

# TEXAS A&M UNIVERSITY - COMMERCE

VENDOR

COMMERCE, TX 75429

12/15/2017

## PURCHASE ORDER

Page 01

Include PO Number on all  
correspondence and packages

P810466

VENDOR GUARANTEES  
MERCHANDISE DELIVERED ON  
THIS ORDER WILL MEET OR  
EXCEED SPECIFICATIONS IN  
THE BID INVITATION.**VENDOR**19810172330  
EXPLORANCE INC  
1470 PEEL STREET, SUITE 500  
MONTREAL, PQ H3A 1-T1ALL TERMS AND  
CONDITIONS SET  
FORTH IN OUR BID  
INVITATION BECOME  
A PART OF THIS  
ORDER.**INVOICE TO AGENCY BELOW**TEXAS A&M UNIVERSITY-COMMERCE  
FINANCIAL SERVICES  
PO BOX 3011  
COMMERCE TX 75429-3011**Ship to:**TEXAS A&M UNIVERSITY-COMMERCE  
CENTRAL RECEIVING  
2600 SOUTH NEAL STREET  
COMMERCE TX 75428ANY EXCEPTIONS TO PRICING OR DESCRIPTION CONTAINED HEREIN MUST BE  
APPROVED BY TEXAS A&M UNIVERSITY-COMMERCE PRIOR TO SHIPPING.PLEASE NOTE: IF YOUR INVOICE IS NOT ADDRESSED AS  
INSTRUCTED PAYMENT WILL BE DELAYED.

Item	Description	Quantity	UOM	Unit Price	Ext Price
1	USER REF: 200007-00001 Blue base technology engine (web, mobile, ema email, SIS, LMS, authentication, datasync tool, and web services)  a. 2 Blue administrators b. Up to 10,000 students FTE c. All of Blue (course evaluations, midterm reviews, 360 degree feedback reviews, advisor assessments...)  Hosting (up to 100,000 responses yearly) + Free test server  Starter package - includes hosting/deployment support, configuration and integration  Turnkey implementation service - includes response rate optimization, consulting, first course evaluation process implementation  Training subscription for one year, 2 administrators   PER YOUR QUOTATION.  ALL PRODUCTS AND/OR SERVICES ORDERED UNDER THIS CONTRACT WILL BE SHIPPED TO TEXAS A&M UNIVERSITY-COMMERCE CENTRAL RECEIVING. ANY PRODUCTS AND/OR SERVICES SHIPPED TO, OTHER THAN THE AFOREMENTIONED ADDRESS, IS SHIPPED AT SUPPLIER'S RISK.	1	YR	50,829.730	50,829.73
				TOTAL	50,829.73

JBS

FOB: DESTINATION FRT INCLUDED

Terms: N 30

Texas A&amp;M University-Commerce cannot accept collect freight

FAILURE TO DELIVER - If the vendor fails to deliver these supplies by the promised delivery date or a reasonable time  
thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the State  
reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the  
vendor. No substitutions or cancellations permitted without prior approval of Texas A&M University-Commerce Purchasing

The State of Texas is exempt from all Federal Excise Taxes.

STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Chapter 20,  
Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased  
from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The terms and conditions of the State of Texas and the University shall prevail.

THIS ORDER IS NOT VALID UNLESS SIGNED BY THE PURCHASING AGENT.

