

## NON-EXCLUSIVE AGREEMENT BETWEEN A&M SYSTEM AND CONTRACTOR

This Services Agreement (“Agreement”) is entered into and effective September 1, 2020 (the “**Effective Date**”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the State of Texas, and Proctor.io Incorporated, a Delaware corporation (hereafter referred to as “Contractor”). “Institution” is defined as any University that is a member of The Texas A&M University System.

### 1. **Scope of Work**

1.1 Contractor acknowledges that this Agreement is a non-exclusive agreement. Neither A&M System nor an Institution is obligated to request Services (defined below) from or enter into an Order Form (Exhibit B) with Contractor under this Agreement.

1.2 Prior to Contractor’s commencement of any Services for a Requesting Institution, the Contractor and the Requesting Institution must complete and enter into an Order Form. Each Institution shall purchase services via a separate Order Form. All of the terms and conditions contained in this Agreement are incorporated into each Order Form for all purposes. The terms and conditions of this Agreement will control in the event of any conflict between the terms and conditions of an Order Form and the Agreement.

### 2. **Term**

The term (Initial Term) of this Agreement will begin on the Effective Date and expire on August 31, 2023. A&M System will have the option to renew this Agreement for two (2) additional one (1) year terms (each a Renewal Term). The Initial Term and each Renewal Term are collectively referred to as the Term.

### 3. **Payment.**

A Requesting Institution will pay Contractor for the performance of Services in accordance with **Exhibit C**, Payment for Services, beginning at the time that Requesting Institution implements and launches the Services. The Parties acknowledge and agree that no fee shall be paid by an Institution to Contractor until they enter into an Order Form and begin participation in the Services under this Agreement and that Order Form.

The contract amount in Exhibit C includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

Fees are due and payable as per the terms of this Agreement in compliance with **Exhibit B**, Order Form.

[Section 51.012, Texas Education Code](#), authorizes Institution to make payments through electronic funds transfer methods. Contractor agrees to accept payments from Institution through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor’s banking information to each Participating Institution in writing is required to complete and submit to a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at: <https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>. Prior to the first payment, each Participating Institution will confirm Contractor’s banking information. Changes to Contractor’s bank information must be communicated to each Participating Institution in accordance with Section 20 in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

Notwithstanding any other provision of this Agreement, each Institution is entitled to a discount of 2% (**Prompt Payment Discount**) off of each payment that Institution submits within 10 days after Institution’s receipt of Contractor’s invoice for that payment.

4. **Tax Exemption.** Institution (a State agency) is exempt from Texas Sales & Use Tax on Work in accordance with [§151.309, Texas Tax Code](#) and [34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to [34 TAC §§3.322\(c\)\(4\)](#) and (g)(3), this Agreement is sufficient proof of Institution’s tax exempt status and Institution is not required to provide further evidence of its exempt status.

### 5. **Contractor's Obligations.**

5.1 Contractor will perform Work in compliance with (a) all federal, state or local, laws, statutes, regulations and ordinances including, but not limited to, all applicable privacy, data protection, and

information security-related laws and regulations (collectively, **Applicable Laws**), and (b) the policies and regulations of The Texas A&M University System (<https://www.tamus.edu/legal/policy/policy-and-regulation-library/>); and the applicable institutional rules, regulations and policies of Institution (collectively, **Institution Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, [Chapter 15, Texas Business and Commerce Code](#), or federal antitrust laws.

- 5.2 Contractor represents and warrants that (a) it will perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances
- 5.3 Contractor will call to Institution's attention in writing all information in any materials supplied to Contractor (by Institution or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 5.4 Institution at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by Institution. Contractor will not be released from any liability by reason of any approval by Institution.
- 5.5 If applicable, Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then Institution may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that Institution may have at law or in equity.
- 5.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work.
- 5.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; 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 Contractor has been duly authorized to act for and bind Contractor.
- 5.8 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of Institution); (ii) to the extent any Work Material is created, University will receive free, good and clear title to all Work Material; (iii) the intellectual property rights protecting any Work Material created through Institution's use of the Application Service are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) the Application Service does not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Application Documentation will not violate the rights of any third parties in Application Documentation, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights. "Application Service" is defined as Contractor's various services and offerings including its technology and application software. "Application Documentation" is defined as any of the Application Service's text, and/or graphical documentation describing the Application Service's functionality.
6. **Texas Family Code Child Support Certification.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the

vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

7. **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
8. **Payment of Debt or Delinquency to the State.** Pursuant to [2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
9. **Loss of Funding.** Performance by A&M System 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 will issue written notice to Contractor and A&M System may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation of funds is beyond the control of A&M System.
10. **Notices.** . Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. 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:

