



## THE TEXAS A&M UNIVERSITY SYSTEM

Office of Procurement and HUB Program

### **REQUEST FOR PROPOSAL**

**RFP NUMBER: RFP01-CIO-23-162**

**LEARNING MANAGEMENT SYSTEM**

**PROPOSAL MUST BE RECEIVED PRIOR TO:**

**2:00 P.M. Central time (CDT) on September 27, 2023**

**EMAIL RFP RESPONSES TO:**

**[soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)**

**SUBJECT LINE: CIO-23-162 Learning Management System**

**Attn: Jeff Zimmermann**

**NOTE:** Proposal response must be received by The Texas A&M University System Office of Procurement and HUB Program before the date and time specified for receipt of proposal as stated within Section 2.3 of this RFP. After the due date and time, only the names of respondents will be made public.

### **REFER INQUIRIES TO:**

Jeff Zimmermann, Executive Director

Procurement and Business Services | HUB Program

The Texas A&M University System

Email: [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)

All proposals shall become the property of The Texas A&M University System and the State of Texas upon receipt. Proposals may be subject to public review after contracts have been executed. Refer to Section 5G for more information regarding confidential and proprietary information.

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## SECTION 1 - INTRODUCTION

### 1.1 **Scope**

The Texas A&M University System ("A&M System") Office of Information Technology ("IT") is seeking proposals for learning management systems ("LMS") to assist its member universities and agencies ("Member" or "Members") and ensure we have the best available tools for our faculty and students to improve their teaching and learning processes. In addition, A&M System IT wishes to ensure the solution(s) are robust enough to support any Member in the A&M System, assist with the change management process of consolidating systems, enable the faculty at a single institution to only learn one (1) system to meet all of their teaching and learning goals, and accomplish all of this with a sustainable economic process.

It is the intent of A&M System to establish a master services agreement ("Agreement") with one or more firms (referred to as "Respondent" or "Vendor") to meet the needs of its Members per the requirements listed in Section 3.

By submitting responses, each Respondent certifies that it understands this Request for Proposal ("RFP") and has full knowledge of the scope and nature of the opportunity described herein. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFP will be the sole responsibility of the Respondent. Proposals shall be in accordance with the terms, conditions, and requirements set forth in this RFP.

### 1.2 **About The A&M System**

The Texas A&M University System is one of the largest systems of higher education in the nation, with a budget of \$7.2 billion. Through a statewide network of 11 universities, a comprehensive health science center, eight state agencies, and the RELLIS Campus, the A&M System educates more than 152,000 students and makes more than 24 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceed \$1 billion and help drive the state's economy. More information about the A&M System and all its members can be found the [A&M System About](#) page.

### 1.3 **Priorities/Expectations**

Respondents should note the following priorities/expectations with regard to the possibility of A&M System establishing a contractual relationship with any Respondent:

- (a) *Ensuring a Quality Level of Service.* This priority encompasses the quality of the level of service that can be provided to all A&M System Members in a timely, cost-effective manner. A&M System is seeking a Respondent or Respondents that will ensure the provision of such quality in its delivery of service through proven techniques and established metrics.
- (b) *Level of Experience and Expertise.* Respondent must demonstrate its capabilities in providing the utmost level of experience and expertise to ensure successful completion of services as determined by A&M System.
- (c) *Delivery Efficiency as it Relates to Total Costs.* Respondent must demonstrate its ability to deliver the required services in a cost-effective and timely manner while not sacrificing the quality required by the A&M System.

**1.4 Calendar of Events**

<b><u>Activity</u></b>	<b><u>Date</u></b>
Release of Request for Proposal	August 25, 2023
Deadline to Submit Questions	September 8, 2023
Release of Addendum (if applicable)	September 15, 2023
Responses Due	<b>September 27, 2023 by 2:00 p.m. CDT</b>
Interviews (at A&M System's option)	TBD
Selection of Respondents	TBD

A&M System will make every effort to adhere to the above schedule. The schedule, however, is subject to change. This may be in the event that further clarification of responses or terms of contract are in the best interest of A&M System and/or in the event A&M System requires more time to ensure that the selection of the Respondent is in accordance with its policies, rules and regulations, as well as actual timing needs.

**1.5 Performance Period**

Should A&M System, in its sole discretion, enter into an Agreement with one or more successful Respondents as a result of this RFP, the resultant Agreements shall be effective upon execution for a period of five (5) years. Any resultant Agreement may be extended for up to two (2) additional two (2) year terms, providing all parties mutually agree in writing on the extension. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by the A&M System and negotiated in writing with the successful Respondent. The A&M System reserves the right to amend the terms of any resultant agreement as necessary to meet state or federal requirements.

## SECTION 2 - INSTRUCTIONS FOR RESPONDENTS

### 2.1 General Information

The A&M System is seeking proposals from qualified companies for innovative approaches to implement learning management systems for its Members. This RFP outlines the scope and requirements within Section 3. While it is the intent of the A&M System to establish an Agreement with a pool of qualified providers for the services stated within this RFP, there is no guarantee that an award will be made or any agreement executed. If a pool of providers is established as a result of this RFP, Members will have the option to choose services and providers from the pool at their discretion.

Submittals are to be in accordance with the outline and specifications contained herein, are to remain in effect a minimum of 120 days from the date of submission, and may be subject to further extensions as negotiated. A statement to this effect should be contained in the Respondent's cover letter.

This RFP contains specific requests for information. Respondents are encouraged to examine all sections of this RFP carefully, as the degree of interrelationship between sections is critical. In responding to this RFP, Respondents are encouraged to provide any additional information they believe relevant.

Clause headings appearing in this RFP have been inserted for convenience and ready reference. They do not purport to define, limit or extend the scope of intent of the respective clauses. Whenever the terms "must" "shall" "will" "is required" or "are required" are used in the RFP, the subject being referred to is to be a required feature of this RFP and critical to the resulting submittal.

In those cases where mandatory requirements are stated, material failure to meet those requirements could result in disqualification of the Respondent's response. Any deviation or exception from RFP specifications must be clearly identified by the Respondent in its submittal.

Expenses for developing and presenting proposals shall be the entire responsibility of the Respondent and shall not be chargeable to the A&M System. All documentation submitted with the proposal response will become the property of the A&M System.

### 2.2 Examination of the Request for Proposal

Before submitting, each Respondent will be held to have examined A&M System requirements outlined in Section 3 and satisfied itself as to the existing conditions under which it will be obligated to perform in accordance with specifications of this RFP.

No claim for additional compensation will be allowed due to unfamiliarity with the specifications and/or existing conditions. It shall be understood that the Respondent has full knowledge of all of the existing and/or revised conditions and accepts them "as is."

### 2.3 Submittal Instructions

All proposals must be received by the A&M System, no later than **2:00:00 p.m. CDT, September 27, 2023** electronically via email to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu) with the subject line of "**RFP01 CIO-23-162 – Learning Management System.**" The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. It is each Respondent's responsibility to ensure that the entire submittal response is received by the A&M System by the

deadline stated above regardless of submission method. **Late proposal responses will not be considered under any circumstances.**

A file sharing tool may be used to submit the proposal response if large file sizes are an issue. If opting to use a file sharing tool it is recommended that Respondents send a test file prior to the due date.

Submittal File Format: Submission shall be saved as two (2) separate files in Adobe Portable Document Format (PDF) according to the items listed below and named as such; **I) “company name – Proposal”** and **II) “company name – Forms.”**

## 2.4 Proposal Components

The following documents and all requirements from noted sections are to be returned as part of your proposal submittal. Failure to include these documents may be basis for response disqualification.

### **I. Proposal**

- ✓ Cover Letter to include a brief introduction with interest and capability of the Respondent.
- ✓ Table of Contents
- ✓ Proposal, to include Sections 4.1 – 4.3
- ✓ Pricing Proposal, Section 4.4

### **II. Forms**

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Non-Collusion Affidavit (Exhibit B) – signed and notarized
- ✓ HUB Subcontracting Plan (Section 4.6)

Proposal format: The proposal response shall be presented in the order listed above with sections noted accordingly for easy reference. The Table of Contents shall provide page numbers for each section of the proposal.

Note: Additional information regarding the Execution of Offer and Non-Collusion Affidavit.

- Execution of Offer: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record. Signature can be done electronically with DocuSign, Adobe or another similar tool.
- Non-Collusion Affidavit: The Respondent signature as well as the notarization on this document may be done electronically with DocuSign, Adobe or another similar tool. An agreement may not be executed with the awarded Respondent until this document is fully signed and notarized.

## 2.5 Inquiries and Interpretations

All questions concerning this RFP are to be directed, in writing, to Jeff Zimmermann, Executive Director, Procurement and Business Services to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu). Respondent may not contact other individuals at A&M System to discuss any aspect of this RFP, unless expressly

authorized by the A&M System Procurement office to do so.