PURCHASING AGENT

TEXAS A&M UNIVERSITY - COMMERCE  
PURCHASE ORDER

VENDOR

Page 02

ORDER DATE: 12/15/2017

PO NUMBER: P810466

VENDOR: 19810172330  
EXPLORENCE INC

Item	Description	Quantity	UOM	Unit Price	Ext Price
JBS	<p>ANY CHANGES TO THIS CONTRACT WITHOUT THE UNDERSIGNED PURCHASING AGENT'S PRIOR WRITTEN APPROVAL IS NOT AUTHORIZED AND AT THE EXPENSE OF THE SUPPLIER.</p> <p>THIS CONTRACT IS SUBJECT TO CANCELLATION WITHOUT PENALTY, EITHER IN WHOLE OR IN PART, IF FUNDS ARE NOT APPROPRIATED BY THE TEXAS LEGISLATURE, OR OTHERWISE NOT MADE AVAILABLE TO THE USING AGENCY</p> <p>UNACCEPTABLE PERFORMANCE BY THE VENDOR INCLUDING BUT NOT LIMITED TO DELIVERY OF GOODS AND/OR COMPLETION OF THE CONTRACTED TASK MAY BE CAUSE FOR CANCELLATION IF DEEMED NECESSARY BY TEXAS A&amp;M UNIVERSITY-COMMERCE.</p> <p>DELIVERY WILL NOT ACCEPTED MORE THAN 48 HOURS PRIOR TO OR 24 HOURS AFTER THE DATE SPECIFIED IN THE BID PROPOSAL AND/OR PURCHASE DOCUMENT.</p> <p>QUANTITIES LISTED ARE ESTIMATES ONLY AND DO NOT CONSTITUTE A GUARANTEE OF PURCHASE. QUANTITIES WILL BE ORDERED ON AN "AS NEEDED" BASIS.</p> <p>BLANKET ORDER FOR ITEMS LISTED BELOW FOR TEXAS A&amp;M UNIVERSITY-COMMERCE FROM DATE OF AWARD THROUGH AUGUST 31. QUANTITIES LISTED ARE ESTIMATES ONLY AND DO NOT CONSTITUTE A GUARANTEE OF PURCHASE. QUANTITIES WILL BE ORDERED ON AN "AS NEEDED" BASIS PER PHONE OR FAX REQUESTS FROM THE ORDERING DEPARTMENT. PRICES MUST BE FIRM THROUGH AUGUST 31 AND MUST BE F.O.B. DESTINATION. TEXAS A&amp;M UNIVERSITY-COMMERCE RESERVES THE RIGHT TO TERMINATE THE BLANKET ORDER AT ANYTIME SHOULD NON-COMPLIANCE WITH ANY OF THE TERMS AND CONDITIONS BECOME A FACTOR.</p> <p>THIS BLANKET ORDER MAY BE RENEWED FOR ADDITIONAL YEAR(S) PROVIDED SUCH EXTENSION IS MUTUALLY AGREED UPON BY BOTH PARTIES AT LEAST THIRTY(30) DAYS PRIOR TO THE EXPIRATION DATE.</p> <p>ANY AGREEMENT ENTERED INTO BY TEXAS A&amp;M UNIVERSITY-COMMERCE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.</p> <p>PRICES MAY NOT INCREASE DURING THE TERM OF THE BLANKET ORDER. SHOULD VENDOR'S COST DECREASE, HE/SHE WILL BE REQUIRED TO PASS THE PRICE REDUCTION ON TO TEXAS A&amp;M UNIVERSITY-COMMERCE.</p> <p>ALL PRICES TO BE HELD FIRM FOR ONE(1) YEAR. AN INCREASE UP TO 5% PER ITEM MAY BE ALLOWED IF REQUESTED IN EACH RENEWAL YEAR WITH VERIFICATION OF PRICE INCREASES FROM YOUR SUPPLIER</p>				