If to 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  
Fax: (979) 458-6250  
E-mail: [zimmermann@tamus.edu](mailto:zimmermann@tamus.edu)

If to Contractor:

Proctorio, Inc.  
6840 E. Indian School Road  
Suite 200  
Scottsdale, Arizona 85251  
Attention: Proctorio Sales  
Email: [sales@proctorio.com](mailto:sales@proctorio.com)

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to A&M System pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice to A&M System as follows:

If to 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  
Fax: (979) 458-6250  
E-mail: [zimmermann@tamus.edu](mailto:zimmermann@tamus.edu)

or other person or address as may be given in writing by A&M System to Contractor in accordance with this Section.

- 11. State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#) *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- 12. Venue; Governing Law.** Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against A&M System or Institution shall be in the county in which the primary office of the chief executive officer of A&M System or Institution, as applicable, is located, which, for A&M System, is Brazos County, Texas. 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.
- 13. Breach of Contract Claims.**
- To the extent that [Chapter 2260, Texas Government Code](#), as it may be amended from time to time (**Chapter 2260**), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in [Chapter 2260](#) will be used, as further described herein, by A&M System and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
- 13.1. Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in [subchapter B](#) of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by [subchapter B](#) of Chapter 2260, to A&M System in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of [subchapter B](#) of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that A&M System allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with [subchapter B](#) of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The chief business officer of A&M System, or another officer of A&M System as may be designated from time to time by A&M System by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
- 13.2. If the parties are unable to resolve their disputes under **Section 13.1** the contested case process provided in [subchapter C](#) of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by A&M System.
- 13.3. Compliance with the contested case process provided in [subchapter C](#) of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under [Chapter 107, Texas Civil Practices and Remedies Code](#). The parties hereto specifically agree that (i) neither the execution of this Agreement by A&M System nor any other conduct, action or inaction of any representative of A&M System relating to this Agreement constitutes or is intended to constitute a waiver of A&M System's or the state's sovereign immunity to suit and (ii) A&M System has not waived its right to seek redress in the courts.
- 13.4. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), as currently effective, thereafter enacted or subsequently amended.
- 13.5. A&M System and Contractor agree that any periods provided in this Agreement for notice and cure of defaults are not waived.
- 14. Records.** Contractor will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for four (4) years after the conclusion of the Agreement.
- 15. Insurance.**

Contractor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis.

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

**Insurance:**

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

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

B. **Automobile Liability**

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

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

**Additional Endorsements**

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

C. **Commercial General Liability**

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

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

- D. **Professional Liability (Errors & Omissions)** Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.

E. Contractor will deliver to A&M System:

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

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

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Contractor under this Agreement. Contractor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in [SOProurement@tamus.edu](mailto:SOProurement@tamus.edu).

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

- 16. Indemnification.** Contractor agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of Contractor's grossly negligent or willful errors or omissions under this Agreement.
- 17. Ethics Matters; No Financial Interest.** By executing this Agreement, Contractor and each person signing on behalf of Contractor 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 A&M 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.
- Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and A&M System and the Institutions with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html).
- 18. Undocumented Workers.** The *Immigration and Nationality Act (8 USC §1324a) (Immigration Act)* makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs

unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, A&M System may terminate this Agreement in accordance with **Section 25**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

