

**Commonwealth of Pennsylvania State System of
Higher Education (PASSHE)**

Contract # 4900000529

for

Proctoring Solutions: Live Online and Automated

with

Examity, Inc.

Effective: February 22, 2021

The following documents comprise the executed contract between the PASSHE and Examity, Inc. effective February 22, 2021:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference

**COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION**

CONTRACT FOR

**Proctoring Solutions:
Live Online and Automated**

WITH

Examity, Inc.

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- A. Data Security Addendum**
- B. Contractor’s Proposal**
- C. Contractor’s Services Agreement as Amended**

COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION
CONTRACT FOR

Proctoring Solutions:
Live Online and Automated

THIS AGREEMENT, made and entered into between the **State System of Higher Education** (2986 North Second Street, Harrisburg, PA 17119), an agency of the Commonwealth of Pennsylvania (hereinafter “State System” or the “Commonwealth”),

and

Examity, Inc. (153 Needham Street, Newton, MA 02464) acting through its proper officials, (hereinafter referred to as “Contractor”) (Federal I.D. #81-5178829).

Both the State System and Contractor, when used together, are hereinafter referred to as “Parties.” The State System is an instrumentality of the Commonwealth of Pennsylvania, established by and existing pursuant to Article XX-A of the Public-School Code of 1949, as amended, 24 P.S. § 20-2001-A, et seq., and is authorized thereby to enter into this Contract.

The State System desires to obtain **Online Proctoring Solutions** from the Contractor.

The State System has partnered separately with OMNIA Partners to make this Contract available to the State System universities and other public agencies nationally, including state and local governmental entities, public and private primary, secondary, and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partner's cooperative purchasing program.

NOW THEREFORE, for and in consideration of the foregoing and the mutual promises hereinafter expressed and intending to be legally bound hereby, the Parties agree as follows:

1. TERM OF CONTRACT.

a. The term of this Contract shall commence on the Effective Date (as defined below) and shall end three years from the Effective Date (the “Expiration Date”), subject to the other provisions of this Contract.

b. The Effective Date shall be: a) the date this Contract has been fully executed by the Contractor and by the State System and all approvals required by the State System contracting procedures have been obtained; or b) the date referenced in this Contract, whichever is later.

c. The State System’s Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the State System shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No State System employee has the authority to verbally direct the commencement of any work under this Contract.

d. The State System reserves the right, upon notice to the Contractor, to extend the term of this Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary to enter into a new contract.

e. This Contract may be renewed for two additional annual periods. Any renewal would be by mutual written consent of both Parties prior to Expiration Date of the initial term. The potential contract period, including any renewals, may not exceed a period of five (5) years.

2. DEFINITIONS. As used in this Contract, these words shall have the following meanings:

a. **Contracting Officer:** The person authorized to administer this Contract for the State System and to make written determinations with respect to this Contract.

b. **Days:** Unless specifically indicated otherwise, days mean calendar days.

c. **Developed Works or Developed Materials:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.

d. **Services:** All Contractor activity necessary to satisfy this Contract.

e. **Live Online Proctoring:** For high-stakes exams and critical certifications, live (human) proctoring is expected to oversee the entire exam, from authentication to test completion. Real-time on-screen support; immediate exam intervention is required.

f. **Automated Proctoring:** Online automated proctoring requires use of AI technology to monitor students during exams while ensuring the integrity through the use of web cameras and screen monitoring software.

3. CONTRACTOR DUTIES. The Contractor, subject to the terms and conditions set forth below, shall perform the following specified duties on an as-needed basis.

a. **Scope.** The State System has partnered with OMNIA Partners to make this Contract available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary, and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partner's cooperative purchasing program. The State System is acting as the lead contracting agency for any other Public Agency that elects to utilize this Contract. Use of this Contract by any Public Agency is preceded by registration with Omnia Partners (a Participating Public Agency).

b. **Technical Requirements.** The Online Proctoring Solution shall include the following requirements, as described in greater detail in the Contractor's Proposal, Exhibit B.

1. Monitoring Process

a. Pre-Test Authentication – Verifying Student Identities

b. Scheduling and Managing Exams

c. Student Registration – Include Exam Instructions

d. Data Security – During Exams

e. Real-time Live Proctoring

f. Automated Proctoring

g. Recording and Viewing Exams – By Faculty

h. Violations – Algorithms to Detect and Capture Aberrant Student Behavior

- i. End-to-End Security – Active Restriction of Student’s Computers
 - j. Post-exam Auditing
 - k. Content Protection
 - l. ADA Assistance
 - m. Other Advanced Monitoring Features
2. **Software / Hardware**
- a. Proctoring Solution Platform
 - b. Hosting options
 - c. LMS integrations
 - d. Publisher Platform integrations
 - e. Data Centers (locations)
 - f. Third-party or subcontractor partnerships or involvement
 - g. System scalability
 - h. System redundancy and availability
 - i. Backup and recovery strategy
 - j. Disaster recovery, testing and business continuity plans
3. **Data**
- a. Data encryption in transit and at rest
 - b. Security – data access and protection
 - c. Data breaches
 - d. Ownership of data
 - e. Termination of services
 - f. Restrictions on amount of data stored on the proposed solution
4. **Security**
- a. Restrictions on number of users accessing the proposed solution
 - b. Student Privacy
 - c. Security-related policies and procedures to which the Offeror’s employees are required to adhere
 - d. Web usability and ADA compliant accessibility of the proposed solution
 - e. IMS Global Certified Proctoring Tool
5. **Customer Support**
- a. Training
 - b. Technical Support
 - c. Support of devices, operating systems, and web browsers
 - d. Third-party integrations
 - e. Active directory
 - f. Customer support operations
 - g. Available ordering methods
6. **Reporting**
- a. Available data reports
 - b. Customized reports

4. PURCHASE ORDERS.

a. This Contract has been established based on RFP #2020-COOP-LAV-45 for Online Proctoring Solutions (Services) and contains a not to exceed value for the Services at established prices, but does not provide a guarantee of work being awarded under this Contract. A University or Public Agency may issue Purchase Orders against this Contract when it seeks to have the Contractor provide the Services under this Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the Expiration Date of this Contract are acceptable and must be performed in accordance with this Contract. The Contractor is not permitted to accept Purchase Orders that require performance extended beyond those performance time periods specified in this Contract unless specifically authorized by the State System's Contracting Officer, but in any event, no longer than ninety (90) days after the Expiration Date of this Contract period. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract. The Contractor shall have the ability to accept or reject a Purchase Order based on its ability to schedule the Services.

b. This Contract does not constitute a commitment to purchase the Services by the State System or any Public Agency. Any purchases made under this Contract shall be made directly by a State System University, or Public Agency. The Contractor shall make available, at a minimum, the Services as described in greater detail herein pursuant to the terms and conditions set forth in this Contract.

c. The Parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The Parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement was not in writing or signed by the Parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

d. Any resulting Purchase Order shall be between the University or Public Agency, and the Contractor.