TEXAS A&M UNIVERSITY - COMMERCE  
PURCHASE ORDER

VENDOR

Page 03

ORDER DATE: 12/15/2017

PO NUMBER: P810466

VENDOR: 19810172330  
EXPLORANCE INC

Item	Description	Quantity	UOM	Unit Price	Ext Price
JBS	<p>TEXAS A&amp;M UNIVERSITY-COMMERCE RESERVES THE RIGHT TO IMMEDIATE CANCELLATION DUE TO NON-PERFORMANCE.</p> <p>A&amp;M-COMMERCE PURCHASING CONTACT: BLAKE SHAW, CTPM PHONE: 903-886-5707 FAX: 903-886-5039 EMAIL: PURCHASING@TAMUC.EDU</p> <p>YOUR BID RESPONSE IS HEREBY MADE A PART OF THIS PURCHASE ORDER AND INCORPORATED HEREIN FOR ALL PURPOSES.</p> <p>ANY CHANGES IN THE WORK WHICH WILL RESULT IN THE CHANGE OF THE CONTRACT AMOUNT BEING INCREASED OR DECREASED WILL FIRST BE PRESENTED TO THE OWNER. APPROVAL OR DENIAL OF THOSE CHANGES BY THE OWNER WILL THEN BE EXPECTED WITHIN THE TIME SET FORTH IN THE PROPOSED CHANGE ORDER (PCO). UPON RECEIPT OF APPROVAL OF THE CHANGE(S) A CHANGE ORDER WILL BE ISSUED TO THE OWNER FOR SIGNATURE.</p> <p>THIS PURCHASE SHALL BE IN ACCORDANCE WITH THE TEXAS A&amp;M UNIVERSITY-COMMERCE TERMS AND CONDITIONS. TO OBTAIN, PLEASE GO TO THE FOLLOWING ADDRESS:</p> <p>WWW.TAMUC.EDU/FACULTYSTAFFSERVICES/PURCHASING/FORMS</p> <p>IRS FORM W-9. TEXAS A&amp;M UNIVERSITY-COMMERCE IS REQUIRED BY LAW TO OBTAIN THIS INFORMATION FROM YOU OR YOUR COMPANY WHEN MAKING A REPORTABLE PAYMENT.</p> <p>YOU CAN ACCESS THE W-9 FORM AT THE FOLLOWING WEBSITE ADDRESS: HTTP://WWW.TAMUC.EDU/FACULTYSTAFFSERVICES/PURCHASING/FORMS</p> <p>TO MAINTAIN OUR FILES AND COMPLY WITH THE LAW, PLEASE COMPLETE AND RETURN THE W-9 FORM BY FAX TO: (903) 886-5057 OR BY E-MAIL AT: APHELP@TAMUC.EDU</p> <p>ACCOUNTS PAYABLE CONTACT INFORMATION: PHONE: (903) 886-5061 E-MAIL: APHELP@TAMUC.EDU</p> <p>TERM OF AGREEMENT IS 12/15/2017 - 12/14/2022</p> <p>VENDOR REF: QTE:12/14/2017</p>				



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**eXplorance Blue – Learning Experience Management (LEM) System  
Proposal for the TAMU Commerce**

**TEXAS A&M**  

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**UNIVERSITY**  

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**COMMERCE**  

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**Author:** Samer Saab  
**Proposal Number:** EXP-PO-20171214-001-v1.0  
**Date Published:** December 14, 2017  
**Valid Until:** December 29, 2017

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**Corporate Address:** 1470 Peel Street, Suite 500, Montreal, Quebec H3A 1T1, Canada  
**Tel:** +1 (514) 938-2111  
**Fax:** +1 (514) 635-6264  
**Email:** ssaab@explorance.com

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## • Investment Schedule

### 1. BLUE BASE INVESTMENT

Item Description (In USD)	Initial Investment	Years 2-5
Blue base technology engine (web, mobile, email, SIS, LMS, authentication, datasync tool, and web services) a. 2 Blue administrators b. Up to 10,000 students FTE c. All of Blue (course evaluations, midterm reviews, 360 degree feedback reviews, advisor assessments ...)	\$27,592.73	\$27,592.73
Hosting (up to 100,000 responses yearly) + Free test server	\$5,800.00	\$5,800.00
Starter package – includes hosting/deployment support, configuration and integration	\$5,765.00	--
Turnkey implementation service – includes response rate optimization, consulting, first course evaluation process implementation	\$8,372.00	--
Training subscription for one year, 2 administrators	\$3,300.00	\$3,300.00
<b>TOTAL</b>	<b>\$50,829.73</b>	<b>\$36,692.73</b>