19. **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, pandemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that A&M System may continue to use the Services during the occurrence.
20. **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) supersedes all prior agreements, written or oral, between Contractor and A&M System and will constitute the entire agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by A&M System and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.
21. **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
22. **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
23. **Ownership and Use of Work Material.**
  - 23.1 All data, photographs, audio and video recordings, documentation, screenshots, screencasts, session notes/proctor logs, student identifying documents (including biometrics), tapes, renderings, models, publications, statements, accounts, reports, studies, exam materials, results, data, and files, and all other materials produced by Contractor as a result of its specific Services to Institution (collectively, **Work Material**), whether or not accepted or rejected by Institution, are the sole property of Institution and for its exclusive use and re-use at any time without further compensation and without any restrictions. For clarification purposes, Contractor IP is not Work Material and Contractor retains all ownership of such Contractor IP in accordance with Section 23.5
  - 23.2 Contractor grants and assigns to Institution all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with Institution in any steps Institution may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
  - 23.3 Contractor will deliver all Work Material, to the extent available in a portable format, to Institution upon expiration or termination of this Agreement. During the Term, Institution will have the right to use Work Material for the completion of Work or otherwise as needed for Contractor's services in connection with the Work. Institution may, at all times, and to the extent available, retain the originals of Work Material. Work Material will not be used by any person other than Institution on other projects unless expressly authorized by Institution in writing.
  - 23.4 Identifiable Work Material will not be used or published by Contractor or any other party unless expressly authorized by Institution in writing. Contractor will treat all Work Material as confidential.
  - 23.5 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants A&M System and the Institution a limited, revocable, non-exclusive, worldwide, royalty-free license to use Contractor IP solely in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means the Application Services, Application Documentation, all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work or, with respect to software and programs, as globally maintained and updated by Contractor or its third party licensors; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.

23.6 Institution grants Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. **“Work Product Improvements to Contractor IP”** means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property; provided, however, any license for Contractor IP granted to Institution under this Agreement ceases upon termination of this Agreement.

**24. Confidentiality and Safeguarding of Institution Records; Press Releases; Public Information.** Under this Agreement, Contractor may create, receive from or on behalf of Institution, or have access to, records or record systems (collectively, **Institution Records**). Among other things, Institution Records may contain data protected or made confidential or sensitive by Applicable Laws. Contractor represents, warrants, and agrees that it will: (1) comply with all Applicable Laws relating to the privacy and security of Institution Records; (2) hold Institution Records in strict confidence and not use or disclose Institution Records except as (a) permitted by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by Institution in writing; (3) implement and maintain appropriate administrative, physical, and technical safeguards to secure Institution Records from unauthorized access, disclosure, and use in accordance with Applicable Laws; and (4) continually monitor its operations and take any action necessary to assure that Institution Records are safeguarded and the confidentiality of Institution Records is maintained in accordance with all Applicable Laws and the terms of this Agreement.

24.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any Institution Records occurs, Contractor will provide written notice to Institution within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide Institution with all information requested by Institution regarding the impermissible use or disclosure.

24.2 **Return of Institution Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Institution Records created or received from or on behalf of Institution will be (1) returned to Institution, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any Institution Records, Contractor will provide Institution with written notice of Contractor’s intent to destroy Institution Records. Within five (5) days after destruction, Contractor will confirm to Institution in writing the destruction of Institution Records.

24.3 **Disclosure.** If Contractor discloses any Institution Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 24**.

24.4 **Press Releases.** Contractor will not make any press releases, public statements, or advertisement referring to A&M System or any Institution or the engagement of Contractor as an independent contractor of A&M System or any Institution, or release any information relating to this Agreement for publication, advertisement or any other purpose without the prior written approval of A&M System or Institution, as applicable.

24.5 **Public Information.** Contractor acknowledges that A&M System 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 A&M System’s written request, Contractor will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System. Contractor acknowledges that A&M System may be required to post a copy of the fully executed Agreement (excluding information exempt from disclosure under [Chapter 552, Texas Government Code](#)) 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 the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.



- 24.6 **Disaster Recovery Plan.** Contractor has implemented and will maintain appropriate business continuity and disaster recovery plans to enable it to continue or resume providing Services in the event of any disaster or other adverse event affecting Institution and/or Contractor.
- 24.7 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if A&M System reasonably determines that Contractor has breached any of the restrictions or obligations in this **Section 24**, A&M System may immediately terminate this Agreement without notice or opportunity to cure.
- 24.8 **Duration.** The restrictions and obligations under this **Section 24** will survive expiration or termination of this Agreement for any reason.

**25. Default and Termination**

- 25.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day (15-day) period.
- 25.2 A&M System may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to A&M System. Notwithstanding any provision in this Agreement to the contrary, A&M System will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.
- 25.2 Termination under **Sections 25.1** or **25.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 25.3 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 25.4 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

**26. Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

**27. Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law..

**28. Limitation of Liability.** IN NO EVENT SHALL ANY PARTY OR ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, STATUTORY, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, EMOTIONAL HARM, DAMAGE TO GOOD WILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTIES

OR ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY CAUSE OR ACTION, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, RELATING TO OR IN CONNECTION WITH THE SERVICES, THE DOCUMENTATION OR THIS AGREEMENT EXCEED THE PURCHASE PRICE PAID FOR THE WORK.