Questions regarding the RFP, including questions for more data or information beyond that included in this RFP and any attachment, should be presented in writing. **Deadline for submission of questions is September 8, 2023.** The A&M System will publish all questions with responses according to the schedule in Section 1.4.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum/amendment and posted to the Electronic State Business Daily (ESBD) at the following site; <http://www.txsmartbuy.com/sp>. (Input Agency Number "710" and select "Posted" for the Status)

It is the responsibility of all Respondents to check the ESBD for any and all addenda issued for this RFP. All such addenda/amendments issued by the A&M System prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall consider and acknowledge receipt of such in Exhibit A – Execution of Offer. Only those A&M System inquiries receiving a public reply via formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

## 2.6 Selection Process

The evaluation of the proposals shall be based on the information provided that the A&M System deems to represent the **best value** to the A&M System. The RFP provides the information necessary to prepare and submit proposals for consideration by the A&M System. All properly submitted proposals will be reviewed, evaluated, and ranked by the A&M System. The A&M System will rank the Respondents in the order that they provide the overall "best value" to the A&M System based on an evaluation of the responses to the RFP. The A&M System may interview one or more of the top ranked Respondents as part of the evaluation process.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications, on the reasonableness of the proposed fees for the services, and on the demonstrated ability to include businesses certified as a Historically Underutilized Business (HUB) in the state of Texas in the performance of a percentage of the scope of work; and if other considerations are equal, give preference to a Respondent who is certified as a HUB in the state of Texas, whose principal place of business is in the state of Texas, or who will manage the contract wholly from an office in the state of Texas.

The Respondent selected will be the one whose experience and qualifications, as presented in response to this RFP, establish them, in the opinion of A&M System, as well-qualified and offering the greatest benefits, experience and value to A&M System. A&M System may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should A&M System determine in its sole discretion that only one Respondent is fully qualified, or that one Respondent is clearly more highly qualified than the others under consideration, a contract may be negotiated and executed with that Respondent. The contract will be an agreement incorporating by reference all the requirements, terms and conditions of the solicitation and the Respondent's proposal as negotiated.

The most qualified Respondents as determined by A&M System MAY BE REQUIRED to interview with the evaluation committee before the final selection(s). If interviews are required, they will be done online through video conferencing, or in person if allowed at the time by A&M System guidelines and agreed to by both parties. A&M System will not provide compensation to

Respondents for any expenses incurred by the Respondent(s) for proposal preparation, submission or interviews that may be conducted.

Submission of proposals indicates Respondent's acceptance of the evaluation techniques and the recognition that subjective judgments must be made by A&M System during the evaluation process. The selection of the successful proposal(s) may be made by A&M System on the basis of the proposals initially submitted, without discussion, clarification, or modification. In the alternative, selection of the successful proposal(s) may be made by A&M System on the basis of negotiation with any of the Respondents. A&M System shall not disclose any information derived from the proposals submitted by competing Respondents in conducting such discussions.

All proposals must be complete and convey all of the information requested to be considered responsive. If a proposal fails to conform to the essential requirements of the RFP, A&M System alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

A&M System may perform reference checks and seek further information, as needed from all Respondents whose proposals A&M System, at its discretion, considers viable, based on the initial evaluation and scoring. The Respondent's response to this requirement officially authorizes A&M System to contact these organizations to discuss the services and other considerations that the Respondent has provided to such organizations and authorizes the organizations to provide such information to A&M System and Respondent shall and hereby does release and hold harmless A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the proposal.

A&M System reserves the right to accept or reject any or all offers, to waive informalities and technicalities, to accept the offer considered most advantageous, and/or to make the award to the most responsive Respondent(s).



## SECTION 3 - SCOPE AND SUPPORT

### 3.1 General

The A&M System is requesting proposals for learning management systems for use within each Member of the A&M System to include services for the implementation and operation. Ease of accomplishing the required scope will be included in the evaluation of every response within the Scope of Work. Discuss the steps to accomplish each task whenever possible. The LMS offered must meet the requirements stated in each section below.

### 3.2 System Administration

#### 3.2.1 System Overview and Implementation

- a. What hosting methods do you offer?
- b. What web browsers do you support?
- c. Do you have a mobile application for instructors?
- d. Do you have a mobile application for students?
- e. Describe the experiences you have had importing materials and activities from other commercial LMS systems into your system. Please include the following items in your answer:
  1. Problems you have encountered with gradebook calculations.
  2. Types of quiz questions you do not support that your peers do.
  3. Quiz settings your system typically does not read as intended by the originating system.
  4. If, in the originating system, a link to Discussion Topic 3 was placed directly in an HTML file, does the link still resolve to Discussion Topic 3 without a manual adjustment of the HTML file?
- f. Do you offer a “white glove” additional service to minimize the problems in importing content from other systems or training faculty? Specify the cost in the Cost section of this RFP.
- g. Do you support the LMS implementation directly or is it contracted out to an implementation partner? If so, who?
- h. What level of technical support do you provide for implementation?
- i. What type of documentation do you have to support implementation?
- j. How long does an implementation typically take?

#### 3.2.2 System Security and Disaster Recovery

- a. What security measures are in place for each hosting method?
- b. How do you monitor system security?
- c. How do you communicate security issues or events with the customer?
- d. Do you have a published disaster recovery plan?
- e. How often do you test your disaster recovery plan?
- f. Do you coordinate disaster recovery tests with the customer?
- g. What reports do you provide relating to disaster recovery plans and tests?
- h. What services or tools are available to LMS administrators and course instructors to

recover from accidental deletion? Include the steps for recovering all course content.

### **3.2.3 System Roles and Capabilities**

- a. What are the predefined LMS roles and their descriptions?
- b. Can system administrators create custom roles? What is the process?
- c. Are there predefined roles or custom role capabilities for advisors or success coaches? In these roles the relationship is not with students within the course, but with students across many courses.
- d. Can course section groups be created when multiple sections of courses are merged into one course site (e.g. cross-listed)?
- e. What tools are available for LMS administrators to review user access and permissions?
- f. What level of customization can be done to the course site by the administrators? This might include colors, logos, fonts, CSS, list of available tools, names of tools, placement of tools, and messaging from tools.
- g. Is there a “preferred name” option for users if they prefer not to go by their legal names?

### **3.2.4 Change Management and Data Retention**

- a. What is your data retention process?
- b. For how long are course design elements made available?
- c. For how long are student submissions, activity click streams, and scores made available?
- d. For how long is user account information and user centric activity made available? (Examples include first name, last name, log in history, and email inbox.)
- e. Describe your process for applying updates and the frequency of updates being applied.
- f. What is your process for classification of changes?
- g. What is the threshold for a change to be considered large?
- h. Do you have a separate workflow for large changes vs small?
- i. Discuss how The Texas A&M University System will play a part in deciding your roadmap.
  1. What is the process for how The Texas A&M University System will participate in this process and impact design decisions?
  2. Is there a public, or quasi-public way, for end-users to register requests and vote requests up or down?
- j. Describe your approach to addressing bugs reported by clients and other vendors. What is your process for bug reporting (who can report it, how must they report it, to whom do they report it)? How do you prioritize bug fixes? How do you communicate to clients and end users about bugs and bug fixes?
- k. Describe workflow when issues are communicated to client LMS administrators but not for public knowledge.
- l. Describe your “user group” made from your organization clients, how many members does it have, how often does it meet, who do they interface with in your company,

and how is this forum integrated into your change request, product development, and release management cycle?