5. COST. The Contractor shall provide the Services per the pricing structure outlined in Exhibit B, Contractor's Proposal based on the scope of services being requested by a University or Public Agency, and shall be reflected in the Purchase Order. The State System reserves the right to purchase the Services covered under this Contract through a separate procurement procedure, whenever the State System deems it to be in its best interest.

6. PRICING. The pricing/discount percentage for the products and/or services as listed in Exhibit B, Contractor's Proposal, shall be applicable to all purchases made under this Contract. Price changes are allowed once per year with sixty (60) days of advance notice. Percentage discounts off the Contractor's list price shall remain firm for the term of the Contract unless improved for the benefit the State System. Any requests for reasonable price adjustments may be made at the time of each annual period. If the State

System agrees to the adjusted price terms, the State System shall issue written approval of the change and provide an amended version of this Contract.

7. PERFORMANCE OF SERVICES. The Contractor shall (a) provide the Services set forth in the Contract, and described in Exhibit B, Contractor's Proposal, in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services being requested herein; (b) ensure the highest quality of work and the delivery of the Services with the utmost efficiency; (c) act in good faith and in the best interests of the State System; (d) keep the State System informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the State System; and (e) fully comply with its obligations and duties under this Contract.

8. CONTRACT EXHIBITS.

a. **EXHIBIT A – DATA SECURITY ADDENDUM.** The Contractor acknowledges that this Contract allows the Contractor access to Covered Data and Information ("CDI"), as defined in Exhibit A to this Contract. The Data Security Addendum adds additional obligations concerning the use of CDI to the Contract between the Parties, and the Contractor agrees to abide by the terms of the Data Security Addendum.

b. **EXHIBIT B – CONTRACTOR'S PROPOSAL.** The Contractor shall provide the Services as described in greater detail in its Proposal, Exhibit B.

c. **EXHIBIT C – CONTRACTOR'S SERVICES AGREEMENT AS AMENDED.** The Contractor's Services Agreement as Amended shall apply to any University or Public Agency purchase.

9. CHANGES. The State System reserves the right to make changes at any time during the term of this Contract or any renewals or extensions thereof 1) to make non-material changes to the Services within the scope of this Contract to meet the needs of the State System except in no event shall the cost of the Services ordered exceed any stated not to exceed amount for this Contract; 3) to notify the Contractor that the State System is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of this Contract to extend the completion date beyond the Expiration Date of this Contract or any renewals or extensions thereof. Any such change shall be made by the State System's Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the notification of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate this Contract. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the section entitled CONTRACT CONTROVERSIES.

10. OTHER CONTRACTORS. The State System may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and State System employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by State System employees. The requirements set forth in this section shall be included in the contracts of all contractors with which this Contractor will be required to cooperate. The State System shall equitably enforce this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

11. ASSIGNABILITY AND SUBCONTRACTING.

a. Subject to the terms and conditions of this section, this Contract shall be binding upon the Parties and their respective successors and assigns.

b. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the State System's Contracting Officer.

c. Notwithstanding the foregoing, the Contractor may, without the consent of the State System's Contracting Officer, assign its rights to payment to be received under this Contract, provided that the Contractor provides written notice of such assignment to the State System's Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

d. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

e. Any assignment consented to by the State System's Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Contract and to assume the duties, obligations, and responsibilities being assigned.

f. A change of name by the Contractor, following which the Contractor's federal tax identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the State System's Contracting Officer written notice of any such change of name.

12. COMPENSATION/INVOICES.

a. The Contractor shall be required to provide the Services at the price(s) quoted in this Contract. The Contractor shall be compensated only for items supplied and performed to the satisfaction of the University or Public Agency. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in a University's or a Public Agency's Purchase Order.

b. The Contractor shall send an itemized invoice to the address referenced on a University's or a Public Agency's Purchase Order. The invoice should include only amounts due under the Purchase Order. This Purchase Order number must be included on all invoices.

c. Each invoice shall be itemized with detail deemed adequate by the University or the Public Agency, or it will be returned as improper and the time for processing a payment will be suspended until the University or Public Agency receives a correct invoice. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, this Contract, updated price lists, or any discounts negotiated by the University or the Public Agency.

13. PAYMENT.

a. The State System shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of this Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in this Contract (a "proper" invoice is not received until the State System accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice

if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in this Contract. If any payment is not made within fifteen (15) days after the required payment date, the State System may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The State System reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the Services if such post-payment testing or inspection discloses a defect or a failure to meet specifications.

b. The State System shall have the option of using a purchasing card to make purchases under this Contract or a Purchase Order. The State System's purchasing card is similar to a credit card in that there will be a small fee that the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the State System. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the State System allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of this Contract or a Purchase Order.

c. The State System may make contract payments through Automated Clearing House (ACH). Within 10 days of award of this Contract or a Purchase Order, the Contractor must submit or must have already submitted their ACH information to the State System. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State System's ACH remittance advice to enable the Contractor to properly apply the State System's payment to the invoice submitted. It is the responsibility of the Contractor to ensure that the ACH information provided to the State System is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

14. TAXES. The State System is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles and sports fishing equipment. The State System is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees that are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

15. INSURANCE. Unless otherwise agreed to in writing by the Parties, Contractor shall procure and maintain during the term of this Contract, at its own expense, the following insurance coverage:

a. Worker's compensation insurance as required by Pennsylvania law for all employees engaged in work.

b. Commercial general liability insurance including coverage against any claims(s) that might occur in carryout out this Contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations.

c. Automobile liability insurance for all owned, non-owned and hired vehicles that are used in carrying out this Contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damages per accident.

d. The State System reserves the right to require higher or lower limits where warranted.

e. Upon request by the State System, the Contractor is required to provide a Certificate of Insurance from a company licensed to do business in the Commonwealth of Pennsylvania, with a minimum AM Best rating of A-, and signed by an authorized agent. A minimum 60-day cancellation notice is desired.

16. CONTRACTOR REPRESENTATIONS, WARRANTIES AND COVENANTS.

a. **PATENT, COPYRIGHT AND TRADEMARK INDEMNITY:** The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of this Contract that is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the State System under this Contract. The Contractor shall defend any suit or proceeding brought against the State System on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this Contract. This is upon condition that the State System shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the State System may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the State System at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the State System harmless from all damages, costs, and expenses, including attorney's fees that the State System may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of this Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software that is obtained contemporaneously with the infringing product, or, at the option of the State System, only those items of equipment or software that are held to be infringing, and to pay the State System: 1) any amounts paid by the State System towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the State System for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this section continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

b. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State System shall have the right to

terminate this Contract without liability or in its discretion to deduct from this Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

17. OWNERSHIP RIGHTS. The State System shall have unrestricted authority to reproduce, distribute, and use any submitted report, data or material, and any Developed Works and Developed Materials as part of the performance of this Contract, which may include written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media. No ownership rights to the Contractor's platform shall be granted under this agreement.