29. **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Contractor will (1) provide Institution with a list (**List**) of all individuals who may be assigned to perform Work on Institution's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on Institution's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work on Institution's premises.

Prior to commencing performance of Work under this Agreement, Contractor will provide Institution a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide Institution an updated certification letter each time there is a change in the individuals on the List.

30. **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF A&M SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON A&M SYSTEM PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON A&M SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

31. **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

32. **Relationship of the Parties.** For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of A&M System. Contractor will not bind nor attempt to bind A&M System to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

33. **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if A&M System or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browserwrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that A&M System, Institution or any of its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

- 34. FERPA Compliance.** Some of the Institution Records Contractor receives, creates or maintains for or on behalf of Institution constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). Before Contractor may access, create or maintain any of Institution's FERPA Data, Contractor must execute [EXHIBIT E](#), FERPA Confidentiality and Security Addendum. To the extent that [EXHIBIT E](#), FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of [EXHIBIT E](#), FERPA Confidentiality and Security Addendum, will control.
- 35. General Data Protection Regulation (GDPR) Applicability.** Solely to the extent that Contractor processes **Personal Data** (as defined by the GDPR) that is contained in Institution Records on behalf of Institution, the terms of [EXHIBIT D](#), GDPR Data Protection Addendum, shall apply to such processing. To the extent that [EXHIBIT D](#), GDPR Data Protection Addendum, conflicts with any term contained in this Agreement, the terms of [EXHIBIT D](#), GDPR Data Protection Addendum, will control.
- 36. Payment Card Industry Standards.** Institution is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (**PCI DSS**), including Payment Application Data Security Standards (**PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires Institution to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (System Components in Scope). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to Institution (1) on or before the date this Agreement is signed by Institution, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by Institution, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit Institution or Institution's QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor's agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by Institution, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by Institution to facilitate the validation of Institution's PCI DSS compliance, and (2) Institution's information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.

- 37. Health Insurance Portability and Accountability Act.** If the Institution Records include Protected Health Information (**PHI**) as defined in the Health Insurance Portability and Accountability Act and 45 Code of Federal Regulations (CFR) Part 160 and subparts A and E of Part 164 (**HIPAA**), the Parties agree to comply with all Applicable Laws relating to the maintenance, uses, and disclosures of such PHI including, but not limited to, HIPAA (collectively, **Healthcare Laws**). Contractor agrees to enter into further agreements including, but not limited to, Business Associate Agreements with A&M System, any Institution or other appropriate entities as necessary to facilitate compliance with any applicable Healthcare Laws.
- 38. Enforcement.** Contractor agrees and acknowledges that A&M System is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to A&M System. A&M System cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause A&M System irreparable injury and damage. Contractor, therefore, expressly agrees that A&M System will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 38. Access by Individuals with Disabilities.** Before Contractor and Institution enter into a Purchase Order or other document under this Agreement under which Institution or its personnel or students will receive electronic and information resources ("EIRs") from Contractor, Contractor and Institution must evaluate and

include terms in such a Purchase Order or other document addressing the accessibility of those EIRs by persons with disabilities. Such terms shall, at a minimum, address compliance by the EIRs with the requirements of [Chapter 2054, Subchapter M of the Texas Government Code](#), [Title 1, Chapter 213](#) of the Texas Administrative Code, and [Title 1, Chapter 206, Rule §206.70](#) of the Texas Administrative Code.

39. **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is or becomes inaccurate.
40. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is or becomes inaccurate.
41. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section [2155.0061, Government Code](#), the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
42. **Websites and Mobile Applications.** Before deploying any website or mobile application included as part of the Work, Contractor must submit to Institution's information security officer the information required under policies adopted by Institution to protect the privacy of individuals by preserving the confidentiality of information processed by the website or application. At a minimum, the information submitted by Contractor must describe:
- (1) the architecture of the website or application;
  - (2) the authentication mechanism for the website or application; and
  - (3) the administrator level access to data included in the website or application.

Additionally, Contractor will provide all assistance and cooperation necessary for Institution to subject the website or mobile application to a vulnerability and penetration test conducted internally by University or by an independent third party.