### 3.2.5 Content and Product Integration

- a. Please describe how you integrate with the following standards, protocols, and providers.
  1. API
  2. Shibboleth
  3. Shibboleth with InCommon federation.
  4. Are you an LTI Consumer?
  5. Are you an LTI Provider?
  6. Can you import Common Cartridge?
  7. Can you export to Common Cartridge?
  8. Which SCORM version do you support?
  9. SAML?
- b. In what ways are you integrated with 3rd party book publishers and discipline-specific homework solutions to include: (1) Cengage, MacMillan, (2) McGraw Hill, and (3) Pearson MyLabs, with regards to them returning the clickstream data back to the LMS?
- c. Describe how you integrate with the following. What do they send back to you and what do they read from your system? If you only do an LTI integration and no API data is included in the integration, then please specify. If you have native functionality in your system that you are including in your RFP response that is doing similar work to these applications, then specify that as well.
  1. Web conferencing (e.g., Microsoft Teams, Zoom, Webex)
  2. Audio discussion tools (e.g., VoiceThread)
  3. Plagiarism detection (e.g., Turn It In, SimCheck, Grammarly)
  4. Video hosting sites (e.g., YouTube, Vimeo)
  5. Survey Tools (e.g., SNAP, Scantron, Qualtrics)
  6. Online Exam Proctoring Tools (e.g., Software Secure Remote Proctor Now, Examity, ProctorU, Respondus Lockdown browser, Proctorio)
  7. Google Apps for Education (GAPE)
  8. Exam Generating Tools (e.g., Respondus 4.0, TestGen)
  9. E-Portfolio Tools (e.g., Digication, TK20, ManeSync, Portolium)
  10. Proxy Tools (e.g., EZ Proxy)
  11. Video Platform integration (e.g., Kaltura)
  12. Lecture Capture Tool (e.g., MediaSite, Panopto, Echo360)
  13. Student Analytics (e.g., Civitas, Starfish, EAP)
  14. Contact Resource Management (e.g., Salesforce, Radius)
- d. If there is an additional cost for your system to provide exports of data to specific 3rd parties, then specify in the Cost criteria of this RFP. (We understand the 3rd party would have its own licensing costs, but we are specifically interested in knowing if there is cost in providing the data to the 3rd party.)
- e. Describe any relationships and processes you have with third party vendors that

- require the export and upload of LMS data into their systems for integrated analytics.
- f. Describe the process to alert customers of potential security issues with third party vendors (e.g., Examsoft/tokens).

### **3.2.6 Mobile Capabilities and Application**

- a. Please describe how the 10 most popular tools in your system function on smart devices (iOS and Android phones) and tablet native applications.
- b. Please describe what portions of your native mobile applications are accessible through the device's built-in accessibility features (VoiceOver and Zoom on iOS and TalkBack on Android).
- c. Does system allow fingerprint or face recognition to sign in on mobile platforms?
- d. Please describe what can be done through HTML5 or a web responsive design in a browser on an iOS or Android phone or tablet.
- e. Does your system allow users to interact in an 'offline' mode with materials and activities and then sync upon connectivity being re-established?

### **3.2.7 General Support**

- a. Discuss the general support you provide to LMS administrators, faculty, and students. If there is an additional cost for your system to provide different levels of support, then please specify in the cost criteria of this RFP. Specify if the support has been outsourced to a third party.
- b. Is your support 24/7 or extended weekdays?
- c. Is there a limit on the number of people that can open tickets?
- d. What opportunities for training are provided to LMS administrators?
- e. What opportunities for training are provided to faculty members?
- f. What opportunities for training are provided to students?
- g. What type of online communities and forums are available for customers?
- h. Do you offer self-help materials in the form of text, images, and captioned videos for LMS administrators
- i. Are your support technicians domestic or outside of the United States

### **3.2.8 Accessibility**

Under Texas Government Code Chapter 2054, Subchapter M, Texas Administrative Code 206.70 and Texas Administrative Code 213 and implementing policy of the Texas A&M Systems Regulations 29.01.04, Texas A&M University System must procure Products that comply with the accessibility standards when such products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, the Respondent must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

- a. Provide your Accessibility Conformance Report (ACR) with your RFP response. At a minimum your ACR should address accessibility, keyboard navigation, and screen reader accessibility. <https://www.itic.org/policy/accessibility/>
- b. Provide Policy Driven Adoption Vendor Self-Assessment (PDAA) with your RFP

response. This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations. <http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PolicyDrivenAdoptionVendorSelf-Assessment.docx>

- c. Are all areas of your application fully Unicode compliant in terms of both data entry and display?
- d. Does your application fully support the major world orthographies (i.e., Chinese, Japanese, Arabic), including those with non-English directionality (R-L, or top to bottom)? Can it accommodate any practical orthographic tradition (i.e., Cherokee syllabics) that can be handled within Unicode?
- e. Does your application fully support math and formal logic equation editors/languages? (LaTeX, Equation Editor and Math ML)
- f. What is your timeline for making all LMS tools fully accessible?

### **3.2.9 TX-RAMP Certification**

Respondent's product must meet the Texas Department of Information Resources ("DIR") definition of a cloud computing service. Respondent shall provide A&M System with evidence of its TX-RAMP compliance and certification at least thirty (30) days prior to the start of any agreement.

### **3.2.10 Non-Academic Support**

- a. Does your system support automated learner removal based on time enrolled?
- b. Can a learner's data in a course be reset?
- c. Can you manually complete or override learner progress?

## **3.3 Course and Instructor Tools**

### **3.3.1 Communications**

- a. Discuss your system's approach to communication. Some of the items to include are email, SMS messages, RSS feeds, push notifications, pull notifications (COB) and the use of Google Calendar to consume calendar events. What tools in your system utilize these communications and what tools do not?
- b. How does your system facilitate communication between each of the following roles?
  1. Instructor to student communication
  2. Student to instructor communication
  3. Student to student communication
  4. Instructor to instructor (especially with regards to course design and mentoring)
  5. If your system has roles for advisors, success coaches, or other members of campus, then please include these in your response. Typically, in these situations, the advisor's relationship is not with the course, but with some of the students across many courses. Can your system allow an advisor to see the correct students' progress in courses without showing them all students in a course?

- c. Communication between various rolls within a course and across courses creates an engaging learning environment. Does your system provide for the following instant messaging (chat) features:
  - 1. Change profile status from “Available, Invisible, Busy, etc.
  - 2. Ability for private instant message (chat).
  - 3. Ability to see only students in particular course shell/section
  - 4. Ability to all students of program/node
- d. When a student’s name is displayed in a roster, dropbox/assignment, discussions, quizzes, and grades, can an instructor communicate with them in the previously mentioned ways or only in some of the ways? If this is different for each tool, then please specify.
- e. Does your system allow instructors and students to create video and/or audio messages?
  - 1. Please describe how students can leverage MP4 and MP3 recordings in your system.
  - 2. Does your system have the ability to record, edit, and caption them?
  - 3. Can they be submitted as part of a Quiz, discussion post, or dropbox/assignment submission?
- f. Is there the ability for users to add an additional email address to their profile to receive notifications and other communications?
- g. Are there novel items in your system that may be used to create community or integrate with social media for students to build connections outside of the LMS for studying and projects?

### **3.3.2 Syllabus**

- a. Does your system provide a tool to enter syllabus information directly into the course?
- b. Does your system provide the capability to upload or imbed a syllabus into the course?
- c. Is there a way to make the syllabus of a course publicly viewable outside of the LMS? How would a student go about discovering the link for the syllabus of a particular course? Is there an API for the Syllabus URL so that we the URL can be called back to our schedule of classes and displayed there? (e.g., Integration with Student Information Systems such as Banner and University CMS such as Cascade)

### **3.3.3 Course Authoring, Import, Export**

- a. Does your system have the capability for an instructor to toggle between instructor (authoring) view and a “true” student view to see exactly what a student will see anywhere in the course? If so, describe this functionality.
- b. Does your system support import/export of entire courses from other courses, master courses, or development shells? If so, describe the process.
- c. Does your system support the export of course content and gradebook information for instructor archive. If so, describe the process.
- d. Describe the course content authoring tool and its capabilities.

- e. Describe the types of course content, media, or interactive content that can be created with the course authoring tool.
- f. What media types are supported in the course authoring tool?
- g. What media sources are supported in the course authoring tool (e.g., YouTube)?
- h. Describe the types of course documents that can be uploaded to the course authoring tool (e.g. .docx, .pptx, .pdf). Include any capabilities to batch upload, upload via .zip files, and drag-and-drop file uploads.
- i. Does your system contain a learning object repository (LOR) or do you have a partnership with a specific LOR that integrates with your product?
- j. Can your system harvest objects from other LORs such as MERLOT?
- k. Does your system support gamification of course content such as leaderboards, badges, or point totals outside the gradebook? If so, describe the functionality.

### **3.3.4 Collaboration, Discussions and Groups**

- a. Are discussions shown on homepage/dashboard? If so, can users respond from homepage/dashboard and still have the activity tracked?
- b. Can the instructor grade within the discussion posts?
- c. How are discussions displayed/filtered? (i.e., preview mode, nested, by name, by date and time, etc.)?
- d. Does your system have the capability for video or audio discussion posts?
- e. Does your system support assigning students in the course to working groups?
- f. Can discussion forms be assigned to specific student groups?
- g. Can the instructor create and assign groups for students?
- h. Can your system auto-assign students to groups?
- i. Can students create self-forming groups?
- j. In what ways can groups of students collaborate to create materials through the tools in your system?
- k. In what ways can groups collaboratively work on creating presentations?
- l. In what ways can an instructor provide feedback to a group and in what tools can group feedback be provided?
- m. Describe any other collaboration tools your system implements.
- n. What does your system provide related to the ideas of adaptive learning, individual learning, mastery learning, and competency-based education? Please provide examples.
  - 1. Describe how courses can be set up to be self-paced? In what ways can an instructor create learning paths through their courses.
  - 2. Describe how an instructor can scaffold the learning process by gatekeeping stages based on completion of prior stages.
  - 3. Describe how instructors can gate keep access between materials, activities, and grades to set up learning paths.
  - 4. What are the types of conditions available for gatekeeping?
  - 5. Are you limited to start dates, end dates, and an on/off manual switch?
  - 6. If you have other mechanisms such as group enrollment, section enrollment, completion status in written assignments, discussion posts, or grades, then please

specify all types.

