



MASTER SERVICES AGREEMENT FOR EDUCATIONAL SOFTWARE AND RELATED SERVICES

This Master Services Agreement (the “Agreement”) is entered into by and between EdCERT, LLC d/b/a ACUE (“ACUE”), a Delaware limited liability company located at 85 Broad Street, 17th Floor, New York, NY 10004 and The Texas A&M University System (“TAMUS”). TAMUS is a state university system with a main office located at 301 Tarrow St College Station, TX 77840. ACUE and TAMUS shall be referred to collectively herein as the “Parties.”

WHEREAS, ACUE, in collaboration with the American Council on Education (ACE), supports colleges and universities to meet their goals for student success through scalable programs of faculty development and credentialing; and

WHEREAS, TAMUS is a state university system established in 1948 with a mission to provide education, conduct research, commercialize technology, offer training, and deliver services for the people of Texas and beyond through its universities, state agencies and health science center; and

WHEREAS, ACUE and TAMUS recognize that quality instruction leads to stronger student outcomes; and

WHEREAS, ACUE and TAMUS wish to formalize a relationship to implement a faculty development program to meaningfully improve student outcomes;

NOW, THEREFORE, the Parties agree as follows:

1. USE RIGHTS; RESTRICTIONS

- 1.1 Services to be Provided. ACUE shall provide services to TAMUS during the Term (as defined in Section 6) as set forth in order forms to this Agreement and in accordance with the terms and conditions hereof (the “Services”). ACUE shall have the right to use its employees and independent contractors to perform the Services. On the effective date set forth in order forms to this Agreement, TAMUS shall provide ACUE with all information, to the extent such information is available, necessary to provide the Services. Additionally, upon ACUE’s request from time-to-time, to the extent such information is available, TAMUS shall provide ACUE with all materials and information and access to its premises that is reasonably necessary to provide the Services. ACUE shall be excused from any delay to deliver the Services to the extent that such delay occurs as a result of failure or untimely performance by TAMUS. ACUE and TAMUS may enter into multiple order forms to this agreement as may be advisable and necessary to clarify mutual responsibilities as agreed to between the Parties.
- 1.2 Access to Services. Subject to the terms and conditions of this Agreement, including TAMUS’s payment obligations hereunder, ACUE hereby grants to TAMUS a non-exclusive right to access and use the Services during the Term solely for TAMUS’s bona fide internal business purposes in the ordinary course of business; provided that TAMUS acknowledges that ACUE’s faculty development program (the “Program”) will not be available to TAMUS or Authorized Users prior to the applicable Program Start Date set forth in one or more order forms to this Agreement. Portions of the Services are provided only to Authorized Users (as defined in Section 1.5) who have received a password permitting them to access such Services through an ACUE website (the “Restricted Website Services”). During the Term, Authorized Users shall have the right to access and use the Restricted Website Services for the period specified in the order form (the “Access Period”).

1.3 Company Content; Downloadable Company Content. During the Access Period, ACUE shall make available to TAMUS and all Authorized Users through the Services certain content and materials (“Company Content”) that are owned by or licensed to ACUE. For any Company Content that ACUE identifies as being available for TAMUS and Authorized Users to access, print or download and store as part of the Services (“Downloadable Company Content”), TAMUS and Authorized Users shall have the right to print or download copies of such Downloadable Company Content during the Access Period; provided, that (i) the Downloadable Company Content is not modified, edited, or taken out of context in any way, (ii) all copyright and other proprietary notices are kept intact, (iii) the phrase “Used with permission of ACUE” is used when displaying or otherwise using such Downloadable Company Content, (iv) the Downloadable Company Content may be requested by the Company to be returned or destroyed in accordance with Section 6.3 hereof upon the expiration or termination of this Agreement and (v) the Company Content and the Downloadable Company Content is used by TAMUS solely in connection with the Services provided to TAMUS pursuant to this Agreement.

