

**SERVICE AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND HONORLOCK INC.**

This Service Agreement (this “**Agreement**”) is entered into and effective upon final execution (the “**Effective Date**”) by and between The Texas A&M University System, an agency of the State of Texas (the “**A&M System**”), and Honorlock Inc., a Delaware corporation (“**PROVIDER**”). The A&M System and PROVIDER are sometimes referred to herein as a “**Party**” individually and as the “**Parties**” collectively.

A&M System and PROVIDER hereby agree as follows:

**1. SERVICES**

- 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 services (“**Services**”). These Services include implementation and operation of an online test proctoring test application (“**Platform**”) and proctoring services delivered through the Platform. Participating Member(s) will contract with PROVIDER by executing an order form or purchase order (each an “**Order Form**”) with PROVIDER. The A&M System makes no guarantee of execution of an Order Form. The Services requested by a Member shall be delivered and/or licensed by PROVIDER to the Member during the term of this Agreement in accordance with the rights, obligations and pricing set forth herein.
- B. The Order Form shall incorporate the specific Services requested by Member, the payment amount due to PROVIDER and the period of performance subject to the terms under this Agreement. The terms of this Agreement shall be incorporated into any Order Form executed by a Member and PROVIDER for the Services during the term of this Agreement and an Order Form shall reference this Agreement. The Order Form shall grant the Member a non-exclusive, non-sublicensable right and license to access and use the Services. Upon execution of such Order Form, such Member is only responsible for its own compliance with the terms and conditions of this Agreement.
- C. Member Content. A&M System and its Members hereby grant PROVIDER during the during the applicable Order Term a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to vendors providing services to PROVIDER (such as hosting providers), to reproduce, execute, use, store, archive, modify, perform, display, and distribute to (i) exam-takers and (ii) test administrators (herein, “**Authorized Users**”) the A&M System Data (as defined below) via the Platform and to use the A&M System Data to provide and improve PROVIDER’S Services. PROVIDER and PROVIDER’S third parties will use the A&M System Data as permitted by this Agreement. Members will have sole responsibility for the accuracy, quality, and legality of the A&M System Data.
- D. Restrictions on Use. To the extent permitted by the Constitution and the laws of the State of Texas, Member shall be responsible for the acts and omissions of its Authorized Users and any other person who accesses and uses the Platform using any of Member or its Authorized Users’ sign-in names, passwords, and unique identifiers. Member will not (and will not authorize, permit, or encourage any third party to): (i) allow anyone other than

Authorized Users to access and use the Platform, the Deliverables, or the Documentation; (ii) allow an Authorized User to share his or her access credentials with other representatives or any third party; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Platform or the Deliverables; (iv) modify, adapt, or translate the Platform, the Deliverables or the Documentation; (v) make any copies of the Platform or the Deliverables (unless otherwise set forth in a Statement of Work with respect to a Deliverable); (vi) resell, distribute, or sublicense the Platform, the Documentation, or the Deliverables or use any of the foregoing for the benefit of anyone other than Member or the Authorized Users unless expressly provided for in the applicable Order Form or Statement of Work; (vii) save, store, or archive any portion of the Platform (including, without limitation, any data contained therein) outside the Platform other than those outputs generated through the intended functionality of the Platform as set forth in the Documentation without the prior, written permission of PROVIDER in each instance; (viii) remove or modify any proprietary markings or restrictive legends on or in the Platform, the Deliverables, or the Documentation; (ix) use the Platform, the Deliverables, or the Documentation in violation of any Applicable Law or regulation, in order to build a competitive product or service, or for any purpose not specifically permitted in this Agreement; (x) introduce, post, or upload to the Platform any Prohibited Content; or (xi) circumvent any processes, procedures, or technologies that PROVIDER have put in place to safeguard the Platform or protect the integrity of the exam taking process. Upon PROVIDER's request, Members will use commercially reasonable efforts to assist PROVIDER in preventing and enforcing these restrictions.

E. PROVIDER has the right to monitor Member compliance with this Agreement. If PROVIDER reasonably believes that that Member is not using the Platform, the Deliverables, or the Documentation in compliance with this Agreement, then Member will remedy any such non-compliance within five (5) business days of receiving notice from us.