7. For materials that students do not yet have access to, can students see these items so they know they exist, with a message that explains why they are not yet available, or are these “future” materials simply absent from the students’ screens?
8. Do you have a graphical representation in the course site that shows instructors and students where they are in the structured process and what the complete course looks like?
9. Is there a status bar that explains where the student is in that subset of material and activities?
10. How does an instructor declare what is in that subset of conditionally released materials?
11. For materials that students have already completed, can your system mark those materials as completed or partially completed by using icons or a color marking system?

### **3.3.5 Assignments, Assessments, Quizzes, and Tests**

- a. Describe the assessment types supported by your system.
- b. Describe the types of questions supported in your system’s quiz and test tool.
- c. Does your system handle question banking (the act of randomly pulling questions for each student from question pools)?
- d. If your system supports question banking (the randomly pulling questions from multiple banks for a single quiz) then is there any looping back of analytics from students answering questions in past iterations of a course resulting in a “difficulty score” for each question? 2. Can this score then be used as part of the randomizing and selection of questions for future students?
- e. Is there an editable ‘preview’ that allows online exam creators to find and fix errors in questions, as well as answer keys, from a single view, rather than having to drill down question by question?
- f. How does your system handle the grading of quizzes and exams involving large question libraries and randomized question sets? Example: A question library of 150 items, presented to students in 3 groupings with 50 questions being available in each grouping and 10 questions being pulled for each grouping in a random order. How does the instructor:
  1. Find a mis-keyed question to edit/rekey it?
  2. Go from finding the item to editing the text or properties of the item?
  3. Regrade the existing student attempts (correct the grading)?
  4. Ensure that the edited/corrected item is stored in the question library?
  5. Log that a change has been made, when and by whom?
  6. Upload multi-media content (provide list of compatible file types)?
  7. Create mathematical equations (provide list of compatible Math languages and software)?
- g. Does your system have a native exam authoring tool? Can an exam be created from an external data source (e.g., Word or PDF document)?



- h. Does your system have simplistic preventative cheating mechanisms for exams/quizzes?
  - 1. Ability to randomize questions without being in a pool.
  - 2. Ability to randomize answers within or without being in a question pool.
  - 3. Provide a list of the type of assessment questions available.
  - 4. Ability to auto save and submit exam/quiz once time expires.
  - 5. How often is an exam/quiz auto saved while taking the exam/quiz?
  - 6. Ability to see in real-time who is currently taking the exam?
- i. Does your system provide capability for total point error check? Example. If a quiz/exam has 25 questions worth 4 points each equaling 100 points, but the instructor goes into the Gradebook and says the quiz/exam is worth 200 points. Will the new LMS notice the discrepancy between the total points on the quiz/exam in the quiz/exam and the Gradebook? Conversely, if the quiz/exam is worth 200 points (50 questions, 4 points each) but the instructor goes into the Gradebook and says the quiz/exam is worth 100 pts. In the first scenario, the student will receive a lower grade (100/200, rather than 100/100). In the second scenario the student will receive a higher grade (185/100 rather than 185/200). These are real scenarios that need to be recognized by the Gradebook and provide an error message.
- j. What is the management of quizzes and exams during the time in which they are available?
- k. Can errors be fixed while students are taking the quiz with their screens being updated?
  - 1. For some of the students who have not yet started do they see the new version?
  - 2. Can errors be fixed after all students have submitted with the fix saved for future attempts? Can the fix be made on the screen you are grading?
- l. How does the system manage versioning in exams?
- m. Does your system support adaptive testing, meaning that the test adapts to the performance of the student each question at a time?
- n. Does your system have the ability for the Gradebook to dynamically record score by: last attempt, most recent, highest score, and/or average of attempts?
- o. Describe the ease of use in respect to adjusting exam/quiz time for students with time accommodations. (30 exams, 6 students in the course, how is exam time allowed adjusted to meet student accommodation and consider students who may require time and a half- or double-time extensions in the same course).
- p. Can the software open an exam for a student before it opens it for the entire class?
- q. Is time extension set at a course level or can admin set at user profile level?
- r. Does your system provide a native e-portfolio tool? If so, describe its functionality.
- s. What happens to student e-portfolio materials upon graduation?
- t. Can student e-portfolio be archived and/or exported?
- u. Providing examples of quality work for students to review is an effective means of setting high standards for student work. Does your system provide a workflow for letting students provide 'consent' for there to be seen by other students. If so, describe the workflow.
- v. Can instructors highlight an assignment submission as a great example so that other

students can understand what is expected of them?

- w. Describe how late work scheduling is handled in your system?
  - 1. Can customizable due date and/or content access notification for only specified students be set?
  - 2. Can a secondary date be set for work submitted later so that students can still submit assignments for partial/full credit?

### 3.3.6 Grade Book and Grading Rubrics

- a. Describe the grade tool in your system LMS and the ease of its use for both faculty and students.
  - 1. Does your grade tool allow for multiple scoring calculations in a single course site?  
**Example 1:** One calculation for undergraduate students and another for graduate students that co- exist in a single course site; or one calculation for honors students and another for regular students that co-exist in a single course site.  
**Example 2:** On week 4 there is a quiz with a single question that asks students if they prefer to take a multiple-choice exam or writing assignment. Each student makes a choice that then informs the grade tool how to calculate the final grade in both a points-based grade book and a percentage grade book.
- b. Does your grading system handle mastery-oriented grading schemes easily versus percent or points- based systems?
- c. Can your grading system handle multiple variations of an assignment within a single column within the gradebook?
- d. In a discussion tool there are unique grading situations: the initial post, the reply from one student to another and a response to the critique by another student. How does your system handle the grading process of multiple posts in a single discussion assignment?
- e. Can you bulk upload grades from an external spreadsheet into the grade book?
- f. Can grading be done in groups (i.e., the instructor's grade on a group project automatically applies to the students within that group)?
- g. Does your system include a grading rubric tool? If so, describe its functionality.
- h. Does your rubric tool support use in long answer quiz questions, student-submitted documents/assignments, and discussion postings.
- i. Can rubrics be created that students see before beginning and during completion of their related assignments?
- j. Can rubrics be used for peer evaluation, tracking the completion of the rubric by a second student?
- k. Can rubrics be used for official grading in the tool while having it viewable from the rubrics tool and the grades tool?
- l. Can a rubric be copied to use within course for other assignments?
- m. Can a rubric be copied to use in other courses?
- n. Discuss the process for setting up peer review using a rubric
- o. Are your rubrics embedded next to students' work, or is it displayed in a separate window?
- p. Are rubric criteria re-usable in multiple rubrics, or is each rubric stored as a self-

contained whole?

- q. Describe how the system manages versioning in rubrics?
- r. Describe how your rubric tool handles inter-rater reliability on assignments?
  - 1. Can the student's name be masked in a course site?
  - 2. Can an assignment be graded without knowing who wrote it?
  - 3. Can an assignment be graded twice without either grader knowing the previous grade?

### **3.3.7 Academic Integrity**

- a. Discuss how each of your activity tools (Dropbox/Assignments, Discussions, Quizzes, etc.) attempt to identify and display suspicious behavior that may indicate cheating has occurred.
- b. Which tools in your system send information to plagiarism detection tools (e.g., TurnItIn, SimCheck, Grammarly) for similarity scores? Examples may include long writing assignments, discussion posts, or long answers in online exams.
- c. Does your system contain native functionality for remote proctoring by recording the screen, camera, and microphone? Can your system send identity challenges or lock down screens for online exams? If you cannot do these things through native features in your system, then please include the vendors that you have partnered with that can provide this functionality.
- d. Have your native remote proctoring tools been tested/verified for accessibility for individuals with disabilities who may be using assistive technologies?
- e. In a course site, are there easily viewable reports that include time stamps for starting and submitting, total time on task, IP addresses, and re-entering for online exams?
- f. Can teaching assistants be granted proctoring privileges for exams?

## **3.4 Analytics, Surveying, and Reporting**

### **3.4.1 Survey Creating and Reporting**

- a. Does your system have a native capacity for creating, hosting, and analyzing of online surveys or do you have a partnership with a vendor that integrates these capabilities? Include a discussion as to whether your system or third-party integration supports survey capacities to include paper, online and smartphone; and whether or not, it includes any response rate incentives or QR codes to increase the number of contacts, opportunities with participants, the ability to personalize survey invitations, and means for establishing message trustworthiness.