### 2. Terms and Conditions:

1. This proposal is based on a five (5) years commitment; and all associated discounts proposed are based on proposal signed before December 29, 2017.
2. This agreement is bound by eXplorance's executed agreement between Texas A&M System within the scope of implementing a course evaluation tool as outlined in RFP01 CIO-17-006.
3. All items listed and selected under this agreement are invoiceable Net/30 on signing of this proposal and/or PO issuance.

**The Company:**  
**eXplorance Inc.**

**Licensee:**  
**TAMU COMMERCE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Blake Shaw

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Asst. Director Procurement

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
12/15/17

\_\_\_\_\_  
Date

AN AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES  
AND EXPLORANCE, INC.

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

TAMUS and PROVIDER hereby agree as follows:

**1. SCOPE OF WORK**

PROVIDER will work with each member (hereafter referred to as “MEMBER”) within The Texas A&M University System to implement a course evaluation tool as outlined in RFP01 CIO-17-006. Reference Section 3 of the RFP and the PROVIDER response for details of the services included in the scope of this agreement.

**2. TERM OF THE AGREEMENT**

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

This Agreement is not a contract to perform work at a specific MEMBER but is intended to demonstrate the ability of each MEMBER to contract individually with the PROVIDER for the services outlined in RFP01 CIO-17-006 for a Course Survey Tool. It is the responsibility of each MEMBER to negotiate a final Agreement for their specific needs. There is no guarantee of MEMBER participation.

**3. PAYMENT TERMS**

- A. TAMUS shall not pay any costs or fees as a direct result of this Agreement. Any and all costs shall be negotiated and defined in each MEMBER specific agreement.
- B. The Texas A&M University System pricing proposal in attached as Exhibit A and made a part of this Agreement.

Each MEMBER entering into an agreement will be responsible to negotiate payment terms for their specific agreement.

**4. DEFAULT AND TERMINATION**

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if

the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of TAMUS.

- B. TAMUS may terminate this Agreement at any time upon seven (7) days prior notice to PROVIDER.

## **5. ACCESSIBILITY**

- A. PROVIDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMUS under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent PROVIDER becomes aware that the EIRs, or any portion thereof, do not comply, then PROVIDER shall, at no cost to TAMUS, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

## **6. PUBLIC INFORMATION**

- A. PROVIDER acknowledges that TAMUS is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TAMUS’s written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, “public information” has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access.
- C. PROVIDER acknowledges that TAMUS may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

## **7. DISPUTE RESOLUTION**

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUS and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER’s claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