18. ASSIGNMENT OF ANTITRUST CLAIMS. The Contractor and the State System recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the State System. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the State System all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services that are the subject of this Contract.

19. LIMITATION OF STATE SYSTEM LIABILITY. IN NO EVENT SHALL THE PARTIES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR OTHER DAMAGES ARISING OUT OF THIS CONTRACT. THE STATE SYSTEM'S TOTAL OBLIGATION UNDER THIS CONTRACT SHALL NOT EXCEED THE COST FOR ALL AND SERVICES UNDER THIS CONTRACT WITHOUT REGARD TO THE THEORY OF RECOVERY OR THE NATURE OF THE CAUSE OF ACTION. THIS PROVISION SHALL NOT BE CONSTRUED TO LIMIT THE SOVEREIGN IMMUNITY OF THE COMMONWEALTH OR OF THE STATE SYSTEM OF HIGHER EDUCATION.

20. HOLD HARMLESS. The Contractor shall hold the State System harmless from and indemnify the State System, the State System of Higher Education and the Commonwealth of Pennsylvania against any and all third-party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the State System gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the State System in actions brought against the State System. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the State System will cooperate with all reasonable requests of Contractor made in the defense of such suits. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The State System may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

21. COMPLIANCE WITH LAW. The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract. More specifically:

a. **ENVIRONMENTAL LAWS AND REGULATIONS:** In the performance of this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

b. **EXPORT CONTROL LAW COMPLIANCE.** To the extent Contractor is providing devices/technology or data under this Contract, Contractor acknowledges that a foreign national(s) may use the device/technology/and or data at the State System. Contractor shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Contract. In the absence of available license exemptions/exceptions, Contractor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to State System any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Contractor shall notify the State System in writing of the nature and extent of the export control. The State System shall have the right to decline any such technical data or product utilizing such data. In the event Contractor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the State System has the right to immediately terminate this Contract.

22. DEFAULT.

a. The State System may, subject to the provisions of the section entitled FORCE MAJEURE and in addition to its other rights under this Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the section entitled TERMINATION) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in this Contract Order or a Purchase Order or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the terms of this Contract or a Purchase Order;
- 3) Unsatisfactory performance of the work;
- 4) Failure to deliver awarded item(s) within the time specified in this Contract or a Purchase Order or as otherwise specified;
- 5) Improper or untimely delivery;
- 6) Failure to provide an item(s) that is in conformance with the specifications referenced in this Contract or a Purchase Order;
- 7) Delivery of a defective item;
- 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 9) Discontinuance of work without approval;
- 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 11) Insolvency, bankruptcy or placed into receivership;
- 12) Assignment made for the benefit of creditors;

- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made of any amounts due for materials furnished, labor supplied or performed, equipment rentals, or for utility services rendered;
- 14) Failure to protect, to repair, or to make good any damage or injury to property;
- 15) Breach of any provision of this Contract;
- 16) Failure to comply with representations made in the Contractor's bid, proposal or contract offer; or
- 17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the State System terminates this Contract or any Purchase Order in whole or in part as provided in subparagraph a. above, the State System may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the State System for any reasonable excess costs for such similar or identical items included within the terminated part of this Contract or a Purchase Order.

c. If this Contract or a Purchase Order is terminated as provided in subparagraph a. above, the State System, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver immediately to the State System in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract or a Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the State System shall be at the price set forth in this Contract. Except as provided below, payment for partially completed items including, where applicable, reports and working papers delivered to and accepted by the State System shall be in an amount agreed upon by the Contractor and Contracting Officer. The State System may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the State System against loss.

d. The rights and remedies of the State System provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. The State System's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the State System of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the section entitled CONTRACT CONTROVERSIES of this Contract, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth of Pennsylvania Board of Claims.

23. TERMINATION. The State System has the right to terminate this Contract (including any Purchase Order issued under this Contract) for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

a. **TERMINATION FOR CONVENIENCE:** The State System shall have the right to terminate this Contract for its convenience without penalty or recourse if the State System determines termination to be in its best interest. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State System. The Contractor shall be paid for work satisfactorily

completed prior to the effective date of the termination and this shall be the Contractor's sole remedy against the State System in the event of termination under this provision. In no event shall the Contractor be entitled to recover loss of profits, loss of use of money, or administrative or overhead costs.

b. **NON-APPROPRIATION:** The State System's obligation to make payments during any State System fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds by a granting agency, the Commonwealth or a governing body. When funds are not appropriated or otherwise made available to support continued performance in a subsequent fiscal year period, the State System shall have the right to terminate this Contract. The Contractor shall be paid for work satisfactorily completed prior to the notice of non-appropriation. The Contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations made available for that purpose.

c. **TERMINATION FOR CAUSE:** The State System shall have the right to terminate this Contract for Contractor default under the section entitled DEFAULT, upon written notice to the Contractor. The State System shall also have the right, upon written notice to the Contractor, to terminate this Contract for other cause as specified in the Contract or by law. If it is later determined that the State System erred in terminating this Contract for cause, then, at the State System's discretion, this Contract shall be deemed to have been terminated for convenience under subparagraph a. above.

24. CONTRACT CONTROVERSIES.

a. In the event of a controversy or claim arising from this Contract, the Contractor must, within six (6) months after the cause of action occurs, file a written claim with the Contracting Officer for a determination, stating all grounds upon which the Contractor asserts a controversy or claim. The written claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth of Pennsylvania's Office of General Counsel Mediation Program.

b. If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful.

c. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the Parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.

d. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the Parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims which retains exclusive jurisdiction. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed

diligently with the performance of this Contract in a manner consistent with the determination of the Contracting Officer and the State System shall compensate the Contractor pursuant to the terms of this Contract.

25. FORCE MAJEURE.

a. Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by an event or circumstance beyond its control, regardless of whether it was foreseeable, that was not caused by the party who is unable to perform (the “nonperforming party”) provided the nonperforming party complies with the provisions of this section. Causes and circumstances beyond a party’s control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade or other labor disputes affecting either party, and freight embargoes. Causes and circumstances beyond a party’s control do not include a strike or other labor unrest that affects only one party or an increase in prices.

b. Upon identifying an event or circumstance a party believes is beyond its control, nonperforming party shall notify the other party as soon as practicable and in writing no later than five (5) days after the date on which the nonperforming party becomes aware, or should have reasonably become aware, that such event or circumstance would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under this Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay and all reasonable efforts being undertaken to attempt performance, limit delay and limit damages. The nonperforming party shall have the burden of proving that such event or circumstance delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the other party may reasonably request, including providing updates regarding the event or circumstance as it is ongoing. After receipt of such notification, the party receiving notice of the event or circumstance may elect to cancel this Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the delay.

c. In the event of a declared emergency by competent governmental authorities, the State System by notice to the Contractor may suspend all or a portion of this Contract or a Purchase Order issued under this Contract.