### **3.4.2 Analytics and Reporting – Tool and Course Level**

- a. Describe the types of analytics and reports your system provides at the tool level and at the course level, including:
  - 1. Student activities in the LMS
  - 2. Time on task – (i.e., per question on each quiz, duration of actually interacting with content.
  - 3. Grades from quizzes or gradebook

4. Exam Level statistics – overall and question level
  5. Time stamp verification on submissions and activities such as discussion boards, at initiation and completion
  6. System usage by teaching team members (e.g., teaching assistant activity, who did what and when)
  7. Can an instructor adjust the scales to create a better understanding of what happened
  8. Analysis across courses
  9. Analysis across cohorts of students
  10. Student-facing indicators of progress toward course completion to include faculty and student progress dashboards
  11. System log in history of a user
  12. Course log in history of a user
  13. Instructor Metrics – (1) engagement (eg. time spent logged into online course, number of instructor posts) and (2) Student completion and persistence rates.
- b. Does your system include estimated probabilities of course success which could then be translated to at-risk warning levels/triggers for instructor, success coaches and/or the student based on past student performance/behavior (course login, site engagement, course progress, etc.)?
  - c. Are there tools in the LMS for instructors/success coaches to launch proactive interventions at any point in the course to assist students who might need extra help?
  - d. Does your LMS afford opportunities to integrate student engagement measures and/or student engagement styles into the assessment of students' work?
  - e. What type of information is available for each tool, and within the course, that may help faculty understand what students are spending time on and who is at risk for a low grade or not completing the course? Can an instructor adjust the scales or sort results to create a better understanding of what happened?
  - f. How often is each report updated? Can I export data at will, daily, weekly, monthly? Provide list of file formats that data can be exported as (i.e. SPSS, .csv, .xls, .pdf, etc.).
  - g. Once the data has been exported from a quiz, what level of processing is required before a point biserial correlation can be completed? Is this information already in your system and available to instructors and students?
  - h. Can a correlation be computed between attendance and exam grades after importing both series into the software?
  - i. Is there an automated, systematic early-alert system that would allow faculty to identify quickly when a student has fallen behind or is showing signs of struggle? Is there some sort of tool/dashboard that automatically tells the student if they are on track, or if they have fallen behind in the course?
  - j. Can grade distribution be analyzed at the classification level?
  - k. Can grade distributions be analyzed at the section level?

### **3.4.3 Analytics and Reporting – Degree and Institutional Level**

- a. What types of analytics and reports does your system provide at the department, degree, and/or system levels? Can an administrator or instructor tie together a set of

courses as being part of a degree and then see analysis across courses as it relates to cohort degree completion?

- b. What types of Learning Analytics are available/tied to the Learning Outcomes of a course(s) and or program(s)?
- c. What is available to track a user across the entire system to understand if he or she is at risk of not completing a course, their degree, or simply not performing well that week or month?
- d. What is available to administrators to demonstrate system usage to campus executives?
- e. How often is each report updated? Can I export data at will, daily, weekly, monthly? Provide list of file formats that data can be exported as (i.e. SPSS, .csv, .xls, .pdf, etc).
- f. Describe your company's learning analytics capabilities involving data mining and predictive analytics to support student success, including 3rd-party integration.

### **3.5 Add on Products, Services, and Tools**

#### **3.5.1 Add on Product, Services, and Tools**

- a. What additional add on products services or tools do you provide? Describe the capabilities of each and include a cost breakdown in the cost section. Samples of add on products, services, and tools may include:
  - Plagiarism detection
  - Media storage and streaming
  - Lecture capture and/or streaming
  - Accessibility assistance
  - Knowledge base
  - Media authoring tools
  - Student success analytics
  - Assessment/Outcomes measurements (institutional, college, department, program)

## SECTION 4 - PROPOSAL RESPONSE

The Respondent recognizes that in its selection process A&M System will rely, in part, on the answers provided in response to this Section. Accordingly, Respondent warrants to the best of its knowledge that all responses are true, correct and complete.

### 4.1 Company Profile

- A. Provide a contact name for this RFP response, including title, address, telephone number and email address.
- B. Number of years in business: \_\_\_\_\_
- C. Number of Employees: \_\_\_\_\_ (company wide) \_\_\_\_\_ (relevant branch office(s))
- D. Annual Sales Volume: \_\_\_\_\_(company wide)
- E. Is your company currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- F. Provide any details of all past or pending litigation or claims filed against your company that would negatively impact your company's performance under an agreement with the Agencies.
- G. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.

### 4.2 Technical Proposal

Respondent should describe how their LMS and services can address the overall needs and requirements of the A&M System as described in *SECTION 3 – SCOPE AND SUPPORT*.

In responding to these requirements Respondent shall:

- Discuss the steps to accomplish each requirement as identified and stated in Section 3.
- The Technical Proposal should be structured to address each sub-section in Section 3 (e.g., Grading, Scheduling, Examinations, etc.). Include screenshots, process flows, schedules, lists, etc. that demonstrate the scope of the system to meet the scope of work – sub section by sub section.

### 4.3 Vendor Qualifications

Respondent shall provide a response to the following items:

- A. Respondent must furnish at least four references from clients from the past three years for services provided similar in scope, size, and complexity to the scope of services described in Section 3 above. If possible, the A&M System requests that two of the references come from institutions of Higher Education and/or other public sector entities and ideally from schools within the A&M System.
  - Company/Agency name & address
  - Contact person name & title
  - Contact phone number

- Contact email address
  - Summary of services provided
- B. Has Respondent worked with the A&M System or any of its Members in the past two years? If yes, provide the specific member of the A&M System, point of contact (name, title, phone number, and email address), and a brief description of the work performed.
- C. Has Respondent had any work with A&M System Members non-renewed or cancelled for any reason in the past five years? If so, please provide details on work, agency, and time frame.
- D. Describe Respondent's core service offerings with particular reference to learning management solutions and the A&M System's preferred technologies as discussed in this RFP.

#### **4.4 Pricing Proposal**

Respondent shall provide a complete pricing proposal for the Services offered to include the following items as applicable.

- A. Initial Implementation or Set-Up Fee
- B. Annual recurring license or subscription – include all possible options in the pricing of this support and applicable terms.
- C. Any other annual charges.

Note: This pricing shall be based with the understanding that each Member will determine which LMS to implement from the awarded Respondents according to its needs. Respondents may provide additional pricing options that would provide discounts if multiple Members selected its LMS.

#### **4.5 Proposal Considerations**

- A. Proposals must include the required A&M System Member resources (People, Processes, Capabilities) to ensure the model(s) success.
- B. Proposal solution must include pricing and rate cards for three (3) years to coincide with the initial term of an Agreement.
- C. Proposal price must include cost of relevant tool licensing to deliver services.
- D. Proposal must include how vendor proposes to accomplish connectivity, should service delivery approach require remote resources, including minimum required bandwidth.
- E. Any additional costs such as travel must be quoted as a separate line item. Allowed travel expenses must be in compliance with the State of Texas Travel Guidelines as defined by the Comptroller of Public Accounts.

#### **4.6 Historically Underutilized Business (HUB) Requirements**

It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) both directly and indirectly in prime contracting and subcontracting efforts. The goal of the HUB Program is to promote equal access and equitable opportunity in the A&M System contracting and purchasing activities.

A subcontracting opportunity is defined as any portion(s) of the scope contracted with a vendor to work, supply commodities for, or contribute towards completing work for a governmental

entity.

The Respondent is required to submit *either* a completed HUB Subcontracting Plan (HSP) form or a HUB Goal Achievement Plan detailing how they will conduct a good faith effort to attract and incorporate State of Texas HUB- certified vendors to perform a percentage of the scope of work defined within this RFP.

**The HUB participation goal for this RFP is 15%** and the Respondent is required to conduct a good faith effort to achieve this goal through subcontracting opportunities, mentor protégé relationships, or other means of meaningful business relationships to increase the capacity and utilization of HUB firms. Maximizing meaningful opportunities to HUBs is of the utmost importance to The Texas A&M University System.

**The Respondent is required to complete and submit *either* a HUB Goal Achievement Plan or HUB Subcontracting Plan (HSP) form.** Failure to submit a comprehensive, acceptable HUB Goal Achievement Plan or HSP form will be considered a material failure to comply with the requirements of this RFP and may result in rejection of the response. Refer to Section 2.6 for details on the A&M System's selection process.

#### **HUB Goal Achievement (HUBA) Plan**

If the Respondent elects to complete and submit a HUBA Plan, the plan is required to include details which outline and accurately represent the company's strategy, procedures, and steps to incorporate HUB certified companies in the performance of this scope.