42. **Project Notifications and Reports.**

Contractor will, upon execution of any Order Form (Exhibit B) under this Agreement, send a fully executed copy of that Order Form to:

Jeff Zimmermann  
[zimmermann@tamus.edu](mailto:zimmermann@tamus.edu)

**Contractor Reports**

In addition to the reports and deliverables required under an Order Form between the Contractor and a Requesting Institution who contracts for specific Services, Contractor shall, on an annual basis, submit a report to the University detailing all Services performed for any Institution, which will include the status of such Service (open / closed), and total fees billed.

43. **Institutions.** Contractor agrees that Institutions may obtain the Services under this Agreement via execution of an Order Form. By executing an Order Form, Contractor and that Institution acknowledge and agree that Contractor and that Institution are bound by the terms and conditions under this Agreement and the Order Form solely for the purposes of the Services to be provided by Contractor to that Institution under that Order Form. With regard to Order Forms entered into by Contractor and an Institution: (i) all references to A&M System or Customer in this Agreement shall be deemed to mean the Institution which entered into the Order Form, (ii) each Order Form shall be subject to the terms and conditions of this Agreement and legally binding exclusively upon the Institution entering into such Order Form and Contractor, and (iii) the termination of an Order Form by Contractor or that Institution shall not impact the validity of any other Order Form.

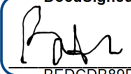
A&M System and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

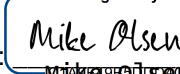
**AGREED TO AND SIGNED BY THE PARTIES:**

**The Texas A&M University System**

**Proctor.io Incorporated**

DS  
JD

DocuSigned by:  
By:   
Name: Billy Hamilton  
Title: Deputy Chancellor & CFO  
Date: 8/20/2020 | 11:33:11 CDT

DocuSigned by:  
By:   
Name: Mike Olsen  
Title: CEO  
Date: 8/20/2020 | 11:50:16 CDT

**Attached:**

- EXHIBIT A – Intentionally Omitted**
- EXHIBIT B – Sample Order Form**
- EXHIBIT C – Payment for Services**
- EXHIBIT D – GDPR DATA PROTECTION ADDENDUM**
- EXHIBIT E – FERPA CONFIDENTIALITY AND SECURITY ADDENDUM**

**EXHIBIT B**  
**SAMPLE ORDER FORM**

# Proctorio Enterprise Order Form



## Customer Information

Customer Legal Name		Contract Number	
Demo State University		2458679.23069	
Billing Address			
1234 W. Main Street			
City/State/Zip or Postal Code			Country
Fakeville, Arizona, 12345			United States
Primary Contact		Email	
Mike Olsen		mike@dsu.edu	
Financial Accounts Payable Contact		Email	
DSU Accounts Payable		ap@dsu.edu	
Effective Date	Service Date	For Learning Management System (LMS)	Additional LMS Instances
07/01/2019	06/30/2020	Instructure Canvas	-

## Product Order

Description	Payment Term
	NET30
	Initial Term (months)
	12
Billing Method	Payment: ACHWire, Check or Credit Card
	Invoice      Check

**EXHIBIT C**

**PAYMENT FOR SERVICES**

**Pricing:**

Automated Proctoring:

\$15 per user annually (unlimited exams; discounted from \$50)

\$5 per test, per student (Paid for by the institution, up-front. Discounted from \$10)

## **EXHIBIT D**

### **GDPR DATA PROTECTION ADDENDUM**

Institution and Contractor are required to adhere to this GDPR Data Protection Addendum (“**GDPR Addendum**”) only to the extent that Contractor Processes Personal Data (as such terms are defined in GDPR (as defined below)) on behalf of Institution in the course of providing services to Institution pursuant to the Non-Exclusive Agreement between A&M System and Contractor (“**Underlying Agreement**”).

#### **1. Definitions**

- (a) “GDPR” means the European Union (EU) General Data Protection Regulation, EU 2016/679 of the European Parliament and of the Council.
- (b) “Personal Data”, “Data Subject”, “Controller”, and “Processor” have the meanings ascribed to them in GDPR.
- (c) “Process” or “Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- (d) “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.
- (e) “Services” has the meaning ascribed to it in the Underlying Agreement.
- (f) “Institution Data” shall mean any Personal Data contained in the Institution Records (as such term is defined in the Underlying Agreement).
- (g) “Subprocessor” means any third party (including Contractor’s affiliates, agents, and subcontractors) authorized by Contractor to Process any Institution Data.