26. USE OF CONFIDENTIAL INFORMATION.

a. Covered Data and Information (“CDI”) includes paper and electronic financial information, student education records, as well as any other data marked as confidential provided by the State System or its students to the Contractor to perform the services under this Contract.

b. Disclosure of CDI: Contractor shall not copy, report or release CDI or information concerning the State System or its students, employees or customers to third Parties except when essential for authorized use under this Contract and then only with State System’s prior written approval and only where the third Parties sign agreements containing substantially the same provisions as contained in this section. Any such report or release of information shall, at a minimum, comply with those requirements enumerated in the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), the Family and Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g), and applicable State System or Board of Governors policies or standards for safeguarding such information, and all other applicable laws regarding consumer privacy and confidential information. The Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

c. **Maintenance of CDI:** The Contractor shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted CDI received from or on behalf of the State System or its students. The Contractor will extend these measures by contract to all subcontractors used by the Contractor. At a minimum, the Contractor agrees to guard the confidentiality of the State System's confidential information with the same diligence with which it guards its own proprietary information.

d. **Destruction or Return of CDI:** Upon termination, cancellation, expiration or other conclusion of this Contract or any license granted hereunder, the Contractor will return to the State System all copies of CDI in the Contractor's possession, unless the Contracting Officer consents in writing to the preservation of a copy of the CDI for archival purposes. The Contractor shall provide a certificate to the State System confirming the date of destruction of the CDI.

e. **Reporting of Unauthorized Disclosures or Misuse of CDI:** The Contractor shall, as soon as reasonably practicable and in accordance with all applicable state and federal statutes and regulations, report to the State System any use or disclosure of CDI not authorized by this Contract. The Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) the identity of the party who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State System.

f. **Remedies:** If the State System reasonably determines in good faith that the Contractor has materially breached any of its obligations under this provision, the State System, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide the Contractor with a thirty (30) day period to cure the breach; or terminate this Contract immediately if cure is not possible. Before exercising any of these options, the State System shall provide written notice to the Contractor 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 the Contractor improperly disclosed personally identifiable information obtained from the State System's education records, the State System may not allow the Contractor access to education records for at least five (5) years.

g. The obligations stated in this section do not apply to information:

- 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
- 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- 4) disclosed to the recipient without a similar restriction by a third-party who has the right to make such disclosure; or
- 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

h. **Indemnity:** The Contractor shall defend and hold the State System harmless from all claims, liabilities, damages, or judgments brought by a third-party, including the State System's costs and attorney fees, to the extent arising as a result of the Contractor's negligent or willful failure to meet any of its obligations under this section.

27. NONDISCRIMINATION. The Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination and immigration. The Parties agree to continue their respective policies of nondiscrimination based on Title VI of the Civil Rights Act of 1964 in regard to sex, age, race, color, creed, and national origin; Title IX of the Education Amendments of 1972 and other applicable laws; as well as the provisions of the Americans with Disabilities Act. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Contractor agrees to comply with the "General prohibitions against discrimination" set forth in 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

28. SEXUAL HARASSMENT. Federal law and the policies of the State System prohibit sexual harassment of State System employees or students. Sexual harassment includes any unwelcome sexual advance toward a State System employee or student, or any other verbal or physical conduct of a sexual nature that is so severe or pervasive as to create a hostile or offensive working environment for State System employees, or a hostile or offensive academic environment for students. State System vendors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of State System employees and students. The employer of any person who the State System, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of this Contract to cause such person to be removed from the project site and from State System premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease. In addition, the State System may proceed with debarment or suspension or make appropriate reports in accordance with the Contractor Responsibility Program.

29. BACKGROUND CHECKS FOR SECURE OR SENSITIVE AREAS.

a. At the direction of the State System, the Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to secure or sensitive areas on the State System's campus, either through on-site access or through remote access, as determined by the State System. Before the State System will permit an employee or subcontractor of the Contractor to have access to secure or sensitive areas on the State System's campus, the Contractor may be required provide written confirmation that appropriate background checks have been conducted.

b. Access to certain State System buildings may be controlled by means of card readers and secured visitors' entrances. State System contracted personnel who have regular and routine business in State System worksites may be issued a photo identification or access badge, at the discretion of the State System, subject to State System policy or direction. The Contractor shall be responsible for all fees in connection is issuance of photo identification or access badges

c. The State System may provide Contractor employees who work on a State System campus with a designated email or other network access for use by the employee for performance under this Contract. Any such access must be in accordance with all applicable laws and State System policies.

d. If it is discovered at any time that an individual who has access to a secure or sensitive area on campus has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, breach of trust/fiduciary responsibility or that raises concerns about building, system or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any State System facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the State System consents to the access, in writing, prior to the access.

e. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the State System may result in the Contractor being deemed in default of its Contract.

30. BACKGROUND CHECKS FOR MINORS.

a. The Contractor must arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will provide a program, activity or service to the State System that is responsible for the care, supervision, guidance, or control of children or as otherwise designated by the State System under applicable policy. The Contractor will be responsible for any such associated costs.

b. Before the State System will permit an employee or subcontractor of the Contractor to provide any program, activity or service to the State System where the employee or subcontractor is responsible for the care, supervision, guidance, or control of children, the Contractor must provide written confirmation that background checks have been conducted in accordance with applicable law and policies. If it is discovered at any time that an individual has a criminal record that includes one of the enumerated offenses set forth in section 6344(c) of the Child Protective Services Law, 23 Pa.C.S. § 6344, the Contractor shall immediately remove the employee or subcontractor from assignment to the State System under this Contract.

c. The State System specifically reserves the right to conduct background checks over and above that described herein or as otherwise required by applicable law.

d. The State System may provide Contractor employees who work on a State System campus with a designated email or other network access for use by the employee for performance under this Contract. Any such access must be in accordance with all applicable laws and State System policies.

e. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the State System may result in the Contractor being deemed in default of its Contract.

31. MANDATORY REPORTING REQUIREMENTS.

a. All employees, subcontractors and volunteers of Contractor who provide a program, activity, or service to the State System that are responsible for the care, supervision, guidance, or control of children are considered mandated reporters of suspected cases of child abuse under Pennsylvania law. All mandated reporters shall make an immediate report of suspected child abuse if the individual has reasonable cause to suspect that a child is the victim of child abuse under any of the following circumstances: (i) the mandated reporter comes into contact with the child in the course of employment,

occupation and practice of a profession or through a regularly scheduled program, activity or service; (ii) the mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child; (iii) a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse; or (iv) an individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse. The minor is not required to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse. The mandated reporter does not need to determine the identity of the person responsible for the child abuse to make a report of suspected child abuse.

b. Mandated reporters must immediately make an oral report of suspected child abuse to the Department of Human Services (DHS), formerly the Department of Public Welfare, by calling ChildLine at 1-800-932-0313, or by filing a written report with DHS through Pennsylvania's Child Welfare Information Solution portal (<https://www.compass.state.pa.us/CWIS>). If an oral report is made, a written report shall also be made within 48 hours to DHS or the county agency assigned to the case as prescribed by DHS. If a mandated reporter feels that a child is in an emergency situation, the mandated reporter should call local law enforcement or 911 immediately. In addition to the mandatory reporting requirements above, employees and subcontractors of Contractor must immediately notify the State System that a report of suspected child abuse has been made.