F. Copyright and Exam Integrity Issues.

F.i. Takedown Notices. PROVIDER's Services may include a feature that searches certain third-party websites and sends takedown notices when content appears to be identified on those sites that potentially infringes A&M System Data. If this takedown feature is included in Member's Services, Member hereby authorizes PROVIDER to send takedown notices on Member's behalf and, upon PROVIDER'S request, Member will (and will cause the appropriate administrator to) execute and file any documents and take any other steps that PROVIDER may deem necessary to establish and/or validate such authorization. Member hereby represents and warrants that Member and Member's administrators have all necessary rights, title, and interest in and to the A&M System Data that is uploaded to the platform and all appropriate authority necessary to provide PROVIDER with the authorization in this section, and that Member and Member's administrators have accurately identified the owner of such A&M System Data. Member may request PROVIDER to send a takedown notice or PROVIDER may send a takedown notice at PROVIDER's own discretion, but PROVIDER cannot guarantee that any takedown notice will be sent, acknowledged, or honored, and

PROVIDER disclaims all representations, warranties, and liabilities with respect thereto.

- F.ii. Exam Integrity Issues. PROVIDER does not and cannot guarantee that any such measures PROVIDER implements that are designed to improve and safeguard the integrity of the exam taking process will be successful, and PROVIDER disclaims all representations, warranties, and liabilities with respect thereto.

## 2. TERM AND TERMINATION

- A. The term of this Agreement begins on the Effective Date and continues for a period of five (5) years 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 two (2) additional two (2) 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 thirty (30) days after receiving written notice of the breach.
- 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 thirty (30) 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. 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 A 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 an agency of the State of Texas, the A&M System and its Members are tax exempt. Tax exemption certification will be furnished to PROVIDER upon request.



#### 4. DATA PRIVACY AND SECURITY

- A. 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, their employees, contractors, students, or any other third party on behalf of MEMBER enter, submit or upload to Services or otherwise provide to PROVIDER under this Agreement (collectively, the "A&M System Data"). A&M System Data may include information relating to employees and students, including, but not limited to personally identifiable information, social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state, and local laws, rules, and regulations.
- B. PROVIDER shall safeguard and maintain the confidentiality of the A&M System Data in accordance with applicable federal, state, and local laws, rules, and regulations. 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 substantially the same restrictions and obligations imposed on PROVIDER in this Agreement and PROVIDER agrees that it shall be responsible for its subcontractors' and agents' compliance with such obligations.
- C. 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.
- D. 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 (to the extent known at the date of report): (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.
- E. Within thirty (30) days of the expiration or termination of this Agreement or an Order Form, PROVIDER, if directed by A&M System or the applicable Member, shall return in a mutually acceptable electronic format all A&M System Data in its possession (or in the possession of any of its subcontractors or agents). Upon termination or expiration of this Agreement or a Member's Order Form, PROVIDER shall dispose of A&M System Data in accordance with PROVIDER's standard deletion processes. PROVIDER shall archive a copy A&M System Data for one (1) year ("Retention Period") solely for the purpose of responding to legal or contractual matters, and such Data shall remain subject to all data privacy and confidentiality terms herein for so long as it is within PROVIDER's control.
- F. A&M System Data shall not include (i) any feedback provided during the term of the Agreement, and (ii) "Usage Data" related to the use of the Platform that is collected, anonymized, and aggregated. A&M System agrees that PROVIDER may collect, use, vend,

and publish such Usage Data provided such shall not directly or indirectly identify A&M System, the Member, or its users.

## 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.
- B. Confidential Information shall not include A&M System Data. “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.
- C. The Receiving Party shall handle Confidential Information with the same care that the Receiving Party uses to protect its own information of comparable sensitivity, but not less than reasonable care. The Receiving Party may use Confidential Information only for purposes of performing its obligations under this Agreement and may disclose Confidential Information only to the Receiving Party’s employees, contractors, agents, and other representatives (“Representatives”) having a need to know the Confidential Information for purposes of performing its obligations under this Agreement, provided that they are subject to confidentiality obligations not less restrictive than those set forth herein, and the Receiving Party remains responsible for its Representatives’ compliance with the obligations under this Section.
- D. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
- E. 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.
- F. 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. INTELLECTUAL PROPERTY