#### **2. Processing of Personal Data**

- (a) The Parties acknowledge and agree that, with respect to the Processing of Institution Data, Institution is the Controller, and Contractor is the Processor. Each Party will comply with the obligations applicable to it under GDPR with respect to the Processing of Institution Data.
- (b) The Parties acknowledge and agree that (a) the subject matter of the Processing under the Underlying Agreement is Contractor’s provision of the Services; (b) the duration of the Processing is from Contractor’s receipt of Institution Data until Contractor’s return or destruction of all Institution Data in accordance with the Underlying Agreement; (c) the nature and purpose of the Processing is to provide the Services; (d) the Data Subjects to whom the Processing pertains are Institution’s students, faculty, staff, and any other individuals to whom Institution Data pertains; and (e) the categories of Institution Data are those categories that Institution submits to the Services including, but not limited to, images, videos, names, dates of birth, identification numbers, email addresses, and phone numbers.
- (c) Contractor will only Process Institution Data as authorized in writing by Institution and as necessary to perform the Services detailed in the Underlying Agreement. Processing outside of this scope will require prior written agreement between Institution and Contractor.
- (d) Contractor will promptly inform Institution in writing:
  - (i) if it is not in compliance with or cannot comply with any material term of this GDPR Addendum or of the Underlying Agreement, including any such term regarding the Services. In addition to any other rights of the Institution under this GDPR Addendum, the Underlying Agreement, or Applicable Law (as such term is defined in the Underlying Agreement), in the event of such notice Institution at its sole discretion may (1) permit Contractor to use reasonable efforts to remedy any such non-



compliance or (2) terminate Contractor's further Processing of Institution Data under this GDPR Addendum and the Underlying Agreement;

- (ii) of any request for access to any Institution Data received from a Data Subject;
- (iii) of any request for access to any Institution Data received by Contractor from any government agency, entity, or official (including any data protection authority or law enforcement agency); and
- (iv) of any other requests with respect to Institution Data received from third parties. Contractor understands that it is not authorized to and will not respond to the requests identified in items (ii), (iii), and (iv) above, unless Contractor is (1) explicitly authorized by Institution or (2) the response is legally required under a subpoena or similar legal document issued by a government agency, entity, or official that compels disclosure by Contractor.

- (e) If Services involve Contractor's collection of Personal Data directly from individuals, Contractor will provide the individuals with a clear and conspicuous written privacy notice. The notice must comply with any legal requirements for the privacy notice in the jurisdictions where it is given, be translated into the languages used in connection with Contractor's interaction with the individuals, and indicate that Contractor is Processing Personal Data as a Processor on behalf of Institution.
- (f) Subject to Section 2(d) of this GDPR Addendum, Contractor will cooperate with Institution and its affiliates and representatives in responding to inquiries, incidents, claims, and complaints regarding Processing of Institution Data or as otherwise needed for Institution to demonstrate compliance with GDPR including, but not limited to, providing Institution with reasonable cooperation and the assistance needed for Institution to fulfill its obligation under GDPR to carry out a data protection impact assessment.