32. CONTRACTOR RESPONSIBILITY. For the purpose of this section, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, in writing, that as of the date of its execution of this Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the Effective Date of this Contract through the Expiration Date. Accordingly, the Contractor shall have an obligation to inform the Contracting Officer if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes or other Commonwealth obligations, or if Contractor or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Contracting Officer of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Contract.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General, the State System or the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472

33. CONTRACTOR INTEGRITY. It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

a. **DEFINITIONS.** For purposes of this section, the following terms shall be defined as follows:

- 1) "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- 2) "Consent" means written permission signed by a duly authorized officer or employee of the State System, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the State System shall be deemed to have consented by virtue of the execution of this Contract.
- 3) "Contractor" means the individual or entity that has entered into this Contract with the State System.
- 4) "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
- 5) "Financial Interest" means either:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or any position of management.
- 6) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

- 7) “Non-bid Basis” means a contract awarded or executed by the State System with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. In furtherance of this policy, Contractor agrees to the following:
- 1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this Contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
 - 2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the services are performed shall satisfy this requirement.
 - 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Contract, except as provided in this Contract.
 - 4) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this Contract, unless the financial interest is disclosed to the State System in writing and the State System consents to Contractor’s financial interest. Contractor shall disclose the financial interest to the State System at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of this Contract signed by Contractor.
 - 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - c) had any business license or professional license suspended or revoked;
 - d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - e) been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the State System will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the Effective Date of this Contract through the Expiration Date. Accordingly, the Contractor shall have an obligation to immediately notify the State System in writing if at any time during the term of this Contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. Contractor acknowledges that the State System may, in its sole discretion, terminate this Contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- 6) Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this Contract was awarded on a non-bid Basis, Contractor must also comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- 7) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Contracting Officer or the Office of the State Inspector General in writing.
- 8) Contractor, by submission of its bid or proposal or execution of this Contract and by the submission of any bills, invoices or requests for payment pursuant to this Contract, certifies and represents that it has not violated any of these Contractor Integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of this Contract, to include any extensions thereof. Contractor shall immediately notify the Contracting Officer in writing of any actions for occurrences that would result in a violation of these Contractor Integrity provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General, the State System and the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 9) Contractor shall cooperate with the Office of the State Inspector General, the State System and the Commonwealth in any investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of a Commonwealth investigator, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the investigating Commonwealth agency to Contractor's integrity and compliance with these provisions. Such

information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this Contract. Contractor shall incorporate the obligations set forth in this section in any agreement, contract or subcontract it enters into in the course of the performance of this Contract solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the State System and any such subcontractor, and no third-party beneficiaries shall be created thereby.

- 10) For violation of any of these Contractor Integrity provisions, the State System may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this Contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, policy or otherwise.

34. COMMONWEALTH EMPLOYEE ETHICS.

a. The Commonwealth Procurement Code, 62 Pa.C.S. § 101 et seq., provides that any attempt by a Commonwealth employee to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of the employee is a breach of a public trust and that Commonwealth employees must avoid conflict of interest or improper use of confidential information. 62 Pa. C. S. § 2302(a).

b. Pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. §1101 et seq., subject to certain statutory exceptions, "public officials" or "public employees" as defined by the Ethics Act, 65 Pa.C.S. §1102, are prohibited from: a) using the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of their immediate family are associated; and b) using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a).

c. "State advisors" and "State consultants" as those terms are defined in the State Adverse Interest Act, 71 P.S. § 7761 et eq., having recommended to the State agency that he or she served, either in the making of a contract or a course of action of which the making of a contract is an express or implied part, are prohibited from "hav[ing] an adverse interest" in such contract, as that term is defined in the statute. A State employee, as that term is defined in the statute, is prohibited from having an adverse interest in a contract with the State agency by which he or she is employed and from influencing or attempting to influence the making of or supervise or in any manner deal with any contract in which the employee has an adverse interest. For purposes of this section, State agency shall refer to the Pennsylvania State System of Higher Education.

d. The Contractor must report any known or suspected violations of the provisions of this section to the State System or the Office of the Chancellor, attn.: Chief Counsel.

35. AUDIT. The State System and the Commonwealth of Pennsylvania shall have the right, at reasonable times and at a site designated by the State System, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for this Contract. The Contractor agrees to maintain records that will support the prices charged and costs incurred for this Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for this Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the State System, the Commonwealth of Pennsylvania and their authorized representatives.

36. RIGHT OF OFFSET. The Contractor acknowledges and agrees that the State System may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth of Pennsylvania against any payments due the Contractor under any contract with the Commonwealth of Pennsylvania.

37. RIGHT TO KNOW LAW.

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract.

b. If the State System needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the State System.

c. Upon written notification from the State System that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:

- 1) Provide the State System, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the State System reasonably believes is Requested Information and may be a public record under the RTKL; and
- 2) Provide such other assistance as the State System may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the State System and provide, within seven (7) days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The State System will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the State System determines that the Requested Information is clearly not protected from disclosure under the RTKL in which case the Contractor shall provide the Requested Information within five (5) days of receipt of written notification of the State System’s determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the State System harmless for any damages,

penalties, costs, detriment or harm that the State System may incur as a result of the Contractor's failure, including any statutory damages assessed against the State System.

g. The State System will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by State System or if none, by the Office of Open Records or as otherwise provided by the RTKL if a fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any State System decision to release a record to the public with the Office of Open Records, or in an appropriate Pennsylvania Court, however, the Contractor shall indemnify the State System for any legal expenses incurred as a result of such a challenge and shall hold the State System harmless for any damages, penalties, costs, detriment or harm that the State System may incur as a result of the Contractor's failure, including any statutory damages assessed against the State System, regardless of the outcome of such legal challenge. As between the Parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the State System's disclosure of Requested Information pursuant to the RTKL.