- A. PROVIDER shall retain all rights, title, and interest in and to the Services and Platform including all modifications, improvements, adaptations, enhancements, or translations made thereto, and to any Usage Data. 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 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. **EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.A, THE SERVICES, THE PROFESSIONAL SERVICES, THE PLATFORM, ITS COMPONENTS, ANY DOCUMENTATION, THE WORK PRODUCT, AND ANY OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND PROVIDER MAKES NO WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. TO THE EXTENT THAT PROVIDER MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.**
- B. Subject to the mutually agreed limitation of liability and exclusion of damages provisions herein, 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"), (ii) PROVIDER's gross negligence or willful misconduct, or (iii) PROVIDER's breach of Sections 4 of 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.
- C. A&M System represents and warrants to PROVIDER that: (i) the A&M System Data contains no Prohibited Content (defined below); (ii) it has the right to provide the A&M System Data in accordance with this Agreement, (iii) its use of the Services, including, without limitation, the submission and processing of the A&M System Data, complies with all Applicable Laws; (iv) A&M System will provide all notices, and obtain all consents, required by any Applicable Law or any other agreement by which a subscribing Member is bound, in connection with the processing of any A&M System Data including personal data of Authorized Users by either Party in connection with the Agreement; and (v) it will



not disclose any biometric data or identifiers collected or otherwise processed in connection with this Agreement to any third party.

## 7. COMPLIANCE WITH LAWS

- A. PROVIDER and A&M System including its Members 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. COPPA and Parental Consent. To the extent A&M System and its Members intends to have the Services be used by any Exam Takers under the age of thirteen (each a "COPPA User"), A&M System agrees to: (i) require a parent and/or guardian of each such COPPA User (each a "Parent") to execute a notice and consent form that is compliant with COPPA (each executed form, a "Consent Form") and maintain copies of all such Consent Forms; (ii) promptly provide a copy of each Consent Form to PROVIDER for each COPPA User; (iii) not authorize, allow, or permit any COPPA User to utilize the Services without obtaining a Consent Form for such COPPA User; and (iv) notify PROVIDER if A&M System or its Member(s) becomes aware of (a) any COPPA User using the Services without such COPPA User's Parent executing a Consent Form; and (b) any parent requesting to revoke any consents granted under a Consent Form.
- D. Family Educational Rights and Privacy Act ("FERPA"). To the extent any information or data processed by PROVIDER via the Services are subject to the Family Educational Rights and Privacy Act of 1974, as amended ("FERPA"), A&M System agrees that, for the purposes of FERPA, PROVIDER will be considered a contractor to whom functions and services have been outsourced by A&M System. As a result of these functions and services, PROVIDER might have access to education records as defined under FERPA. PROVIDER agrees that it shall safeguard and keep confidential such personally identifiable information from education records subject to FERPA that it receives or has access to from A&M System or its Members pursuant to this Agreement and shall not re-disclose such records to any third parties, unless such re-disclosure is required in order to perform the functions and Services provided by PROVIDER under this Agreement and is authorized in writing by A&M System including by its Members. As of the Effective Date, A&M System hereby authorizes PROVIDER to make such re-disclosures to PROVIDER's hosting provider and any organization that processes data on behalf of PROVIDER in order for PROVIDER to perform the Services. PROVIDER shall require any such third party to comply with the same restrictions and obligations imposed on PROVIDER in this Section, including without limitation, the prohibition on redisclosure. PROVIDER will not use or re-disclose the education records provided by A&M System and its Members hereunder for any purpose

other than in compliance with the terms of this Agreement and to carry out Services on behalf of A&M System and its Members.