## **8. INSURANCE**

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

## **9. DATA SECURITY**

- A. “Protected Information” means employment records, medical records, education records, personal financial records (or other individually identifiable information), research data, classified government information, and other data that has been designated as private, protected, or confidential by law or by TAMUS. “Protected Information” does not include public records that by law must be made available to the general public. If PROVIDER is uncertain as to whether any data constitutes Protected Information, PROVIDER shall treat the data in question as Protected Information until a determination is made by TAMUS.
- B. PROVIDER shall comply with all vendor access requirements.
- C. For purposes of the Family Educational Rights and Privacy Act (“FERPA”), TAMUS designates PROVIDER as a school official with a legitimate educational interest in any education records in Protected Information to the extent PROVIDER requires access to those records to fulfill its obligations under this Agreement.
- D. PROVIDER shall hold Protected Information in strict confidence. PROVIDER may not use or disclose Protected Information received from or on behalf of TAMUS except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by TAMUS. PROVIDER may not use Protected Information for any purpose other than the purpose for which the disclosure was made. PROVIDER may allow only PROVIDER’s employees who have a legitimate business need in performing this Agreement to have access to Protected Information.
- E. Upon termination of this Agreement, PROVIDER shall return all Protected Information to TAMUS within 30 days or, if return is not feasible, destroy all Protected Information. At least 20 days before destruction of any Protected Information, PROVIDER shall provide TAMUS with written notice of PROVIDER’s intent to destroy Protected Information. Within seven days after destruction, PROVIDER shall confirm to TAMUS in writing the destruction of Protected Information.
- F. If TAMUS reasonably determines in good faith that PROVIDER has materially breached any of its confidentiality obligations under this Agreement or has violated FERPA, TAMUS, in its sole discretion, may require PROVIDER to submit to a plan of monitoring and reporting; provide PROVIDER with a 15-day period to cure the breach; or terminate this Agreement immediately. Before exercising any of these options, TAMUS shall provide written notice to PROVIDER describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that PROVIDER improperly disclosed personally identifiable information obtained from TAMUS’s education records, TAMUS may not allow PROVIDER access to education records for at least five years.
- G. PROVIDER shall ensure that Protected Information in PROVIDER’s custody is (1) encrypted when transmitted over the internet or any other public network, (2) encrypted at rest, and (3) stored only within the United States, and shall develop, implement, maintain, and use other appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Protected Information

received from, or on behalf of TAMUS. PROVIDER shall extend these measures by contract to all subcontractors used by PROVIDER.

- H. PROVIDER shall, within one day of discovery, report to TAMUS any use or disclosure of Protected Information not authorized by this Agreement or in writing by TAMUS. PROVIDER's report shall identify: (1) the nature of the unauthorized use or disclosure, (2) the Protected Information used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what PROVIDER has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (5) 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 TAMUS.
- I. PROVIDER shall defend and indemnify TAMUS from all claims, liabilities, damages, or judgments involving a third party, including TAMUS's costs and attorneys' fees, which arise as a result of PROVIDER's failure to meet or breach any of its obligations under this provision.
- J. The restrictions and obligations under this provision will survive expiration or termination of this Agreement for any reason.

## **10. MATERIAL FUNCTION**

- A. In the event PROVIDER removes a material function ("Function") found in any Software licensed by PROVIDER to TAMUS hereunder ("Initial Software") from a subsequent version or release of such Software, whether such removal occurs via Support Services purchased by TAMUS for the Initial Software or otherwise, and that Function appears in another product ("Additional Software") PROVIDER makes commercially available, then TAMUS, at TAMUS's sole discretion and without forfeiting rights to Initial Software, shall be entitled to receive an equal quantity of licenses for the Additional Software as TAMUS had rights to the Initial Software at no additional license or Support Services charge provided that has purchased Support Services continuously from the date of license acquisition of the particular unit of Initial Software, until the time Additional Software is offered to TAMUS hereunder.

## **11. SOFTWARE END OF LIFE**

- A. Should PROVIDER (a) cease further development work for or "end of life" Initial Software, and (b) should PROVIDER make commercially available any replacement product or products that contain substantially all of same functionality found in Initial Software ("Replacement Software"), then TAMUS, at TAMUS's sole discretion, shall be entitled to receive an equal quantity of licenses for each such Replacement Software as TAMUS had rights to the Initial Product at no additional license or Support Services charge, provided that TAMUS has purchased Support Services continuously from the commencement date of the license acquisition of the particular unit of Initial Software, until the time the Replacement Software is offered to TAMUS hereunder. To the extent that Additional Software includes new and substantially different functionality not found in the Initial Software (where such functionality is not specified in the documentation supplied with the Initial Software or made available under the provisions of Support Services) and PROVIDER elects and is able through code to prevent the use of only the new and



substantially different functionality without in any way degrading the functionality found in the Initial Software, TAMUS acknowledges that TAMUS's right to use such Additional or Replacement Software shall be limited solely to the use of the functionality supplied in the Initial Software and, for the avoidance of doubt, nothing in the foregoing grants TAMUS a license to use such new and substantially different functionality unless PROVIDER is unable through code to prevent the use of only the new and substantially different functionality found in the Initial Software without in any way degrading the functionality found in the Initial Software. Notwithstanding the foregoing, nothing herein shall entitle TAMUS to receive new Hardware System(s) without payment to PROVIDER.