38. APPLICABLE LAW. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

39. MISCELLANEOUS.

a. **PUBLICITY:** Contractor shall not reference or use the name of the Commonwealth of Pennsylvania, the State System of Higher Education, the State System or any official, employee, unit or department or any logo, trademark or symbol associated with any of the above for commercial promotion. News releases or other publicity pertaining to this Contract shall not be made without the prior written approval of the State System.

b. **INTEGRATION:** This Contract, including all referenced documents and exhibits, and any issued Purchase Order(s), constitute the entire agreement between the Parties. No agent, representative, employee or officer of either the State System or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to this Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both Parties. All such amendments will be made using the appropriate State System form.

c. **CONTROLLING TERMS AND CONDITIONS:** The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the State System. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the Parties' agreement and shall be disregarded by the Parties, unenforceable by the Contractor and not binding on the State System unless specifically referenced as being incorporated into this Contract. In the event attachments or exhibits containing

additional terms are incorporated as part of this Contract, the terms and conditions herein shall control and prevail over any such attachments or exhibits, regardless of any language contained therein to the contrary.

d. **SEVERABILITY:** If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law or rendered unlawful by a legislative act, such provision shall be interpreted to be modified so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Contract shall remain in full force and effect.

e. **SURVIVAL:** The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

f. **NOTICE:** Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at the address set forth in this Contract. In the case of an alleged breach of this Contract, a copy of the written notice to the State System shall also be provided to the following: State System Legal Counsel, 2986 N 2nd Street, Harrisburg, PA 17110.

g. **LEGISLATIVE AND POLICY UPDATES:** The Parties acknowledge that it may be necessary from time to time to modify the provisions of this Contract to comply with legislative or policy updates, including updates to policies of the Pennsylvania State System of Higher Education. In such cases, the State System will notify the Contractor of the necessary changes and the Parties will incorporate such changes into an amendment to this Contract.

h. **THIRD PARTY BENEFICIARY:** The State System and the Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives or is intended to give or shall be construed to give or provide any benefit or right, directly or indirectly, to third Parties.

i. **INDEPENDENT CONTRACTOR:** In performing its obligations under this Contract, the Contractor will act as an independent contractor and not as an employee or agent of the State System. The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

j. **COUNTERPARTS:** This Contract may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed pursuant to due and legal action authorizing the same to be done on the date(s) below.

FOR THE CONTRACTOR:

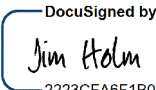
FOR THE STATE SYSTEM:

Individual or Partner or Member Date
(if Contractor is an individual or partnership
or limited liability company)

Director, Procurement Shared Services

Title

APPROVED AS TO FISCAL RESPONSIBILITY,
BUDGETARY APPROPRIATENESS AND
AVAILABILITY OF FUNDS

DocuSigned by:
 1/19/2021
2223CFA6F1B0469...

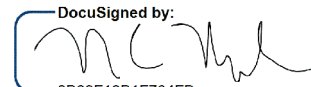
President or Vice President Date
(Circle Title)

Digitally signed by Molly M
Mercer
Date: 2021.01.20 15:33:29
-05'00'
Molly M Mercer

Comptroller

CEO

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
 1/19/2021
8B83F19B1F704FB...

Secretary or Treasurer Date
(Circle Title)

Digitally signed by Jeffrey
Hawkins
Date: 2021.01.20 16:54:40
-05'00'
Jeffrey B. Hawkins

University Legal Counsel

CFO

Digitally signed by David E. Stover
DN: cn=David E. Stover, o=PA Office of
Attorney General, ou,
email=dstover@attorneygeneral.gov, c=US
Date: 2021.02.22 09:09:08 -05'00'
David E. Stover

Deputy Attorney General

N/A

Office of General Counsel

Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.

Data Security Addendum

Contractor acknowledges that the Contract between the Parties allows the Contractor access to Covered Data and Information (“CDI”), as defined below. This Data Security Addendum adds additional obligations concerning the use of CDI to the Contract between the parties.

1. Definitions

- a. **Covered Data and Information (“CDI”)** - includes (1) paper and electronic financial information that is marked as confidential; (2) “personal information” as that term is defined by Pennsylvania’s Breach of Personal Information Notification Act, 73 P.S. § 2301 et seq., as may be amended; (3) personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act (“FERPA”), 20 USC 1232g; (4) "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act (“HIPAA”), 45 CFR Part 160.103; (5) nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999 (“GLB”), 15 USC 6809; (6) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (7) other financial account numbers, access codes, driver’s license numbers; state- or federal-identification numbers such as passport, visa or state identity card numbers; (8) and any other data marked as non-public that is provided by the University, its students or a third party to the Contractor to perform the services under this Contract.
- b. **Covered Parties** - The following are considered a “Covered Party” subject to the restrictions on the use of CDI: Contractor; employees or agents of Contractor who actually and legitimately need to access or use CDI in the performance of Contractor’s duties to University; and such third parties, such as but not limited to subcontractors, who have an actual and legitimate need to access or use CDI.
- c. **System** - An assembly of components that supports an operational role or accomplishes a specific objective including a discrete set of information resources (network, server, computer, software, application, operating system or storage devices) organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

2. Use of, Disclosure of, Storage of, or Access to CDI

- a. Contractor and Covered Parties shall only use, disclose, store, or access CDI in accordance with, and only to the extent permissible or necessary to fulfill obligations under the Contract, this Addendum and any other agreement between the parties and will not share CDI with or disclose it to any third party without the prior written consent of the University, except as required by the Contract or as otherwise required by applicable law.
- b. Contractor and Covered Parties shall only use, disclose, store, or access CDI in full compliance with any and all applicable laws and regulations, only to the extent applicable to Contractor, including but not limited to: FERPA, HIPAA, GLB, Federal Trade Commission Red Flags Rule, the Social Security Act, Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), U.S. export control laws, the European Union General Data Protection Regulation (GDPR), and personnel and data breach laws of the Commonwealth of Pennsylvania.
- c. Contractor will ensure all internal Covered Parties have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Contract and this Addendum.
- d. Contractor shall require all third party Covered Parties to agree in writing and in advance of any disclosure, to be bound by confidentiality terms at least as stringent as the terms of this Addendum.

- e. Any transmission, transportation, or storage of CDI outside the United States is prohibited except on prior written authorization by the University.
- f. Contractor and Covered Parties may store CDI on servers housed in datacenters owned and operated by third parties, provided the third parties have executed confidentiality agreements with Contractor that are consistent with the Contract and this Addendum.
- g. For CDI subject to FERPA, Contractor will be considered a "school official" with a "legitimate educational interest" as those terms are used in FERPA and its implementing regulations. Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the education records only for the purpose of fulfilling its duties under the Contract for University's and its end user's benefit, and will not share such data with or disclose it to any third party except as provided for in the Contract, required by law, or authorized in writing by the University.
- h. The parties agree that as between them, all rights including all intellectual property rights in and to CDI shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Contract solely for the purpose of performing its obligations under the Contract. The Contract does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Contract.

3. Safeguarding CDI

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Contract and this Addendum, including but not limited to all terms relating to data and intellectual property protection.
- b. Contractor agrees that use, storage, and access to CDI shall be performed with that degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices designed and implemented in such a manner to ensure the confidentiality, availability, and integrity of CDI and to avoid or prevent compromises, attacks and potential Data Breaches.
- c. Contractor will implement the controls reasonably necessary to protect any System owned or operated by Contractor that contains CDI: (1) using secure protocols and encryption to safeguard CDI in transit; (2) adding a host-based or external firewall to protect the System (or allowing the University to add a host-based or external firewall); (3) limiting administrative and remote access to the System; (4) limiting account access and privileges to the least necessary for the proper functioning of the System; (5) removing or disabling applications and services that are not necessary for the proper functioning of the System; (6) utilizing named user accounts and not generic or shared accounts; (7) utilizing Federated Single Sign On, Kerberos, or other industry compliant services for authentication and authorization; (8) avoidance of default passwords and capabilities that allow the changing of System and user passwords; (9) enabling an appropriate level of auditing and logging for the operating system and applications; and (10) take reasonable measures to protect CDI against deterioration or degradation of data quality and authenticity.
- d. The University reserves the right to request security information reasonably necessary to ascertain University's own compliance with state and federal data privacy laws. Upon the University's request, Contractor shall provide a copy of its most recent SOC 2 report, and that of any data center in which CDI is stored. The University may also require the Contractor to complete a Higher Education Cloud Vendor Assessment Tool (HECVAT) to ensure the services to be provided are appropriately assessed for security and privacy needs. Contractor agrees to cooperate with the University to ensure data is handled and systems are operated in compliance with applicable University policy and adopted standards.