Within this plan, the Respondent is required to address the following items:

1. The Respondent shall state whether it is a Texas certified HUB vendor.
2. The Respondent shall state its commitment to conduct a good faith effort to include HUB vendors in this engagement.
3. The Respondent shall discuss the method in which it will identify subcontracting opportunities related to the scope(s) of work within this RFP.
4. The Respondent shall describe the method in which it solicits HUB vendors regarding the subcontracting opportunities identified.
5. The Respondent shall discuss its existing relationships within the HUB community, including those with HUB-certified vendors, HUB-focused organizations, and non-HUB companies doing business with HUB-certified vendors. The Respondent shall also provide details on how these relationships will support their plan to connect with and invite HUB certified companies to bid on the subcontracting opportunities defined in Item 4 above.
6. If not already stated, the Respondent shall provide a list of the trade organizations or development centers that it intends to work with to inform and solicit HUBs to bid on the subcontracting opportunities identified in Item 4 above. Examples of these can be found at the following site:

<https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

#### **HUB Subcontracting Plan (HSP) Form**

If the Respondent elects to complete an HSP form, the Respondent is required to review and complete the [A&M System HSP form](#).



In all cases, the Respondent is required to:

- i. Complete Section 1, Section 2, and Section 4 of the HSP form.
- ii. Determine whether it is probable that they will subcontract any portion of the scope within this RFP.
- iii. Complete either Method A, Method B, or Section 3 as applicable based on the response to Section 2.

If the Respondent determines it is probable that they will subcontract any portion of the scope within this RFP, the applicable HUB participation goal for this RFP is 15%, and the Respondent is required to conduct and demonstrate a good faith effort to achieve this goal and list all anticipated subcontracting opportunities in Section 2b of the HSP form. **Note: In all cases, the HUB goal stated within this RFP takes precedence over the HUB goal stated on the downloaded HSP form.**

Please contact Ms. Porschia Tolbert, A&M HUB Program Director, at [SO-HUBProgram@tamus.edu](mailto:SO-HUBProgram@tamus.edu) or (979) 458-3265 for assistance with completing the requirements of this section. Respondents can submit a draft of their HUB Goal Achievement Plan or HSP form prior to submittal of their response to the RFP for review by Ms. Tolbert. All drafts must be submitted at least five business days prior to the RFP due date.

## SECTION 5 - GENERAL TERMS AND CONDITIONS

- A. TERMS AND CONDITIONS: The A&M System reserves the right to accept, reject, modify, and/or negotiate any and all submittals received in conjunction with this RFP. It reserves the right to waive any defect or informality in the submittals on the basis of what it considers to be in its best interests. Any submittal which the A&M System determines to be incomplete, conditional, obscure, or which has irregularities of any kind, may be rejected. The A&M System reserves the right to award to the company, or companies, which in our sole judgment, will best serve our long-term interest.

This RFP in no manner obligates the A&M System to the eventual purchase of any products or services described, implied, or which may be proposed, until confirmed by written agreement, and may be terminated by the A&M System without penalty or obligation at any time prior to the signing of a contract.

The Respondent must include a formal copy of any Respondent terms and conditions applicable to this transaction. Evaluation and acceptance and/or modification of these terms and conditions by the A&M System Office of General Counsel are essential prior to execution of any resultant agreement. In the event the Respondent does not supply terms and conditions with their submittal, A&M System terms and conditions will govern this transaction.

- B. GOVERNING LAW: Respondent agrees that, in the event of a dispute, laws of the State of Texas will prevail.
- C. NON-DISCRIMINATION: The parties agree that in the performance of any contract they shall not discriminate in any manner on the basis of race, color, national origin, age, religion, sex, genetic information, veteran status or disability protected by law. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation. By submitting a submittal, Respondent certifies that it will conform to the provisions of the federal Civil Rights Act of 1964, as amended.
- D. CIVIL RIGHTS REQUIREMENTS: All Respondents must comply with applicable civil rights laws.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting a proposal, the Respondent certifies that it does not, and will not, during the performance of any resultant Agreement, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.
- F. DEBARMENT STATUS: By submitting a proposal, Respondent certifies that it is not currently debarred from submitting submittals on contracts nor is it an agent of any person or entity that is currently debarred from submitting bids on contracts.
- G. PUBLIC INFORMATION: Respondent is hereby notified that the A&M System strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. The A&M System may seek to protect from disclosure all information submitted in response to this RFP until such time as the resultant Agreement is executed. Upon execution of the resultant Agreement, the A&M System will consider all information, documentation, and other materials requested to be submitted in response to this RFP to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552. Respondent will be advised of a request for public information that implicates its materials and

will have the opportunity to raise any objections to disclosure to the Texas Attorney General.

- H. ALTERNATE PROPOSALS: A&M System reserves the right to consider alternate proposals submitted by Respondents. Alternate proposals shall be clearly marked "Alternate" with the proposed alternates clearly defined and all pricing/cost advantages included, if applicable.
- I. ANTITRUST: Respondent hereby assigns to the A&M System, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
- J. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION: In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the A&M System or any of its Members, (2) a person who at any time during the four years before the date of the contract was the executive head of the A&M System or any of its Members, or (3) a person who employs a current or former executive head of the A&M System or any of its Members.
- K. INSURANCE: Respondent shall obtain and maintain, for the duration of any resultant Agreement or longer, the minimum insurance coverage set forth on Exhibit C attached hereto.
- L. REQUIRED CONTRACT TERMS: The terms and conditions contained in the draft agreement attached as Exhibit D or, in the sole discretion of the A&M System, terms and conditions substantially similar to those contained in the attached agreement, will constitute and govern any Agreement that results from this RFP. If Respondent takes exception to any terms or conditions set forth in the attached agreement, Respondent will submit a list of the exceptions as part of its proposal. Respondent's exceptions will be reviewed by the A&M System and may result in disqualification of Respondent's proposal as non-responsive to this RFP. If Respondent's exceptions do not result in disqualification of Respondent's proposal, then the A&M System may consider Respondent's exceptions when the A&M System evaluates the Respondent's proposal.

**EXHIBIT A  
EXECUTION OF OFFER**

**RFP01 CIO-23-162**

**DATE: \_\_\_\_\_**

**In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.**

**A.1 Respondent Affirmation**

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the respondent's proposal. Failure to complete, sign and return this execution of offer with the proposal may result in rejection of the proposal.

Signing a false statement may void the submitted proposal or any agreements or other contractual arrangements, which may result from the submission of respondent's proposal. A false certification shall be deemed a material breach of contract and, at owner's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment

Receipt is hereby acknowledged of the following addenda to this RFP by entering yes or no in space provided and indicating date acquired. Enter "N/A" if none received.

No. 1 \_\_\_\_\_ Date \_\_\_\_\_

No. 2 \_\_\_\_\_ Date \_\_\_\_\_

**A.2 Signature**

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

- (i) the Response and all statements and information prepared and submitted in response to this RFP are current, complete, true and correct;
- (ii) it is not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount trip, favor or service to a public servant in connection with the submitted response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at A&M System' option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of A&M System;
- (v) Respondent has not been an employee of A&M System within the immediate twelve (12) months prior to the RFP response;
- (vi) no compensation has been received for participation in the preparation of this RFP (ref. Section 2155.004 Texas Government Code);
- (vii) all services to be provided in response to this RFP will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;

- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action;
- (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Project;
- (x) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
- (xi) under Section 231.006, Family Code, the Respondent or applicant certifies that the individual or business entity named in this RFP, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that any resultant agreement may be terminated and payment may be withheld if this certification is inaccurate; and,
- (xii) under Section 2155.006, Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that any resultant agreement may be terminated and payment withheld if this certification is inaccurate.

Respondent shall provide their Federal Employer Identification Number (EIN), full VENDOR name, address and contact information in the spaces below. Failure to sign manually or with electronic signature (such as DocuSign or Adobe Sign) below will disqualify the proposal response. The person signing the submittal should show title or authority to bind his/her firm in contract.

Federal EIN/Taxpayer ID #: \_\_\_\_\_

Vendor/Company Name: \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

\* By signing this RFP, Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Government Code, § 2252.001(4).

**EXHIBIT B  
NON-COLLUSION AFFIDAVIT**

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Proposal (such persons, firms and corporations hereinafter being referred to as the "Respondent"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Proposal, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of A&M System or any employee thereof, or any person, firm or corporation under contract with A&M System whereby the Respondent, in order to induce acceptance of the foregoing Proposal by said A&M System, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Proposal.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or A&M System.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the Respondent without consultation with other Respondents or potential Respondents or foreknowledge of the prices to be submitted in response to this solicitation by other Respondents or potential Respondents on the part of the Respondent, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

**CONFLICT OF INTEREST**

The undersigned Respondent and each person signing on behalf of the Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of A&M System, nor any employee, or person, whose salary is payable in whole or in part by A&M System, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

Notary \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2023.