### **3. Confidentiality and Data Access**

- (a) Contractor will not use or disclose Personal Data received from or on behalf of Institution, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement (including any Personal Data provided by an Institution student directly to Contractor) except as permitted by the Underlying Agreement or this GDPR Addendum or required by law. If Contractor discloses any Institution Data to a Subprocessor, Contractor will require the Subprocessor to comply with the same restrictions and obligations that are imposed on Contractor by the Underlying Agreement and this GDPR Addendum, including requiring each Subprocessor to agree to the same restrictions and obligations in writing. Contractor will remain liable for its compliance with the obligations of this GDPR Addendum and for any acts or omissions of any Subprocessor that causes Contractor to breach any of its obligations under this GDPR Addendum. Contractor maintains an up-to-date list of its authorized Subprocessors, which it will provide to Institution upon request. Contractor will also provide Institution with reasonable prior notice if it intends to replace any Subprocessors. Institution may object in writing to Contractor's appointment of a new Subprocessor or the replacement of a current Subprocessor, provided that such objection is based on reasonable grounds relating to data protection. In such event, the Parties will discuss such concerns in good faith with a view to achieving resolution and if this is not possible, Institution may suspend or terminate Contractor's further Processing of Institution Data under this GDPR Addendum and the Underlying Agreement.
- (b) Contractor has implemented and will maintain appropriate technical and organizational security measures to protect Institution Data from Personal Data Breaches and to preserve the security and confidentiality of the Institution Data.
- (c) Prior to allowing any employee, subcontractor, representative, agent, Subprocessor, or other individual to process Institution Data, Contractor will (i) conduct an appropriate background check of the individual as permitted by law and in compliance with the Underlying Agreement, (ii) require the individual to execute an enforceable confidentiality agreement, and (iii) provide the individual with appropriate privacy and security training. Contractor will also continually monitor its employees, subcontractors, representatives, agents, Subprocessors, or other individuals it provides or engages for compliance with the privacy and security program requirements.
- (d) After becoming aware of any Personal Data Breach, Contractor will report to Institution without undue delay as much information as Contractor has available including but not limited to: (i) the nature of the Personal Data Breach, (ii) the Institution Data involved, (iii) who was responsible for the Personal Data Breach (if known), (iv) what Contractor has done or will do to mitigate any deleterious effect of the Personal Data Breach, and (v) what corrective action Contractor has taken or will take to prevent a future similar Personal Data

Breach. Contractor will provide such other information, including written reports, as reasonably requested by Institution. Contractor agrees to take reasonable steps to mitigate and, where possible, remedy the effects of any Personal Data Breach.

- (e) Upon request, Contractor will provide Institution with information about the Contractor’s information security program. Institution may submit reasonable requests for additional information, including security and audit questionnaires, and Contractor will provide prompt written responses. Contractor will also submit its data processing facilities for audit, during Contractor’s reasonable business hours, which will be carried out in a mutually-agreeable manner no more than ten (10) days after such request. In the event that such audit reveals material gaps or weaknesses in Contractor’s security program, Institution will be entitled to terminate Contractor’s Processing of Institution Data, and A&M System will be entitled to terminate the Underlying Agreement immediately, or suspend such Processing until such issues are resolved.

**4. Data Transfer**

To the extent that Contractor Processes any Institution Data of individuals located in the EU or Switzerland, Contractor shall comply with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework with respect to the transfer of such Institution Data from the European Economic Area and/or Switzerland to the United States. If Contractor is unable to comply with this requirement, Contractor shall inform Institution, and the Parties shall mutually agree upon another transfer method that complies with GDPR.


**5. Return of Records**

Contractor agrees that no later than thirty (30) days after expiration or termination of the Underlying Agreement for any reason, or within thirty (30) days after Institution’s written request, Contractor will halt all Processing of Institution Data and will return or destroy Institution Data in accordance with the terms of the Underlying Agreement.

**AGREED TO AND SIGNED BY THE PARTIES.**

DS  
JD

**The Texas A&M University System**


By:   
BEDCDB89EA78479...

Name: Billy Hamilton

Title: Deputy Chancellor & CFO

Date: 8/20/2020 | 11:33:11 CDT

**Protonio Incorporated**

By:   
C1A9F49B5DDDD4CE...

Name: Mike Olsen

Title: CEO

Date: 8/20/2020 | 11:50:16 CDT

**EXHIBIT E****FERPA CONFIDENTIALITY AND SECURITY ADDENDUM**

This FERPA Confidentiality and Security Addendum (**FERPA Addendum**) provides the terms under which Contractor is required to maintain the confidentiality and security of any and all Institution Records subject to the Family Educational Rights and Privacy Act, [20 United States Code §1232g](#) (**FERPA**) which Contractor will create, receive, or maintain on behalf of Institution pursuant to the Non-Exclusive Agreement between A&M System and Contractor (**Underlying Agreement**).