4. Product Maintenance and Support

- a. Contractor shall have a process for the timely review, testing, and installation of patches essential for safeguarding the confidentiality, integrity, or availability of the System or CDI.
- b. Contractor will implement best practices for change management procedures, including a formal process to ensure that changes to a System are introduced in a controlled and coordinated manner to avoid or reduce the possibility that unnecessary changes, faults or vulnerabilities are introduced to the System, or that changes made by other users are undone.
- c. Contractor shall ensure that all products under subscription are remotely supported via a secure connection method that includes an audit log of events. Remote access shall be limited to an as needed or as requested basis. Contractor shall provide University with notice 12 months before the product becomes unsupported.

5. Contractor Access to University Systems

- a. In accordance with applicable policies, University login credentials may be given to contractors for the purposes of scheduled troubleshooting, maintenance, or updates to software provided or supplied by Contractor and installed on University-owned computer equipment. In such a case, University will provide the Contractor with credentials for logging in locally or through a secured Virtual Private Network (VPN), if required. Credentials will be issued by the University through a help desk ticket and issued for a specified time and disabled once that time has expired.
- b. As a condition of the Contractor's access to University computing equipment the Contractor represents that they will not attempt to access any system(s) other than the one(s) designated in the help desk ticket.
- c. All work performed by the Contractor while connected to University computing equipment may be monitored or verified by the University.

6. Data or Security Incident

- a. If Contractor becomes aware that CDI may have been accessed, disclosed, or acquired without proper authorization, Contractor shall immediately notify the specified University contact. Contractor shall immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the incident. Contractor shall give highest priority to immediately correcting any incident and shall devote such resources as may be required to accomplish that goal. Contractor shall fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident.
- b. Contractor shall promptly provide the University information necessary to enable the University to fully understand the nature and scope of the incident so that it can take appropriate action, including notice to individuals impacted and, if need be, notice to consumer reporting agencies as required by the Commonwealth's Breach of Personal Information Notification Act, 73 P.S. §§ 2301 et seq.
- c. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs incurred by the University in investigation and remediation of any incident, including but not limited to providing notification to individuals whose CDI was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the CDI exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the incident.
- d. Upon request, Contractor shall provide University information about what Contractor has done or plans to do to mitigate any deleterious effect of the unauthorized use or disclosure of, or access

to CDI. In the event that an incident requires Contractor's assistance in reinstalling software, such assistance shall be provided at no cost to the University. The University may discontinue any services or products provided by Contractor until the University, in its sole discretion, determines that the cause of the incident has been sufficiently mitigated.

- e. The Contractor shall coordinate all outbound communications regarding an incident with the University.

7. Compelled Disclosure of CDI

- a. Contractor shall promptly notify the University in writing of any subpoena, discovery request, court order, or other legal request or command to disclose CDI and provide the University sufficient time to obtain a court order or take any other action the University deems necessary to prevent disclosure or otherwise protect CDI. Contractor shall provide prompt and full cooperation in University's efforts to protect CDI. Upon request, Contractor will provide the University with a copy of its response.
- b. If the University receives a subpoena, discovery request, court order, or other legal request or command (including a request pursuant to the Pennsylvania Right to Know Law) or request seeking CDI maintained by Contractor, the University will promptly provide a copy to Contractor. Contractor will promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response.

8. Data Transfer or Destruction Procedures

- a. Upon expiration or termination of the Contract, Contractor shall follow the University's instructions as to the preservation, transfer, or destruction of CDI. Any transfer to the University or a designated third party shall occur within a reasonable period of time and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to CDI during the transition.
- b. In the event the University requests destruction of CDI, Contractor agrees to destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred CDI in accordance with standards that meet or exceed [National Institute of Standards and Technology \(NIST\) Special Publication 800-88r1 guidelines](#) pertaining to data sanitization using "purge" or "destroy" methods. Contractor agrees to provide documentation of data destruction.
- c. Contractor will notify the University of an impending cessation of its business and any contingency plans, immediately transfer any previously escrowed assets and CDI and provide the University access to facilities to remove and destroy University-owned assets and CDI. Contractor shall take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. Contractor will also provide a full inventory and configuration of all hardware and software involved in service delivery. Contractor will work closely with its successor to ensure a successful transition in advance of the final transition date, with minimal downtime and effect on the University. Upon request by the University, Contractor shall certify in writing to University that return or destruction of data has been completed. Prior to such return or destruction, Contractor shall continue to protect CDI in accordance with the terms of the Contract and this Addendum.
- d. The Contractor's obligations under this section shall survive termination of the Contract until all CDI has been returned or securely destroyed.



Proctoring Solutions: Live Online and Automated

RFP #2020-COOP-LAV-45

October 26, 2020

October 26, 2020

Linda A. Venneri, Collaborative Contracts Manager
Pennsylvania's State System of Higher Education

Dear Ms. Venneri,

In response to RFP #2020-COOP-LAV-45, we are delighted to present our proposal for Proctoring Solutions to Pennsylvania's State System of Higher Education.

Examity Overview

Examity's flexible and secure solution includes a superior student experience, seamless D2L integration, comprehensive reporting, and training. With 24/7/365 technical and customer support, students can test at their convenience regardless of the day or time. Faculty and administration can expect a partner who is responsive, and laser focused on your needs, as evidenced by our 96% client retention. We believe our solution will ensure PASSHE courses maintain the highest level of academic integrity.

Exceptions to Terms and Conditions

Regarding the General Conditions proposed in RFP #2020-COOP-LAV-45, Examity has the following exceptions:

- Section 4a: Examity will need the ability to accept or reject POs based on its ability to schedule proctoring services.
- Section 5b: Examity generally does not grant MFN contracts.
- Section 17: Examity will need to clarify that no ownership rights to the platform will be granted under this agreement.
- Section 19: Limitation of liability should be mutual.

Point of Contact

All communication associated with this RFP should be directed to Eric Rodriguez, Director of Business Development at Examity:

Eric Rodriguez, Director, Business Development
153 Needham Street, Newton, MA 02464
781.864.0310, erodriguez@examity.com

We appreciate your consideration and look forward to hearing back from you.