## 8. INDEMNIFICATION; LIMITATION OF LIABILITY

- A. **Subject to the mutually agreed limitation of liability and exclusion of damages provisions herein**, PROVIDER shall indemnify and hold harmless the A&M System Indemnitees in accordance with Section 6(B) above. Section 6(B) and this Section 8 (A) will not apply to the extent the third-party claim arises from or is based upon (i) A&M System's or Member's use of: (a) the Platform or a Deliverable not in accordance with the Documentation or this Agreement; or (b) any unauthorized modifications, alterations, or implementations of the Platform or a Deliverable not made by PROVIDER; (ii) use of the Platform or a Deliverable in combination with unauthorized modules, apparatus, hardware, software, or services not supplied or specified in writing by PROVIDER; or (iii) any use of the Platform or a Deliverable for which they were not designed.
- B. In the event that PROVIDER reasonably determines that the Platform or a Deliverable is likely to be the subject of a third-party claim, PROVIDER will have the right (but not the obligation), at PROVIDER's own expense, to: (i) procure for A&M System the right to continue to use the Platform or Deliverable as provided in this Agreement; (ii) replace the infringing components of the Platform or Deliverable with other components with equivalent functionality; or (iii) suitably modify the Platform or Deliverable so that it is non-infringing and functionally equivalent. If none of the foregoing options is available on commercially reasonable terms, PROVIDER may terminate this Agreement, any applicable Order Form, or any applicable Statement of Work without further liability to A&M System and refund subscribing Members a prorated portion of any pre-paid but unused Fees. This Section together with the indemnity provided under Section 6(B), states A&M System's sole and exclusive remedy, and PROVIDER's sole and exclusive liability, regarding any third-party claim.
- C. **Indirect Damages. IN NO EVENT WILL EITHER PROVIDER OR THE APPLICABLE A&M System MEMBER BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY INCLUDING A&M System FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION, INACCURATE INFORMATION, OR LOSS OF INFORMATION) OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**
- D. **Direct Damages. EXCEPT IN CONNECTION WITH A&M SYSTEM'S OR A MEMBER'S BREACH OF SECTION 1.D ("RESTRICTIONS ON USE"), A&M SYSTEM'S OR A MEMBER'S FAILURE TO PAY ANY UNDISPUTED SUMS DUE HEREUNDER, PROVIDER'S BREACH OF SECTION 4, A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID OR PAYABLE BY THE MEMBER UNDER THE APPLICABLE ORDER FORM OR STATEMENT OF WORK DURING THE PERIOD TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM (THE "LIABILITY CAP"); PROVIDED, HOWEVER PROVIDER'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING FROM PROVIDER'S BREACH OF SECTION 4 AND/OR PROVIDER'S INDEMNITY OBLIGATIONS UNDER SECTION 6(C) WILL NOT EXCEED THREE (3) TIMES THE**



## LIABILITY CAP.

- E. Limit on Claims. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY A PARTY MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE GREATEST EXTENT PERMITTED BY LAW.

**9. INSURANCE**

Insurance requirements as stated within Exhibit B, attached hereto.

**10. INFORMATION TECHNOLOGY**

- A. **Electronic and Information Resources.** PROVIDER represents and warrants that the services provided hereunder comply with the applicable accessibility requirements set forth in Web Content Accessibility Guidelines (WCAG) version 2.1, level AA and 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 "Accessibility Warranty"). If PROVIDER becomes aware of noncompliance with the Accessibility Warranty, PROVIDER shall, at no cost to A&M System and Members, promptly respond to and use reasonable efforts to resolve and remediate any noncompliance. 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 control baseline required by the then-current risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP"), to safeguard and preserve the confidentiality, integrity, and availability of A&M System Data. 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 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.

## 11. 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, except in the case of a change of control, in which case PROVIDER shall provide at least thirty (30) days notice in advance of such change of control.
- 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](mailto:jzimmermann@tamus.edu)
- PROVIDER:                     Honorlock Inc.  
  2500 N Military Trail, Suite 322  
  Boca Raton, FL 33431  
  Attention: Wade Howard  
  Phone: (844) 243-2500  
  Email: [whoward@honorlock.com](mailto:whoward@honorlock.com)
- 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. **Certification Regarding Products from the Gaza Strip.** PROVIDER represents and warrants that the goods it provides to MEMBER under this Agreement, if any, are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.
- V. **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.
- W. **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.

- X. **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.
- Y. **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.
- Z. **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.
- AA. **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.
- BB. **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.
- CC. **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.
- DD. **Definitions.**



- a. "Deliverables" means the description of the project, including any applicable specifications, service levels, milestones, and deliverables to be developed.
- b. "Destructive Elements" means computer code, programs, or programming devices that are designed to disrupt, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Platform or any other associated software, firmware, hardware, computer system, or network.
- c. "Documentation" means the manuals, specifications, and other materials describing the functionality, features, operating characteristics, and use of the Platform or Deliverables (defined below), as provided or made available by Honorlock.
- d. "Platform" means Honorlock's proprietary, cloud-based proctoring platform, which is delivered within the learning management system, including any associated software or applications designed to operate in conjunction with such Platform.
- e. "Prohibited Content" means content that: (i) is illegal under Applicable Law; (ii) violates any third party's intellectual property rights; (iii) contains indecent or obscene material; (iv) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (v) promotes unlawful or illegal goods, services, or activities; (vi) contains false, misleading, or deceptive statements, depictions, or sales practices; (vii) contains Destructive Elements; or (viii) is otherwise reasonably objectionable.
- f. "Services" means Honorlock's provision to A&M System, A&M System's access to and usage of (i) the Platform; and (ii) the support services identified in an order or schedule pursuant to this Agreement.
- g. "Statement of Work" means a statement of work for Professional Services mutually executed by the Parties.

