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.
- c. "University Data" includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data.
- d. "Personally Identifiable Information" (PII) includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as defined in Virginia Code section 18.2-186.6 and/or any successor laws of the Commonwealth of Virginia; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "medical information" as defined in Virginia Code Section 32.1-127.1:05; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.
- e. "Security Breach" means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- f. "Service" or "Services" means any goods or services acquired by the University from the Contractor.
- g. "Software": The terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

B. AUDITS:

- a. The University reserves the right in its sole discretion to perform audits of the Contractor at the University's expense to ensure compliance with the terms of this Contract. The Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all contracts under which the Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If the Contractor must under this contract create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, protected health information, or financial or business data that is restricted data such as transaction data, the Contractor will at its expense conduct or have conducted at least annually a(n):
 - a. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests the Contractor's security policies, procedures and controls;
 - b. vulnerability scan, performed by a scanner approved by the University, of the Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Contract; and
 - c. formal penetration test, performed by a process and qualified personnel approved by the University, of the Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Contract.
- c. Additionally, the Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this Contract. The University may require, at University expense, the Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

C. COMPLIANCE:

- a. The Contractor will comply with all applicable laws and industry standards in performing services under this Contract. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to the Contractor upon request.
- b. The Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or the Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Section 508 of the Rehabilitation Act via a Voluntary Product Accessibility Template (VPAT), and Federal Export Administration Regulations, Defense Federal Acquisition Regulation, and NIST 800-171 for Controlled Unclassified Information.
- c. If the Payment Card Industry Data Security Standards (PCI_DSS) are applicable to the Vendor's service provided to the University, the Vendor will furnish proof of compliance with PCI-DSS.

- D. CONFIDENTIALITY (University): The University agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with *the Rules §34*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the University.
- E. CONFIDENTIALITY (Contractor): The Contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this contract, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.
- F. DATA PRIVACY:
- a. The Contractor will use University Data only for the purpose of fulfilling its duties under this Contract and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by this Contract or as otherwise required by law.
 - b. University Data will not be stored outside the United States without prior written consent from the University.
 - c. The Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under this Contract. The Contractor will ensure that the Contractor's employees who perform work under this Contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Contract.
 - d. If the Contractor will have access to the University's Education records as defined under the Family Educational Rights and Privacy Act (FERPA), the Contractor acknowledges that for the purposes of this Contract it will be designated as a "school official" with "legitimate educational interests" in the University Education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed on school officials. The Contractor will use the Education records only for the purpose of fulfilling its duties under this Contract for University's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Contract, required by law, or authorized in writing by the University.
- G. DATA TRANSFER UPON TERMINATION OR EXPIRATION:
- a. The Contractor's obligations shall survive termination of this Contract until all University Data has been returned or Securely Destroyed.
 - b. Upon termination or expiration of this Contract, the Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. The Contractor shall ensure that such

transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.

- c. In the event that the University requests destruction of its data, the Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred University data. The Contractor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. The Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to the Contractor's facilities to remove and destroy University-owned assets and data. The Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. The Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

H. DATA SECURITY:

- a. The Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. The Contractor will use industry-standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Contract.
- c. Without limiting the foregoing, the Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) in accordance with latest version of National Institute of Standards and Technology Special Publication 800-53.
- d. If the Contractor will store Personally Identifiable Information as part of this contract, the Contractor warrants that the information will be stored in accordance with latest version of National Institute of Standards and Technology Special Publication 800-53.
- e. The University may inspect the data center used to store and process University Data annually or at any time upon request.

I. DATA AUTHENTICITY, INTEGRITY AND AVAILABILITY:

- a. The Vendor shall maintain a formal security program in accordance with industry standards that is designed to: (i) ensure the security and integrity of University Data; (ii) protect against threats or hazards to the security or integrity of University Data; and (iii) prevent unauthorized access to University Data.