1. **FERPA.** The Parties understand and agree that:
  - 1.1 As part of the Services (as defined in the Underlying Agreement) that Contractor will provide pursuant to the Underlying Agreement, Contractor is expected to create, receive or maintain, records or record systems from or on behalf of Institution that (a) are subject to FERPA or (b) contain personally identifiable information (**PII**) from "**Education Records**" as defined by and subject to FERPA (collectively, **FERPA Records**) namely: a student's image, first and last name, date of birth, identification number, academic status within the Institution or other personally identifying information to validate and confirm the student's identity and exam information, including information which may lead to a component of a student's disciplinary record and other sensitive information. Records include all data in any form whatsoever, including electronic, written, and machine readable form.
  - 1.2 Notwithstanding any other provision of the Underlying Agreement, this FERPA Addendum or any other agreement, all FERPA Records created, received or maintained by Contractor pursuant to the Underlying Agreement will remain the sole and exclusive property of Institution.
2. **FERPA Compliance.** In connection with all FERPA Records that Contractor may create, receive or maintain on behalf of Institution pursuant to the Underlying Agreement, Contractor is designated as a school official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Contractor (a) is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement, and (b) understands and agrees to all of the following terms and conditions *without reservation*:
  - 2.1 **Prohibition on Unauthorized Use or Disclosure of FERPA Records.** Contractor will hold Institution FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of Institution, including any FERPA Records provided by an Institution's student directly to Contractor, except as (i) explicitly permitted by the Underlying Agreement or this FERPA Addendum, (ii) required by law, or (iii) authorized by Institution in writing. Upon Institution's request, any FERPA Records held by Contractor will be made available to Institution.
  - 2.2 **Maintenance of the Security of FERPA Records.** Contractor will use appropriate administrative, technical and physical safeguards, including secure encryption in the case of electronically maintained or transmitted FERPA Records, to secure the FERPA Records from unauthorized access, disclosure, and/or use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the Institution in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan with Institution upon request.
  - 2.3 **Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information.** Contractor, as soon as practicable, but no later than 72 hours after discovery, will report to Institution any use or disclosure of FERPA Records not authorized by the Underlying Agreement and this FERPA Addendum. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by Institution. For purposes of this **Section 2.3**, an unauthorized disclosure or use includes any access or use of an Education Record by a Contractor employee or agent that the employee or agent does not require to perform the Services or access by any employee or agent that does not involve the provision of the Services.

- 2.4 **Right to Audit.** If Institution has a reasonable basis to believe that Contractor is not in compliance with the terms of this FERPA Addendum, Institution may audit Contractor's compliance with FERPA as it relates to Institution's FERPA Records maintained by Contractor.
- 2.5 **De-Identification.** Contractor may use de-identified data for product development, research, or other purposes. De-identified data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school identification number. Furthermore, Contractor agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party unless that party agrees not to attempt re-identification.
- 2.6 **Prohibition on Marketing.** Contractor will not use any FERPA Records to advertise or market to students.
- 2.7 **Five Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from Institution's Education Records by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract with Institution for at least five (5) years.
3. **Return or Secure Destruction of FERPA Records.** Contractor agrees that no later than thirty (30) days after expiration or termination of the Underlying Agreement for any reason, or within thirty (30) days after Institution's written request, Contractor will halt all access, use, creation, or processing of FERPA Records and will return to Institution or Securely Destroy (as defined below) all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to Institution that all FERPA records have been returned to Institution or Securely Destroyed. **Securely Destroy** and **Securely Destroyed** mean shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.
4. **Disclosure.** Except as otherwise required by law, Contractor will not share the FERPA Records with any third parties without the prior written consent of Institution. Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under the Underlying Agreement. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by the Underlying Agreement and this FERPA Addendum, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing. Contractor must promptly notify Institution of any legal request for the FERPA Records from a third party and take (and assist Institution in taking) appropriate steps not to disclose such FERPA Records.
5. **Survival.** Sections 2, 3, 4, 5, and 6 of this FERPA Addendum will survive expiration or termination of the Underlying Agreement.
6. **Breach.** In the event of a breach, threatened breach or intended breach of this Addendum by Contractor, Institution (in addition to any other rights and remedies available to Institution at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach. Contractor acknowledges and agrees that, if Contractor fails to comply with any provision of this FERPA Addendum with respect to any Institution's FERPA Records, A&M System will have the right to immediately terminate the Underlying Agreement.

DocuSigned by: **AGREED TO AND SIGNED BY THE PARTIES:**

*Billy Hamilton*

**The Texas A&M University System**

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By: *Billy Hamilton*  
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Name: Billy Hamilton

Title: Deputy Chancellor & CFO

Date: 8/20/2020 | 11:33:11 CDT

**Proctor.io Incorporated**

DocuSigned by:

By: *Mike Olsen*  
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Name: Mike Olsen

Title: CEO

Date: 8/20/2020 | 11:50:16 CDT