1.4 Restrictions. Except as expressly set forth in this Agreement, the rights and licenses herein are granted subject to the following restrictions:

TAMUS shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, or distribute to third parties, or time share or otherwise commercially exploit or make the Services available to any third party, other than as expressly permitted by this Agreement; (ii) copy, edit, reproduce, modify, distribute, transmit, sell, display, perform, license, sublicense, make translations or other derivative works of, or otherwise use, take out of context, or exploit any Company Content for any purpose not authorized in this Agreement without the express prior written consent of ACUE or the respective licensors of the Company Content; (iii) remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Company Content; (iv) use the Services to process data on behalf of third parties; (v) knowingly interfere with or disrupt the integrity or performance of the Services; (vi) attempt to gain unauthorized access to the Services, or to modify, translate, decompile, disassemble, use reverse engineering or otherwise attempt to derive the source code for the computer systems and other technology that operate the Services or otherwise tamper with security components, usage rules or other protective measures applicable to the Services, Company Content or Customer Content (as defined in Section 1.7); or (vii) knowingly use the Services, including the Restricted Website Services, to store or transmit infringing, libelous, or otherwise unlawful or tortious content or material, or to store or transmit content or material in violation of any rights of any third party.

1.5 Authorized Users. “Authorized Users” shall mean the Course-takers defined and identified in order forms to this Agreement and personnel of TAMUS responsible for monitoring and administering the Program (including any internal technical support personnel), who are authorized to access the Services using a user identifier and password provided to TAMUS by ACUE. TAMUS is fully responsible for any acts or omissions of its Authorized Users in accessing and using the Services and any Company Content and will ensure that TAMUS and all Authorized Users comply with the Agreement, as well as all laws and regulations that apply to TAMUS’s and its Authorized Users’ access and use of the Services and the Company Content. TAMUS shall not permit any person or entity other than Authorized Users to access the Services or the Company Content (except for access and use reasonably on behalf of an Authorized User and, notwithstanding anything to the contrary, any such access and use shall not constitute a breach of this Agreement), shall use commercially reasonable efforts to prevent unauthorized access to or use of the Restricted Website Services and to prevent unauthorized downloading or use of any Company Content (including any Downloadable Content), and shall provide ACUE prompt notice of any such unauthorized access, downloading, or use.

1.6 Reservation of Rights. Subject only to the rights expressly granted to TAMUS under this Agreement, as between ACUE and TAMUS (and TAMUS’s Authorized Users) all right, title, and interest in and to the

Services and the Company Content (for clarity, excluding Customer Content) will remain with and belong solely and exclusively to ACUE.

- 1.7 Customer Content. TAMUS, and not ACUE, shall be responsible for the content, text, and other materials posted on or through the Service by Authorized Users, employees, and other representatives of TAMUS, and any persons authorized by TAMUS to use an Authorized User's user identifier and password, and any content provided to ACUE by TAMUS for inclusion in the Services (including any information relating to TAMUS's procedures) (collectively, "Customer Content"). TAMUS will acquire the necessary approvals, consents, and license rights needed to provide the Customer Content to ACUE. Subject to ACUE's confidentiality obligations in Section 2, TAMUS hereby grants to ACUE, a worldwide, sub-licensable, royalty-free, perpetual, irrevocable, non-exclusive license to use Customer Content to provide the Services and to create and exercise its rights with respect to Analytics Data (as defined below).
- 1.8 Analytics Data. ACUE may create, use, distribute, and otherwise make use of Analytics Data in any manner and for any purpose, all of which will be owned by and shall be the property of ACUE. "Analytics Data" means aggregated data derived from the operation or use of the Services, including data elements derived from Customer Content, and any conclusions, reports, or other data resulting from analysis of such data.