## 12. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TAMUS. TAMUS will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not

currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.

- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

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

- M. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- N. **Loss of Funding.** Performance by TAMUS under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature").

If the Legislature fails to appropriate or allot the necessary funds, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.

- O. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:


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

PROVIDER:           eXplorance, Inc.  
1470 Peel Street, Suite 500  
Montreal, QC 1T1, Canada  
Attention: Samer Saab  
Phone: (514) 635-6264  
Email: [ssaab@explorance.com](mailto:ssaab@explorance.com)

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



**The Texas A&M University System**

By   
Jeff Zimmermann  
Director, Procurement and Business Services

8/14/17  
Date

**eXplorance, Inc.**

By   
Samer Saab

5 August 2017  
Date

## EXHIBIT A – PRICING

	Perpetual Blue License			Annual Blue License (Year 1+)		Hosting <sup>10</sup>	
License/subscription pricing by tier	Year 1	Year 2+	Inclusions	Annual Subscription	Inclusions	Hosting	Yearly Responses
0-2,500 FTE	\$ 28,286.45	\$ 6,187.66	2 admins	\$ 11,092.73	2 admins	\$ 2,200.00	25000
2,501 to 5,000	\$ 41,481.83	\$ 9,074.15	2 admins	\$ 16,592.73	2 admins	\$ 3,300.00	50000
5,001 to 7,500	\$ 55,231.82	\$ 12,081.96	2 admins	\$ 22,092.73	2 admins	\$ 4,500.00	75000
7,501 to 10,000	\$ 68,981.82	\$ 15,089.77	2 admins	\$ 27,592.73	2 admins	\$ 5,800.00	100000
10,001 to 15,000	\$ 83,669.32	\$ 18,302.66	3 admins	\$ 33,467.73	3 admins	\$ 6,900.00	150000
15,001 to 20,000	\$ 106,044.33	\$ 23,197.20	3 admins	\$ 42,417.73	3 admins	\$ 8,700.00	200000
20,001 to 25,000	\$ 108,731.83	\$ 23,785.09	3 admins	\$ 43,492.73	3 admins	\$ 9,900.00	250000
25,001 to 30,000	\$ 126,731.83	\$ 27,722.59	3 admins	\$ 50,692.73	3 admins	\$ 11,000.00	300000
30,001 to 40,000	\$ 162,731.83	\$ 35,597.59	5 admins	\$ 65,092.73	5 admins	\$ 12,500.00	400000
40,001 to 50,000	\$ 198,731.83	\$ 43,472.59	5 admins	\$ 79,492.73	5 admins	\$ 13,500.00	500000
Greater than 50,000							

	Services		
License/subscription pricing by tier	Deployment <sup>1</sup>	Implementation <sup>2</sup>	Training (Per admin) <sup>3</sup>
0-2,500 FTE	\$ 2,995.00	\$ 6,336.00	\$ 1,550.00
2,501 to 5,000	\$ 5,765.00	\$ 8,372.00	\$ 1,550.00
5,001 to 7,500	\$ 5,765.00	\$ 8,372.00	\$ 1,550.00
7,501 to 10,000	\$ 5,765.00	\$ 8,372.00	\$ 1,550.00
10,001 to 15,000	\$ 9,367.00	\$ 8,372.00	\$ 1,550.00
15,001 to 20,000	\$ 9,367.00	\$ 14,756.45	\$ 1,550.00
20,001 to 25,000	\$ 9,367.00	\$ 14,756.45	\$ 1,550.00
25,001 to 30,000	\$ 9,367.00	\$ 14,756.45	\$ 1,550.00
30,001 to 40,000	\$ 9,367.00	\$ 14,756.45	\$ 1,550.00
40,001 to 50,000	\$ 9,367.00	\$ 14,756.45	\$ 1,550.00
Greater than 50,000			