Notary Public in and for the County of \_\_\_\_\_, State of

\_\_\_\_\_. My commission expires: \_\_\_\_\_

## EXHIBIT C INSURANCE

The Respondent shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Respondent under this Agreement. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

<u>Coverage</u>	<u>Limit</u>
<b>1. <u>Worker's Compensation</u></b>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

### **2. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

### **3. Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Respondent's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

### **4. Cyber Liability**

Contractor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data,

infringement of intellectual property, invasion of privacy and breach of data. Cyber Liability policy with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this **agreement and shall include, but not limited to, claims involving infringement of intellectual property**, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Such insurance shall be maintained and in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement. [SYSTEM AND/OR MEMBER] shall be given at least 30 days notice of the cancellation or expiration of the aforementioned insurance for any reason.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the System and its members require and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the System and its members.

5. **Additional Endorsements**

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Respondent as additional insureds.

6. Respondent will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Respondent under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

**All insurance policies**, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and A&M System as Additional Insureds up to the actual liability limits of the policies maintained by Respondent. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and A&M System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

**All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to



the performance of any services by Respondent under this Agreement. Respondent is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following A&M System contact:

The Texas A&M University System  
301 Tarrow Street  
College Station, TX 77840  
Attn: Jeff Zimmermann  
Facsimile Number: 979-458-6101  
Email Address: [jzimmermann@tamus.edu](mailto:jzimmermann@tamus.edu)

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing.

**EXHIBIT D**  
**REQUIRED CONTRACT TERMS**

MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND \_\_\_\_\_

This Services Agreement (“Agreement”) is entered into and effective \_\_\_\_\_ (the “Effective Date”), by and between The Texas A&M University System, an agency of the state of Texas (hereafter referred to as “A&M SYSTEM”), and \_\_\_\_\_, a \_\_\_\_\_ (hereafter referred to as “PROVIDER”). A&M SYSTEM and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively.

A&M SYSTEM and PROVIDER hereby agree as follows:

**1. SCOPE OF WORK**

- A. This Agreement is not a contract to perform specific work but is intended to establish the terms and conditions under which the A&M SYSTEM and its member universities and agencies (hereafter referred to as “Member” or “Members”) may enter into a contract individually with the PROVIDER to license and use PROVIDER’s platform and/or other services set forth in Exhibit A of this Agreement (“Services”) by executing an order form or purchase order (each an “Order Form”) with PROVIDER. The Services requested by Member shall be delivered and/or licensed by PROVIDER to Member during the term of this Agreement in accordance with the rights, obligations and pricing set forth herein.
- B. The terms of this Agreement shall be incorporated into any Order Form executed by a Member and PROVIDER for delivery and/or license by PROVIDER of the Services during the term of this Agreement and the Order Form shall reference this Agreement. Upon execution of such Order Form, such Member is only responsible for its own compliance with the terms and conditions of this Agreement.

**2. TERM AND TERMINATION**

- A. The term of this Agreement begins on the Effective Date and continues for a period of \_\_\_\_\_ unless earlier terminated as provided herein; provided, however, that the terms of this Agreement shall remain applicable to any Order Form that was executed prior to the expiration or termination of this Agreement but whose period of performance extends beyond the expiration or termination of this Agreement. This Agreement may be extended for \_\_\_\_ (\_\_) additional \_\_\_\_ (\_\_) year periods upon mutual written agreement executed by the Parties.
- B. Either Party may terminate this Agreement effective upon written notice to the other Party if the other Party materially breaches any term of this Agreement and fails to cure such breach within \_\_\_\_ (\_\_) days after receiving written notice of the breach. Furthermore, A&M SYSTEM may terminate this Agreement at any time upon \_\_\_\_ (\_\_) days prior notice to PROVIDER.
- C. The period of performance of any Order Form will be as provided in the Order Form. Either party to the Order Form may terminate such Order Form effective upon written notice to the other party if the other party materially breaches any term of this

Agreement or the Order Form and fails to cure such breach within \_\_ (\_\_) days after receiving written notice of the breach. In the event that the Member terminates the Order Form pursuant to this Section, the Member shall receive a pro-rata refund of any pre-paid fees. Furthermore, Member may terminate the Order Form at any time upon \_\_\_\_ (\_\_) days prior notice to PROVIDER. The termination of any one Order Form will not affect any other Order Form or this Agreement.

### 3. PAYMENT TERMS

- A. The A&M SYSTEM shall not pay any costs or fees as a direct result of this Agreement. The fees paid by Member to PROVIDER for the Services requested under the Order Form, shall be calculated based on the fee rate schedule attached as Exhibit B and made a part of this Agreement. The rate schedule may be renegotiated at the discretion of A&M SYSTEM upon renewal of this Agreement. Additional rates and fees may be negotiated on a Member specific Order Form, provided no less favorable than under this Agreement.
- B. PROVIDER shall invoice Member for amounts due consistent with the payment schedule as negotiated under the Order Form. Each invoice must reference the Order Form and Member's purchase order number (if applicable) and include a description of services provided along with documentation that Member may reasonably request to support the invoice amount. Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
- C. As applicable, for reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by Member in advance, PROVIDER will be reimbursed by Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to Member receipts, invoices and other documentation as required by Member. Under no circumstances will PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.
- D. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to Member a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:  
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.

### 4. INTELLECTUAL PROPERTY

- A. PROVIDER shall retain all rights, title, and interest in and to the Services. PROVIDER represents and warrants that: (i) it has the full right, power, and authority to grant the rights and licenses to Members; (ii) the Services do not infringe upon or violate any copyright, patent, trademark, or other proprietary or intellectual property rights of any third party; (iii) the Services will perform substantially in accordance with PROVIDER's marketing materials and documentation, including without limitation, any user guides,

technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by PROVIDER to Members; and (iv) PROVIDER and each of its employees, subcontractors, or agents who will perform the Services has the necessary knowledge, skill, experience, and qualifications to provide and perform the Services in accordance with this Agreement, and the Services will be performed for and delivered to Members in a diligent, professional, workmanlike manner in accordance with industry standards.

- B. PROVIDER shall indemnify and hold harmless the A&M SYSTEM, Members, and their regents, employees, and agents (collectively, the "A&M System Indemnitees") from any Claim arising from or related to (i) an allegation that any of the Services infringe upon or violate the intellectual property rights of a third party ("Infringement Claim") or (ii) PROVIDER's breach of any of its representations or warranties in this Agreement. If the Services become or are likely to become the subject of an Infringement Claim, then PROVIDER may, at its expense and option, either: (a) replace or modify the Services to make them non-infringing, while maintaining equivalent functionality; (b) procure for the Members the right to continue using the Services pursuant to this Agreement; or (c) terminate this Agreement and refund the Members, on a pro-rata basis, the amount of any pre-paid fees.

## 5. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (i) appropriate stamp or markings on the document exchanged, or (ii) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party. "Confidential Information" does not include information that: (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (ii) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (iv) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.
- B. The Receiving Party shall use the same reasonable efforts to protect the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature. The Receiving Party may only disclose Confidential Information to its personnel having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement. The Receiving Party may not reproduce, disclose, or use Confidential Information except in performing its obligations under this Agreement. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the

Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.

- C. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of three (3) years.

## **6. COMPLIANCE WITH LAWS**

- A. PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- B. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.
- C. If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), Member hereby designates PROVIDER as a school official with a legitimate educational interest in any education records (as defined in FERPA) that PROVIDER is required to create, access, receive, or maintain in order to fulfill its obligations under this Agreement. PROVIDER shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or Member in writing. PROVIDER is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Section, including without limitation, the prohibition on redisclosure. PROVIDER shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

## **7. INDEMNIFICATION**

PROVIDER shall indemnify and hold harmless the A&M System Indemnitees from and against any third-party claim, damage, liability, expense or loss asserted against the A&M System Indemnitees (each, a "Claim") arising out of (i) PROVIDER's negligent or willful errors or omissions under this Agreement, or (ii) PROVIDER's breach of any representation or warranty contained herein.

## 8. INSURANCE

Insurance requirements as stated within Exhibit C, attached hereto.