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

**The Texas A&M University System**

**Honorlock Inc.**

DocuSigned by:  
  
 BY: \_\_\_\_\_  
 E2BE2924E69547F...

DocuSigned by:  
  
 BY: \_\_\_\_\_  
 008CFB3937094BE...

Name: Jeff Zimmermann

Name: Pat Henn

Title: Executive Director, Procurement Services

Title: CFO

Date: 7/1/2024

Date: 7/1/2024

**Exhibit A – Fee Rate Schedule****Enterprise Pricing Model – Annual Payment, Institution Payment by User or FTE****PER USER or FTE MODEL – INSTITUTION PRE-PAY ANNUALLY**

	User Adoption	AI + Live Pop-in	Automated (AI) Only
Tier 1	1 – 99,000	\$21.50	\$12.00
Tier 2	100,000 – 199,000	\$20.50	\$11.00

**PER EXAM MODEL – INSTITUTION PRE-PAY ANNUALLY**

AI + Live Pop-in	Automated (AI) Only	AI + Live Pop-in with Certified Proctor Review
\$6.00	\$4.00	\$12.00

**Additional discounts for multi-year agreements**

3 YR	5 YR
2.50%	4.00%

**Notes:**

1. Pricing per user is defined as the unique users across a 12-month period. Per user pricing is subject to overages (5% premium) if actual quantity exceeds licensed quantity.
2. Pricing per FRE is based on iPeds FTE (Full Time Equivalent enrollment), covers the entire institution, and is not subject to overages.
3. Once licensing for A&M System qualifies for Tier 2, all previously licensed agreements will reflect new pricing upon their annual renewal.
4. Institutions who license with PROVIDER within 2024 will receive desired level of service and license quantity for free for up to 3 months or through 08/31/2024, whichever is greater, if agreement to a multi-year agreement.
5. Implementation and Training fee of \$2,500 is waived for all A&M System institutions.

**Exhibit B - Insurance**

A. PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. 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 MEMBER. By requiring such minimum insurance, MEMBER 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 MEMBER at least ten days before the effective date of the cancellation.

**1. Worker's Compensation**

Worker's compensation insurance with the following minimum limits of coverage:

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 MEMBER. 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;

**3. Commercial General Liability**

Commercial general liability insurance with the following minimum limits of coverage:

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 must 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.



#### 4. Cyber Liability

PROVIDER shall procure and maintain, for the duration of this Agreement and for such length of time as is necessary to cover any and all claims, cyber liability insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. The cyber liability policy shall be sufficiently broad to cover PROVIDER's duties and obligations under this Agreement and include coverage for claims involving: invasion of privacy; loss, damage, theft, alteration or other misuse of data; unauthorized exposure or breach of data; privacy event expenses such as mandatory/voluntary notification costs, credit monitoring, call center services, forensic costs, and any other fees, costs, or expenses necessary to comply with any applicable breach notification laws; privacy regulatory proceedings (including fines and penalties); cyber extortion payments; and network security.

- B. PROVIDER shall deliver to MEMBER evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance prior to the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall provide additional evidence of insurance 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.
- C. Commercial General Liability and Auto Liability policies must be endorsed to name The Texas A&M University System Board of Regents ("Board of Regents"), The Texas A&M University System ("A&M System") and MEMBER as additional insureds up to the actual liability limits of the policies maintained by PROVIDER. The commercial general liability additional insured endorsements must include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.
- D. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents, A&M System and MEMBER.
- E. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to MEMBER ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy.
- F. Any deductible or self-insured retention must be declared to and approved by MEMBER prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.
- G. Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be forwarded to: [SOProurement@tamus.edu](mailto:SOProurement@tamus.edu)
- H. The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by MEMBER in writing.
- I. Certificate Holder should read as follow:

The Board of Regents for and on Behalf of The Texas A&M University System  
The Texas A&M University System  
301 Tarrow St.  
College Station, TX 77840