License/subscription pricing by tier	Value-add Modules (annual license)					
	DIG <sup>4</sup>	BTA <sup>5</sup>	BPM <sup>6</sup>	BIB <sup>7</sup>	SMS-G <sup>8</sup>	Bluepulse <sup>9</sup>
0-2,500 FTE	\$ 5,042.00	\$ 6,482.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 6,609.00
2,501 to 5,000	\$ 5,517.00	\$ 7,082.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 9,534.00
5,001 to 7,500	\$ 5,992.00	\$ 7,682.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 12,459.00
7,501 to 10,000	\$ 6,467.00	\$ 8,282.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 15,384.00
10,001 to 15,000	\$ 7,417.00	\$ 9,482.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 21,234.00
15,001 to 20,000	\$ 8,367.00	\$ 10,682.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 27,084.00
20,001 to 25,000	\$ 9,317.00	\$ 11,882.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 32,934.00
25,001 to 30,000	\$ 10,267.00	\$ 13,082.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 38,784.00
30,001 to 40,000	\$ 12,167.00	\$ 15,482.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 50,484.00
40,001 to 50,000	\$ 14,067.00	\$ 17,882.00	\$ 2,533.00	\$ 9,995.00	\$ 5,765.00	\$ 62,184.00
Greater than 50,000						

**Notes:**

Note 1 - Deployment applies in both cases of an internal installation, or hosted instance of Blue. It entails setup, configuration and integration support.

Note 2 - Implementation is where eXplorance provides a full service solution where we would implement your first course evaluation process based on your requirements.

Note 3 - Training seats are subscription based (yearly) and typically are connected to the duration of the contract. It entails a named administrator to access as many training activities during a year as needed.

Note 4 - DIG (Data Integrity Gateway) is a stand alone component that enables institutions to ensure that enrolment data is accurate and validated by department admins prior to the course evaluation process.

Note 5 - BTA (Blue Text Analytics) is a Blue module and incorporates a validated teaching and learning dictionary to help you make sense of student open ended feedback (qualitative).

Note 6 - BPM (Blue Paper Module) is a Blue module that enable you to setup a hybrid evaluation process supporting a paper option workflow, and the generation of scanned friendly paper forms.

Note 7 - BIB (Blue Item Bank) is a formative/experience focused question library of more than 200 questions.

Note 8 - SMS-G (Blue SMS Gateway) brings SMS notification/reminder functionality to Blue assisting institutions in reaching out to students more seamlessly. Base license includes 100,000 messages; additional messages can be acquired at 1 cent per message.

Note 9 - Bluepulse is a live formative feedback tool that complements any course evaluation process by bringing the conversation between students and faculty to the classroom from Day 1.

Note 10 - Hosting is an add-on service that may be applied to both proposed Blue licensing models (perpetual or annual). It includes both a production and a test server, and is fully managed by eXplorance.

## **EXHIBIT B – INSURANCE**

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

### **Insurance:**

#### **Coverage**

#### **Limit**

##### **A. Worker's Compensation**

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

Statutory  
\$1,000,000 Each Accident  
\$1,000,000 Disease/Employee  
\$1,000,000 Disease/Policy Limit

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

##### **B. Automobile Liability**

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

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

#### **Additional Endorsements**

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

##### **C. Commercial General Liability**

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



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

**D. 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 eXplorance 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, eXplorance 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 or cancellation of this Agreement.

**E.** PROVIDER will deliver to TAMUS:

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

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

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

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

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following TAMUS contact in Section 12R.

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