- b. The Vendor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, “is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.”
 - c. The Vendor will ensure backups are successfully completed daily or more frequently and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.
 - d. The Vendor will maintain an uptime of 99.99% or greater, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations.
- J. DISCLOSURE: Unless expressly agreeing to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by the Contractor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
- K. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS: The Vendor shall ensure that its employees who will have potential access to University Data have passed appropriate, industry standard, background screening and possess the qualifications and training to comply with the terms of this agreement.
- L. EXCESSIVE DOWNTIME: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than 2 consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the University. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within 7 days following the request for replacement.
- M. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- N. NO END USER CONTRACTS: This Contract is the entire contract between the University (including University employees and other End Users) and the Contractor. In the event that the Contractor enters into terms of use contracts or other contracts or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such contracts shall be null, void and without effect, and the terms of this Contract shall apply.
- O. NONVISUAL ACCESS TO TECHNOLOGY:
 - a. All information technology which, pursuant to this contract, is purchased or upgraded by or for the use of the University (the “Technology”) shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this contract:

- a. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
 - b. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
 - c. Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
 - d. the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
- b. Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.
 - c. Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.
 - d. If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.
 - e. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, § 2.2-3500 through § 2.2-3504 of the *Code of Virginia*.
- P. OWNERSHIP OF INTELLECTUAL PROPERTY: Contractor retains all rights, title, and interest in and to all aspects of the services and the technology platform for the delivering real-time, on-demand, online services ("Tutor.com Platform"), including but not limited to Contractor's proprietary Online Classroom and Contractor's proprietary on line Meeting Spaces service, recordings and transcripts of tutoring sessions that Contractor will use for internal training and quality control purposes. Contractor will provide to the University and its End Users the online tutoring Services set forth in a Purchase Order. "End User" means students who are properly registered to attend classes at the University.
- Contractor provides the Services through the Online Classroom, and during the term of this Agreement and subject to the terms and conditions of this Agreement. Tutor.com grants the University and its End Users the non-exclusive, non-transferable right to access the Online Classroom in connection with the Services."
- Q. PRODUCT SUBSTITUTION: During the term of any contract resulting from this solicitation, the Contractor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
- R. QUALIFIED REPAIR PERSONNEL: All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified

technicians properly authorized by the manufacturer to perform such services. The University reserves the right to require proof of certification prior to award and at any time during the term of the contract.

S. REQUESTS FOR DATA, RESPONSE TO LEGAL ORDERS OR DEMANDS FOR DATA:

- a. Except as otherwise expressly prohibited by law, the Contractor will:
 - a. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by the Contractor seeking University Data;
 - b. consult with the University regarding its response;
 - c. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
 - d. upon the University's request, provide the University with a copy of its response.
- b. If the University receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by the Contractor, the University will promptly provide a copy to the Contractor. The Contractor will promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response.
- c. The University may request and obtain access to University Data and related logs at any time for any reason.

T. SECURITY BREACH:

- a. Response. Upon becoming aware of a Security Breach, or of circumstances that are reasonably understood to suggest a likely Security Breach, the Contractor will notify the University within 72 hours, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, the Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. Liability. In addition to any other remedies available to the University under law or equity, the Contractor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach caused by the Contractor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach. The Contractor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

U. CERTAIN OBLIGATIONS AND RESTRICTIONS

- a. University will not allow the services or Tutor.com Platform including the Online Classroom and Meeting Spaces to be used by any person who is not a User. University will notify Contractor promptly of any known or suspected breach of Contractor's rights to the services or the

Tutor.com Platform that comes to its attention and will reasonably cooperate in Contractor's efforts to protect its rights.

- b. University, including its Users, will not (i) use, copy, create derivative works of, display, or modify the services (including any content available through the services) or the Online Classroom except as permitted by this Agreement, (ii) disclose, reproduce, sell, or distribute any content available through the services to any third party, or (iii) decompile, reverse engineer, or otherwise attempt to discover any source code of the Online Classroom.
- c. University, including its Users, consistent with Contractor's privacy policy, will not communicate, upload to or distribute or publish through the Online Classroom 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.
- d. University, including its Users, will not (i) attempt to gain unauthorized access to the Services or the Online Classroom or use or access the Services or the Online Classroom in a way intended to avoid fees, (ii) interfere with or disrupt the Services or the Online Classroom or (iii) upload to or distribute through the Online Classroom any viruses, Trojan horses, worms, or other similar programs.

CONTRACTOR:
Tutor.com Inc.

Sandi White

UNIVERSITY:
Old Dominion University

By: _____

Name: Sandi White

Title: GM & VP

Date: 01/02/2020

By: _____

Name: Harry R. Smithson, Jr., CPPO

Title: Assistant Director, Procurement Services

Date: December 20, 2019

Signature Certificate

Document Ref.: UBHLN-NYBGQ-K5XKH-BK5ZN

Document signed by:

	<p>Sandi White Verified E-mail: sandi.white@tutor.com</p> <p>IP: 108.195.191.123 Date: 02 Jan 2020 20:35:18 UTC</p>	<p><i>Sandi White</i></p> 
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