2. CONFIDENTIALITY

As used herein, "Confidential Information" means, any and all information or data, regardless of whether it is in tangible form, disclosed or otherwise made available in connection with this Agreement by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), that the Disclosing Party has either marked as confidential or proprietary, has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the Receiving Party, or that would reasonably be expected to be confidential under the circumstances; provided, however, that in any event ACUE's Confidential Information shall include the features and functions of ACUE's products and services, and TAMUS's Confidential Information shall include Customer Content. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, ACUE may disclose the terms of this Agreement to existing and potential investors, lenders and acquirers and the legal or financial advisors of the foregoing, as well as ACUE's employees, agents and contractors assisting ACUE with providing the Services or exercising ACUE's rights under this Agreement, in each case, under confidentiality terms substantially similar to those set forth in this Agreement. The obligations in this Section 2 are not applicable to information the Receiving Party can show: (i) is or becomes generally known to the public by any means other than a violation of this Agreement by the Receiving Party; (ii) is information previously known to the Receiving Party; (iii) is information independently developed by or for the Receiving Party; or (iv) is required by law to be released.

3. REPRESENTATIONS, WARRANTIES, AND EXCLUSIONS

- 3.1 Representations and Warranties. ACUE represents and warrants to TAMUS that ACUE shall provide the Services in a professional and workmanlike manner. Each Party represents and warrants to the other Party that such Party has the required rights, power, and authority to enter into this Agreement and to grant all rights, authority, and licenses granted hereunder, and that it will perform its obligations under this Agreement in a manner that complies with applicable laws, rules and regulations.
- 3.2 Exclusions. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND COMPANY CONTENT ARE PROVIDED WITHOUT ANY WARRANTY OF ANY KIND AND ACUE AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, PARTNERS AND THIRD PARTY LICENSORS DO NOT MAKE AND TO THE MAXIMUM EXTENT OF THE LAW EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION OF THE FOREGOING, TAMUS ACKNOWLEDGES THAT ACUE DOES NOT WARRANT THAT THE

SERVICES WILL BE PROVIDED IN AN UNINTERRUPTED, SECURE, OR ERROR-FREE FASHION AT ALL TIMES. TAMUS MAY NOT MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF ACUE TO ANY AUTHORIZED USERS.

4. INTELLECTUAL PROPERTY INDEMNIFICATION

ACUE agrees to indemnify, defend, and hold TAMUS harmless from and against third-party claims brought against TAMUS that the Services infringe a United States patent, copyright, or trademark. ACUE's obligation in this Section 4 is expressly conditioned upon: (i) ACUE being notified promptly in writing by TAMUS of any such claim; (ii) ACUE having sole control of the defense or settlement of such claim subject to the consent of the Attorney General of the State of Texas, and TAMUS not making any compromise, admission of liability or settlement or taking any other action impairing the defense of such claim without ACUE's prior written approval; (iii) TAMUS cooperating with ACUE in all reasonable ways to facilitate the settlement or defense of such claim; and (iv) such claim not arising from TAMUS's or any Authorized User's modifications, from ACUE's compliance with TAMUS's designs, specifications or instructions, Customer Content where the unmodified Services are not infringing, or from combination, operation or use of Services with other data, services, products or equipment provided by TAMUS or others where such combination is not reasonably anticipated and where the operation or use of Services alone is not infringing, or from TAMUS's use of such Services other than in accordance with the Agreement where the use of the Services in accordance with the Agreement is not infringing. If use of the Services by TAMUS has become the subject of an infringement claim or ACUE believes such an infringement claim is reasonably likely, ACUE may, at its sole option and expense, (a) use commercially reasonable efforts to procure the right for TAMUS to continue using the infringing Services or (b) replace or modify the same so that it becomes non-infringing; provided, however, that if neither of the foregoing options is commercially feasible, either Party may terminate this Agreement immediately by providing written notice thereof to the other Party. If this Agreement is so terminated, TAMUS's exclusive remedy and ACUE's entire liability shall be direct damages in an amount not to exceed that portion of the fees that corresponds to such infringing Services and that have actually been paid by TAMUS.

THIS SECTION 4 STATES ACUE'S ENTIRE OBLIGATION TO TAMUS AND ITS AUTHORIZED USERS WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS BROUGHT BY ANY THIRD PARTY.

5. LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING FROM BREACH OF SECTION 2 (CONFIDENTIALITY) OR ACUE'S OBLIGATIONS UNDER SECTION 4 (INTELLECTUAL PROPERTY INDEMNIFICATION)", THE TOTAL AGGREGATE LIABILITY OF ACUE AND ANY THIRD PARTIES INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES (THE "ACUE PARTIES"), COLLECTIVELY, RELATING TO THIS AGREEMENT AND THE SUBJECT MATTER HEREOF, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY TAMUS TO ACUE IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH DAMAGES. RECOVERY OF ACTUAL AND RECOVERABLE DIRECT DAMAGES, IF ANY, NOT TO EXCEED SUCH AMOUNT SHALL BE TAMUS'S SOLE AND EXCLUSIVE REMEDY. NEITHER THE ACUE PARTIES NOR TAMUS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS OR LOST SALES OR BUSINESS, EVEN IF SUCH ACUE PARTY OR TAMUS IS ADVISED, KNEW OF, OR SHOULD HAVE KNOWN THE POSSIBILITY OF SUCH DAMAGES.

6. TERM, TERMINATION

- 6.1 Term. The "Term" shall commence on the Effective Date, and unless earlier terminated as described below, shall continue through December 31, 2021 unless extended by mutual written agreement of the Parties or terminated pursuant to the terms of this Agreement.

- 6.2 Termination for Cause. Each Party may terminate this Agreement, without liability, obligation, or penalty of any kind, upon written notice in the event the other Party commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach.
- 6.3 Termination for Convenience: TAMUS may terminate this Agreement at any time upon thirty (30) days prior notice to ACUE.
- 6.4 Obligations on Termination. Upon termination or expiration of this Agreement, except as expressly provided hereunder, all rights granted hereunder and all obligations of ACUE to provide Services shall immediately terminate and the Parties shall (in each Party's sole discretion) return promptly or destroy (and, if applicable, confirm such destruction in writing to the other Party) all tangible material embodying the Confidential Information of the other Party, except for any archived copies automatically created in the ordinary course of the Party's document management systems (it being understood that such archived copies shall still be treated as Confidential Information hereunder and subject to the terms of this Agreement). The Parties agree that any fee(s) paid in connection with an order form under this Agreement are non-refundable if ACUE has performed any service(s) under such order form.
- 6.5 Survival. Termination of this Agreement or expiration of the Term shall not relieve TAMUS from paying all fees (to the extent applicable) accruing prior to termination.

7. GENERAL

- 7.1 Use of Images. ACUE may not use the name or any adaptation of the name of TAMUS or any of its employees in any way except in factual statements that, in context, are not misleading or imply an endorsement by TAMUS or TAMUS employees.
- 7.2 Force Majeure. Neither Party shall be deemed in breach hereunder for any cessation, interruption, or delay in the performance of its obligations to the extent due to causes beyond its reasonable control, including, without limitation, earthquake, flood, epidemic, pandemic or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, or war (whether or not officially declared), or any change in or the adoption of any law, regulation, judgment, or decree (each a "Force Majeure Event"); provided that financial inability in and of itself shall not be a Force Majeure Event. In such event, the Party whose performance has ceased, or been interrupted or delayed, shall, as quickly as practicable under the circumstances, notify the other Party by telephone (to be confirmed in writing within five (5) business days of the inception of such delay) and describe at a reasonable level of detail the circumstances of such Force Majeure Event and make commercially reasonable efforts to perform notwithstanding the Force Majeure Event. In the event ACUE is the affected Party and its performance has not been fully resumed within ten (10) days after the first occurrence of the Force Majeure Event, TAMUS may terminate this Agreement immediately upon written notice to ACUE.
- 7.3 Compliance with Laws. In performing the services and other obligations to be performed hereunder, the Parties shall comply with all applicable federal, state, and local laws, rules, and regulations related to the performance of their duties and exercise of their rights hereunder.
- 7.4 No Assignment. TAMUS may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without ACUE's express prior written consent. ACUE may assign or transfer this Agreement, in whole or in part, without restriction, provided that such assignment or transfer (i) is to an affiliate of ACUE, (ii) arises by operation of law, or (iii) occurs in connection with a merger, stock sale, or the sale, transfer, or other disposition of all or substantially all of ACUE's assets pertaining to the Services or another similar transaction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, and the Parties' respective successors and permitted assigns. Any attempt by either Party to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing shall be null and void.