## 9. INFORMATION TECHNOLOGY

- A. **Electronic and Information Resources.** PROVIDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to A&M SYSTEM and Members under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code) (the "EIR Accessibility Warranty"). If PROVIDER becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, PROVIDER shall, at no cost to A&M SYSTEM and Members, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that PROVIDER fails or is unable to do so, A&M SYSTEM and Members may immediately terminate this Agreement, and PROVIDER will refund to A&M SYSTEM and Members all amounts paid by A&M SYSTEM and Members under this Agreement within thirty (30) days following the effective date of termination.
- B. **Access to Agency Data.** Pursuant to Section 2054.138, Texas Government Code, PROVIDER shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://cyber-standards.tamus.edu>, as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of A&M SYSTEM Data (as defined below). PROVIDER shall periodically provide A&M System and Members with evidence of its compliance with the Security Controls within thirty (30) days of A&M System or Member's request.
- C. **Cloud Computing Services.** As of the Effective Date, PROVIDER represents and warrants that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP"). Pursuant to Section 2054.0593, Texas Government Code, PROVIDER shall maintain RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. PROVIDER shall provide A&M System and Members with evidence of its TX-RAMP compliance and certification within thirty (30) days of A&M System and Members request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that PROVIDER fails to maintain TX-RAMP compliance and certification throughout the Term, including any Renewal Term, A&M System and Members may immediately terminate this Agreement, and PROVIDER will provide a refund to A&M System and Members of any prepaid fees.
- D. **Cybersecurity Training Program.** Pursuant to Section 2054.5192, Texas Government Code, PROVIDER and its employees, officers, and subcontractors who have access to A&M SYSTEM's or Members' computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected

by A&M SYSTEM and Members. The cybersecurity training program must be completed by PROVIDER and its employees, officers, and subcontractors during the Term and any renewal period of this Agreement. PROVIDER shall verify completion of the program in writing to A&M SYSTEM and Members within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. PROVIDER acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for A&M SYSTEM and Members to terminate this Agreement for cause.

**E. Data Privacy.**

- i. The A&M System or the applicable Member shall retain all right, title, and interest in and to all information, data or other content that the A&M System, the Members or its users enter, submit or upload to Services or otherwise provide to PROVIDER under this Agreement (collectively, the "A&M System Data")
- ii. PROVIDER shall hold A&M SYSTEM Data in confidence. PROVIDER shall only use or disclose A&M SYSTEM Data for the purpose of fulfilling PROVIDER's obligations under this Agreement, as required by law, or as otherwise authorized in writing by A&M SYSTEM or the applicable Member. PROVIDER shall restrict disclosure of the A&M SYSTEM Data solely to those employees, subcontractors or agents of PROVIDER that have a need to access the A&M SYSTEM Data in order for PROVIDER to perform its obligations under this Agreement. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Agreement.
- iii. PROVIDER shall, within two (2) business days of discovery, report to A&M SYSTEM or the applicable Member any use or disclosure of A&M SYSTEM Data not authorized by this Agreement or in writing by A&M SYSTEM or the applicable Member. PROVIDER's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the A&M SYSTEM Data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what PROVIDER has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action PROVIDER has taken or will take to prevent future similar unauthorized use or disclosure. PROVIDER shall provide such other information, including a written report, as reasonably requested by A&M SYSTEM or the applicable Member.
- iv. PROVIDER must promptly notify A&M SYSTEM or the applicable Member of any legal request for A&M SYSTEM Data from a third party and take (and assist A&M SYSTEM or Member in taking) appropriate steps not to disclose such A&M SYSTEM Data.
- v. Within thirty (30) days of the expiration or termination of this Agreement or an Order Form, PROVIDER, as directed by A&M SYSTEM or the applicable Member, shall return all A&M SYSTEM Data in its possession (or in the possession of any of its subcontractors or agents) to A&M SYSTEM or the applicable Member.

**10. MISCELLANEOUS**

- A. Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This

Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties. In the event of a conflict between the terms of this Agreement and any other documents constituting part of this Agreement, the terms of this Agreement shall control.

- B. **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.
- C. **Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.
- D. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER's Service to A&M SYSTEM and Members. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M SYSTEM or Members. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. PROVIDER and its employees shall observe and abide by all applicable A&M SYSTEM and Members policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- E. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the Services to be provided pursuant to this Agreement.
- F. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M SYSTEM or Members.
- G. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.



- H. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- I. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- J. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. A&M SYSTEM and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

A&M SYSTEM:      The Texas A&M University System  
                                  301 Tarrow St., Suite 273  
                                  College Station, Texas 77840  
                                  Attention: Jeff Zimmermann  
                                  Phone: (979) 458-6410  
                                  E-mail: jzimmermann@tamus.edu

PROVIDER:            [ \_\_\_\_\_ ]  
                                  [ \_\_\_\_\_ ]  
                                  Attention: \_\_\_\_\_  
                                  Phone: \_\_\_\_\_  
                                  Email: \_\_\_\_\_

- K. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- L. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against A&M SYSTEM or Members is to be in the county in which the principal office of A&M SYSTEM's or Member's governing officer is located.

- M. **Non-Waiver.** A&M SYSTEM and Members are an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that A&M SYSTEM and Members are an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M SYSTEM and Members of their right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M SYSTEM and Members.
- N. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M SYSTEM, Members and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of A&M SYSTEM or the applicable Member, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M SYSTEM's or Member's sovereign immunity to suit or liability, and A&M SYSTEM and Members have not waived their right to seek redress in the courts.
- O. **Public Information Act.** PROVIDER acknowledges that A&M SYSTEM and Members are obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon A&M SYSTEM's and Member's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M SYSTEM or Members to A&M SYSTEM or Members in a non-proprietary format acceptable to A&M SYSTEM or Members that is accessible by the public. PROVIDER acknowledges that A&M SYSTEM and Members may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- P. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. PROVIDER acknowledges this Agreement may be terminated immediately if this certification is inaccurate.
- Q. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, PROVIDER certifies that it is not

ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

- R. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- S. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- T. **HUB Subcontracting Plan.** It is the policy of the state of Texas, A&M SYSTEM and Members to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M SYSTEM and Member contracting and purchasing. PROVIDER has indicated it will not subcontract any of its duties or obligations under this Agreement. If PROVIDER will subcontract any of its duties and obligations under this Agreement, PROVIDER will be required to provide prior written notice to A&M SYSTEM and Members and make a good faith effort to submit a HUB subcontracting plan as required under Section 20.285 of the Texas Administrative Code.
- U. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- V. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- W. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- X. **Loss of Funding.** Performance by A&M SYSTEM and Members under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M SYSTEM and Members will issue written notice to PROVIDER and A&M

SYSTEM and Members may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M SYSTEM and Members. In the event of a termination or cancellation under this Section, A&M SYSTEM and Members will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.

- Y. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits A&M SYSTEM and Members from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M SYSTEM and Members during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M SYSTEM or Members that was employed by A&M SYSTEM or Members during the twelve (12) month period immediately prior to the effective date of the Agreement.
- Z. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System's Board of Regents, nor any officer of A&M SYSTEM or Members, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.
- AA. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- BB. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M SYSTEM or Members under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event A&M SYSTEM or Member becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M SYSTEM or Member will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M SYSTEM or Member.
- CC. **Campus Secure Areas; Research Activities; Confidentiality.** Only applicable to the extent A&M SYSTEM enters into an Order Form for the RELLIS Campus, the parties acknowledge that activities at the RELLIS Campus involve the conduct of research, which may be highly sensitive in nature. The parties agree that PROVIDER's access to the RELLIS Campus (including access by its employees, agents, and subcontractors) shall be restricted to the locations and purposes described herein, or otherwise authorized by A&M System. The parties agree that all research and testing information and activities ("Research Activities") conducted or accessed on the RELLIS Campus shall be considered Confidential Information (as defined herein) belonging to the A&M System or the individual researcher or licensee conducting the Research Activities. PROVIDER agrees that it (including its employees, agents, and subcontractors) shall comply with any security processes and procedures communicated to PROVIDER before or during PROVIDER's access to the RELLIS Campus, and shall not attempt to access the Research Activities at the RELLIS Campus. In the event that PROVIDER (including its employees, agents, and

subcontractors) should view, receive, hear, observe, or access Research Activities of any entity at the RELLIS Campus (whether from air space, office, hangar, common area, electronically, or by any other means), PROVIDER (including its employees, agents, and subcontractors) shall treat all such information as Confidential Information and shall use reasonable care to protect the Confidential Information from disclosure and not disclose, copy, photograph, record, retain, use or discuss any such Confidential Information. For purposes of this section, Confidential Information means any information not publicly known or available, including, but not limited to, sensitive, proprietary or other non-public information, or trade secrets, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation. PROVIDER is responsible for ensuring compliance of its employees, agents and subcontractors with this section.

**(SIGNATURES TO FOLLOW ON NEXT PAGE)**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**The Texas A&M University System**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

- Exhibit A – Service
- Exhibit B – Fee Rate Schedule
- Exhibit C - Insurance

DRAFT