

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND RUSTICI SOFTWARE

This Services Agreement (“Agreement”) is entered into and effective upon final execution of this Agreement (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “TAMUS”), an agency of the state of Texas, and Rustici Software (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

TAMUS and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with TAMUS to provide replacement of the Shareable Content Object Reference Model (SCORM) engine integrated into the TrainTraq Learning Management System (LMS) as outlined in RFP01 INRE-16-014. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin upon the final execution of the Agreement and will extend for three (3) years. This Agreement can be extended for two (2) additional one (1) year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by TAMUS and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. The payment rate schedule is attached as Exhibit B and made a part of this Agreement.
- B. PROVIDER can invoice TAMUS monthly for the Scope of Work identified in Section 1. For reimbursement of travel expenses, PROVIDER’S invoice(s) must include supporting documents. Payment will be made to PROVIDER upon approval of such invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. Business-related travel, lodging and/or meal expenses will be reimbursed by TAMUS according to the State of Texas rates, rules, and regulations (<http://www.window.state.tx.us/procurement/prog/stmp/>). PROVIDER is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the 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 contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

If the PROVIDER's place of business is located more than 60 miles from the job site, then a round trip charge of \$120 per trip will be allowed, regardless of the number of people in a vehicle(s) and of the time it takes to reach the site. This is to help offset personnel travel time which is NOT chargeable. If your PROVIDER's place of business is located closer than 60 miles to the job site, a round trip charge will not be allowed. Mileage reimbursement still applies in either case.

Overtime and holidays will be paid at straight time.

- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<http://www2.tamus.edu/offices/budget-acct/acct/general/> .
- E. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of TAMUS.
- B. TAMUS may terminate this Agreement at any time upon seven (7) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that TAMUS is 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.
- B. Upon TAMUS's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access.
- C. PROVIDER acknowledges that TAMUS 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*.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUS 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 Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. INSURANCE

- A. This process is described in Exhibit C, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TAMUS. TAMUS will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.
- C. **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. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 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.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*,

does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- F. **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.
- G. **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.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

In the event that you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from the A&M System's HUB Program at (979) 458-6410 or jzimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

- M. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not


- reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- N. **Loss of Funding.** Performance by TAMUS 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, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- O. **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.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS 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:


TAMUS: The Texas A&M University System
301 Tarrow St., Suite 361
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jzimmermann@tamus.edu

PROVIDER: Rustici Software, LLC
210 Gothic Court #100
Franklin, TN 37067
Phone: (615) 376-9867
Email: tim.martin@scorm.com

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

The Texas A&M University System

By 
Jeff Zimmermann
Director, Procurement and Business Services


Date

Rustici Software, LLC

By 
Tim Martin

July 12, 2016
Date

EXHIBIT A – SCOPE

A. Technical Architecture

- Run on the Windows Server 2008 and 2012 platforms using the Microsoft Internet Information Server (IIS) web server versions 7 and 8.
- SCORM Engine is available as a compiled .NET 4.0 or higher application.
- Fully support all editions of Microsoft SQL Server 2012.
- Provide a fully documented REST web service API.
 - i. developer's resources and documentation for the SCORM Engine can be found here: <http://rustici-docs.s3.amazonaws.com/engine/2015.1.x/index.html>
- Be fully compatible with, fully operational under, and fully supported on a VMWare virtual machine.

B. Integration Architecture

- Integrate seamlessly into the TAMUS TrainTraq application and be hosted within the TAMUS domain, on TAMUS-owned servers.
- When reporting progress and completions, do so by invoking HTTP web services.
- To aid in integration, offer a .NET API such that references to the engine's web service API can be made using a vendor-supported managed code assembly.

C. Course Management

- Fully support SCORM 1.1, SCORM 1.2, SCORM 2004 (2nd, 3rd, & 4th Editions), AICC, and Tin Can / Experience (xAPI) courses, including registration, playback, progress recording, and completions.
- Report all errors and warnings relevant to the course when new and modified course packages are uploaded to TrainTraq.
- Support versioning of course packages.

D. Learner Experience

When launched by an employee from TrainTraq, the SCORM engine must record the following:

- LearnerID – the TAMUS Unique Identification Number (UIN)
- Progress
- Completion – includes the grade on scored courses when a new version of a course is uploaded to TrainTraq, learners who have already started the previous version of the course should be able to complete that version without errors or loss of progress.

E. Learning Records

In addition to sending completion notifications to TrainTraq, the SCORM engine must also fully support importing of completions from external sources in SCORM, xAPI, and AICC formats and facilitate the loading of such completions into TrainTraq; e.g., Lynda.com, etc.

The Rustici Software SCORM Engine software supports content packages that are properly following the SCORM, xAPI, and AICC formats. Not all content will be compatible with the cross-domain challenges of remote hosting content. It is the burden of the content creator/provider to leverage the proper standard to meet these needs. The SCORM Engine software expects that the content provider will provide proper cross-domain packages for the Software to track. There is no support for content that does not properly adhere to the eLearning standards or for content that does not have a proper cross-domain solution in place.