- 7.5 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by a duly authorized representative of each Party. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 7.6 Relationship. Nothing in this Agreement shall be construed to place the Parties hereto in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner, and nothing herein shall give rise or is intended to give rise to any rights of any kind to any third parties. For all purposes under this Agreement, ACUE shall be and act as an independent contractor of TAMUS.
- 7.7 Severability. If any provision of this Agreement is found to be unenforceable, then such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.
- 7.8 Counterparts. This Agreement may be executed and delivered in several counterparts, each of which together shall be deemed an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.
- 7.9 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its rules of conflict of laws. Venue for any claim arising out of or relating to this Agreement or any of the transactions it contemplates must be as provided by Texas law.
- 7.10 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (i) delivered personally; (ii) sent by confirmed facsimile; (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. Notices shall be sent to:

If to ACUE	If to TAMUS
Attn: General Counsel 85 Broad Street 17th Floor New York, NY 10004	Attn: Jeff Zimmermann 301 Tarrow, Suite 273 College Station, TX 77840 SOProcurement@tamus.edu

- 7.11 Entire Agreement. This Agreement, together with any order forms to this Agreement, constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter contained herein, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments, or quotations. In the event of a conflict between the Agreement and the Terms of Service posted on the ACUE website used in connection with delivery of the Services, then this Agreement shall prevail to the extent necessary to resolve such conflict.
- 7.12 Cumulative Remedies. Each Party retains all rights not expressly granted hereunder and, subject to the terms hereof, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy available under this Agreement or otherwise.

- 7.13 Effective Date. This Agreement shall be effective upon its full execution by both Parties, and the effective date of this Agreement shall be the last date entered in the signature lines below (the “Effective Date”).
- 7.14 Access by Individuals with Disabilities. ACUE represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMUS 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, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent ACUE becomes aware that the EIRs, or any portion thereof, do not comply, then ACUE shall, at no cost to TAMUS, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.
- 7.15 Certification as to Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, ACUE certifies that ACUE does not and will not, during the performance of this Agreement, boycott Israel. TAMUS may terminate this Agreement if this certification is inaccurate.
- 7.16 Certification as to Business with Certain Countries and Organizations. Pursuant to Chapter 2252, Texas Government Code, ACUE certifies that ACUE is not engaged in business with Iran, Sudan, or a foreign terrorist organization. TAMUS may terminate this Agreement if this certification is inaccurate.
- 7.17 Certification as to Contracts Related to Persons Involved in Human Trafficking. Pursuant to Section 2155.0061, Texas Government Code, ACUE certifies that ACUE is not ineligible to enter into this Agreement due to financial participation by a person who, during the five-year period preceding the date of this Agreement, has been convicted of any offense related to the direct support or promotion of human trafficking, and acknowledges that TAMUS may terminate this Agreement and withhold payment if this certification is inaccurate.
- 7.18 Conflict of Interest. ACUE and each person signing on behalf of ACUE certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The Texas A&M University System or the A&M System Board of Regents, nor any employee or person whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- 7.19 Debts or Delinquencies. Pursuant to Section 2252.903, Texas Government Code, any payments owing to ACUE under this Agreement may be applied directly toward certain debts or delinquencies that ACUE 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.
- 7.20 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% 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.”
- 7.21 Disputes. ACUE shall use the dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General to attempt to resolve any claim for breach of

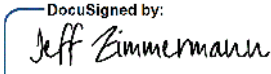
contract made by ACUE that cannot be resolved in the ordinary course of business. ACUE shall submit written notice of a claim of breach of contract under this chapter to TAMUS's designated official, who will examine ACUE's claim and any counterclaim and negotiate with ACUE in an effort to resolve the claim.

7.22 Non-Waiver. ACUE acknowledges TAMUS is an agency of the State of Texas and nothing in this Agreement waives or relinquishes TAMUS's right to claim any exemptions, privileges, or immunities as may be provided by law.


7.23 Public Information. ACUE 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. Upon TAMUS's written request, ACUE shall 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 in Section 552.002, Texas Government Code, but only includes information to which TAMUS has a right of access. ACUE acknowledges that TAMUS may be required to post a copy of the fully-executed Agreement on TAMUS's website in compliance with Section 2261.253(a)(1), Texas Government Code.

IN WITNESS WHEREOF, the Parties' authorized signatories have duly executed this Agreement as of the dates indicated below.

THE TEXAS A&M UNIVERSITY SYSTEM

By:  _____
Name: Jeff Zimmermann
Title: Director, Procurement & Business Services
Date: 4/27/2020 | 10:56:59 CDT

EdCERT, LLC d/b/a ACUE

By:  _____
Name: Doug Saidenberg
Title: Chief Financial Officer
Date: 4/27/2020

Protected Information Addendum

“Protected Information” means employment records, education records, personal financial records and other personally identifying information, research data, mission critical information (information designated by TAMUS to be essential to the continued performance of TAMUS’s mission, the unavailability of which would result in consequences to TAMUS), and other data that has been designated as private, protected, or confidential by law or by TAMUS. “Protected Information” does not include public records that by law must be made available to the general public. If ACUE is uncertain as to whether any data constitutes Protected Information, ACUE shall treat the data in question as Protected Information until a determination is made by TAMUS.

ACUE shall comply with all TAMUS requirements for vendor access to TAMUS systems and networks.

TAMUS hereby designates ACUE as a TAMUS “official” with a legitimate educational interest in TAMUS’s education records as defined in the Family Education Rights and Privacy Act (“FERPA”). Such designation is solely for the purposes of FERPA compliance and for no other purpose, and to the extent TAMUS has policies, rules, and procedures binding on TAMUS officials generally, such policies, rules, and procedures will apply to ACUE only insofar as such compliance is relevant to compliance by ACUE and TAMUS with FERPA.

ACUE shall hold Protected Information in confidence. ACUE may not use or disclose Protected Information received from or on behalf of TAMUS except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by TAMUS. ACUE may not use Protected Information for any purpose other than the purpose for which the disclosure was made. ACUE may allow only ACUE’s employees who have a legitimate business need in performing the Agreement to have access to Protected Information.

ACUE shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted Protected Information received from, or on behalf of TAMUS. ACUE shall extend these measures by contract to all subcontractors used by ACUE in the performance of this contract.

Upon termination of the Agreement, ACUE shall return all Protected Information to TAMUS within 30 days or, if return is not feasible, destroy all Protected Information. At least 20 days before destruction of any Protected Information, ACUE shall provide TAMUS with written notice of ACUE’s intent to destroy Protected Information. Within seven days after destruction, ACUE shall confirm to TAMUS in writing the destruction of Protected Information.

ACUE shall, within one day of discovery, report to TAMUS any use or disclosure of Protected Information not authorized by the Agreement or in writing by TAMUS. ACUE’s report shall identify: (a) the nature of the unauthorized use or disclosure, (b) the Protected Information used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what ACUE has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action ACUE has taken or will take to prevent future similar unauthorized use or disclosure. ACUE shall provide such other information, including a written report, as reasonably requested by TAMUS.

ACUE shall defend and indemnify TAMUS from all claims, liabilities, damages, or judgments involving a third party, including TAMUS’s costs and attorneys’ fees, which arise as a result of ACUE’s breach of any of its obligations under this section.

The restrictions and obligations under this section will survive expiration or termination of the Agreement.