To be clear, the SCORM Engine cannot import completion data (or any other type of data) from other platforms, without those platforms leveraging the communication tools found within the SCORM, AICC, and Tin Can API (xAPI) standards. The SCORM Engine can only capture data sent properly, following a supported eLearning standard.

F. Administration Services

The SCORM engine must provide a web-based administration console through which course and learner data can be viewed for support and debugging purposes.

G. Implementation

Rustici shall provide technical resources to assist TAMUS in implementing the SCORM engine. The implementation project shall be a fixed cost implementation for the duration of the initial implementation, not to exceed eight (8) weeks.

The Rustici Software SCORM Engine software provides unlimited, remote integration support. The Rustici Software integration team will work with the TAMUS developers to assist with the integration. No travel or on-site services are included with the SCORM Engine integration strategy.

H. Pre-Production Environments

The TAMUS IT development environment consists of three pre-production tiers: Development, Test, and Training/Staging. The SCORM engine must be fully operational in all of these environments, simultaneously, on the same Windows Server hardware.

I. On-going Maintenance and Support

Rustici shall be required to provide on-going maintenance and support of the implemented SCORM engine. All available options for these services are included in Exhibit B.

- Code updates and maintenance releases, for the SCORM Engine software, will be provided when available and requested. Notification of patches and releases will be made via a portal at: <http://support.scorm.com>. Detailed database scripts and documentation will be provided with code updates. Current development schedules indicate 1 to 2 code updates per year, although this is not a firm commitment. Code updates will be made to support many items including:
 - i. Increased feature sets
 - ii. Bug and error fixes
 - iii. Standards interpretations
- The Customer (TAMUS) will be expected complete maintenance integrations, with guidance provided by Licensor. As always, changes to a Customer's code should be made by the Customer. The SCORM Engine Customers are expected to update to the most recent version of the Software on a timely basis in accordance with its own

development and release schedules and processes. Patches provided by Licensor for Customer issues will be created for the most recent release of the Software. If that release occurred in the prior 4 months, Licensor commits to provide that patch against the prior major release at Customer's request. Patches against versions of the Software older than 4 months will be made at the discretion of the Licensor.

- Code updates do entitle Customer to subsequent releases of a previously purchased standard version (i.e. SCORM 2004 5th Edition) but do not necessarily entitle a Customer to a subsequent full standard release (i.e. SCORM 2020, should it ever come).
- The SCORM Engine's License provides Third Tier Support, where Rustici Software support teams support only TAMUS technical personnel, working on the SCORM Engine Software. Third Tier Support covers items related to the SCORM Engine Software only. Content that will not function properly in the Software can be sent to Licensor for diagnosis, but not necessarily repair. Rustici Software will make a concerted effort to accommodate content that differs from the standard when it can be done without damaging the core standards support in the product. Rustici Software reserves the right to refuse to support content that either fails its respective test suite or differs from the standard technically. An initial response to support inquiries is typically provided within 1-2 business days. Support requests must be made via the support portal (<http://support.scorm.com>) or email to support@scorm.com. Either will create a ticket which can be tracked by the Customer and licensor staff members. Rustici Software does not have expertise in server deployment or maintenance. Rustici Software's expertise is SCORM and learning standards. Rustici Software will attempt to provide some support for items beyond its expertise, but cannot commit to have expertise beyond the learning standards.

EXHIBIT B – PRICING

A. Initial Implementation Project

The SCORM Engine software carries a one-time initial fee of \$30,000. This fee includes the delivery of the SCORM Engine software and integration support. This fee is due at the start of the SCORM Engine integration.

B. On-going maintenance and support

The SCORM Engine Software carries an annual license fee, based on the total user population, with an annual license minimum of \$15,000. It is estimated that the TAMUS system will have 50,000 actual users of the SCORM Engine Software. The license fee is \$0.30 per user per year, counting only unique users who launched at least one course using the SCORM Engine software in the license year. For 50,000 unique users (tracked in a table provided by the SCORM Engine) the annual license fee will be \$15,000 and this sets the annual license minimum. This license structure includes the right to use the software for the license year, unlimited ongoing remote support, and all the maintenance/upgrades for the Software, during the term.

The Annual License Minimum (\$15,000) will be due 3 months after the start of the SCORM Engine integration. At the end of the license year, a user count (provided in the tables within the SCORM Engine software) will be provided by a technical contact at TAMUS. If the total number of actual unique SCORM Engine users exceeds 50,000 users, each additional user, over the minimum, will be charged at a rate of \$0.30 per user per year.

EXHIBIT C – INSURANCE

PROVIDER 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 TAMUS. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER 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 TAMUS at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

A. Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$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 TAMUS. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. 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.

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 as additional insured's.))

C. 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 PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

D. PROVIDER will deliver to TAMUS:

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 PROVIDER 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 and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. 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 and The Texas A&M University System. No policy will be canceled without unconditional written notice to TAMUS 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 TAMUS ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by TAMUS prior to the performance of any services by PROVIDER under this Agreement. PROVIDER 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 TAMUS contact in Section 8R.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMUS in writing, except as may be noted.