Best regards,



Jillian Wiseman
Vice President, Strategic Development

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Executive Summary

Examity is the global leader in online proctoring and pioneer in flexibility. Offering a one-stop-shop for all proctoring needs, what sets Examity apart is our robust support and superior scale. Our position in the marketplace was achieved by our unique and flexible offering of one platform and one workflow for all users, no matter what proctoring solution selected, automated through to live, allowing instructors and administrators to choose the level of security that fit their needs. With PASSHE consisting of 14 schools, each unique with different goals and cultures, Examity can protect the integrity of low stakes and high stakes exams for every institution through our wide array of solutions.

Examity's platform, spanning ID verification and online proctoring, includes seamless D2L integration, comprehensive reporting, and industry leading 24/7/365 technical and customer support. With a strong emphasis on flexibility, Examity allows instructors to select the appropriate level of security (from automated through to live) for each unique situation. Examity is uniquely positioned to meet the needs of Bloomsburg, California, Cheyney, Clarion, East Stroudsburg, Edinboro, Indiana, Kutztown, Lockhaven, Mansfield and Slippery Rock University. We are also positioned to continue meeting the needs of our current PASSHE clients which are West Chester, Millersville, Shippensburg University.

- **Multimodal Proctoring:** Examity's solution provides instructors with the flexibility to select the solution (automated through to live) that best fits their needs – whether they are managing a quiz, a midterm, or a final exam.
- **Extensive Integration Expertise:** Examity's developed a true expertise for implementation through our work with hundreds of clients. We support and integrate with all commercial and proprietary learning management systems, including D2L. We are the only proctoring solution to achieve LTI 1.3 certification by IMS Global, the gold standard in interoperability, we are able to provide deeper integration and greater security for our partner.
- **Premium Support Services:** Examity's support is unmatched. We have a robust support structure in place to address any and all student concerns. Our team of over 1,500 helpful experts, provides students with 24/7/365 support through online chat, email, and phone, giving them the freedom to contact us however they feel the most comfortable.
- **Efficiency and Scale:** Examity's superior ability to scale, while maintaining the highest level of support and efficiencies, is the reason we are the market leader. It is an absolute necessity when providing proctoring and something that our competitors have not been able to replicate. It is also the reason why we can proctor over three million exams per year and still have an average wait time of less than one minute, the lowest in the industry.

- **Robust Reporting:** Examity provides one-touch access to reporting and analytics. From student satisfaction to violation reports and video files, our reporting provides you with the information you need to immediately assess and address student activity.

We are honored and excited at the opportunity to present our Proctoring Solutions to PASSHE and look forward to taking the next step in this process.

A. General

1. State the Supplier's understanding of the solution being requested by this RFP.

Examity's understanding and evaluation of this RFP's requirements is that PASSHE is seeking a proctoring partner, not just a proctoring provider. You cited key areas that fit with our solution, such as cost effective, convenient, and customizable solutions. Beyond that, you are solving unique challenges for your members at a massive scale, which is reflected in the Work Statement. While functional ability from a technology perspective is a significant share of the scope, there is also a clear focus on finding a partner that can dedicate a team to collaborate with your members to carry out a specific vision. The focus on technology, security, privacy, and support structures for all users and stakeholders demonstrates a need to build a fully-integrated ecosystem approach where our solution is molded to match the needs of your members, rather than a one-size-fits-all solution.

The strategic-nature of this RFP illustrates the need for a partner who can obsess over the details without losing sight of the long-term objectives. Finally, the emphasis on a proven track record with systems of your size shows that the successful partner will do as much, if not more, *showing* than telling. Examity believes the proposal we have crafted will demonstrate our unique qualifications to be your online proctoring partner.

2. Include a narrative response that summarizes the key features and competitive advantages of the proposed solution that make it stand out from competing solutions.

When Examity entered the online proctoring market, there were a few providers already in the space, but each were focused on niche applications. We recognized that test providers - whether universities, colleges or corporations - have different needs depending upon what they were trying to accomplish and that no one thinks the same about how to handle test integrity. This is where we saw an opportunity to provide a holistic solution and it was this need that motivated us to create a single platform with varying proctoring styles, from automated through to live. We built our foundation based on flexibility, support and scale which in turn has allowed us the opportunity to provide students, instructors, and administrators the same experience whether testing in peak or non-peak periods giving us our competitive edge. Because of our impact in the market, in recent years, others

have started to offer the same, but building off a single-style solution leads to uneven footing and a lack of fluidity and efficiency.

What has kept Examity the industry leader is our robust support, superior scale, and focus on student experience while at the same time enabling test integrity. Below we have outlined several key areas that separate Examity from competing solutions:

Premium Support Services: Examity's support is unmatched. We have a robust support structure in place to address any and all student concerns. Our team of over 1,500 helpful experts, provides students with 24/7/365 support through online chat, email, and phone, giving them the freedom to contact us however they feel the most comfortable.

Efficiency and Scale: Examity's superior ability to scale, while maintaining the highest level of support and efficiencies, is the reason we are the market leader. It is an absolute necessity when providing proctoring and something that our competitors have not been able to replicate. It is also the reason why we can proctor over three million exams per year and still provide superior service and support for all modalities, including an average wait time of less than one minute for live proctoring, the lowest in the industry.

Pioneering Audit Process: Examity pioneered the auditing process to include a second set of eyes to review each video before uploading integrity results at no extra charge. Auditing brings forth quality assurance (better test integrity) and quality control (assists in continuously improving our proctoring). In addition, auditing provides rich data to train our innovative AI solutions.

Industry-Leading Live Proctoring Solution: For our live solutions, we average a 2:1 student to proctor ratio, far exceeding the industry standard, which is 6:1 or greater. We believe this enables the best service for students, the best ability to monitor your unique requirements, and the best protection against cheating or unauthorized behavior. Rather than handing students off from greeter to proctor or between proctors, the Examity proctor stays with the student throughout the duration of the exam. This significantly reduces wait times and eliminates associated risk and student frustration. Finally, most exam challenges can be handled by our IT-trained proctors.

Extensive Integration Expertise: Examity's developed a true expertise for implementation through our work with hundreds of clients. We support and integrate with all commercial and proprietary learning management systems, student management systems, and test platforms. Examity is helping the industry innovate while leading the industry by becoming the first online proctoring provider to adopt the LTI® Proctoring Services standard by IMS Global Learning Consortium. Built on the innovative IMS Learning Tools Interoperability® standard, LTI Proctoring Services aligns with best-in-class learning management systems and assessment platforms to deliver a credible and secure user experience for students, administrators, and proctors. **We are also the only proctoring solution to achieve LTI 1.3 certification by IMS Global**, we are able to provide deeper integration and greater security for our partner.

Robust Reporting: Examity provides one-touch access to reporting and analytics. From student satisfaction to violation reports and video files, our reporting provides you with the information you need to immediately assess and address student activity.

Rigorous Security Protocols: Examity has adopted the ISO/IEC 2700x and NIST Cyber Security “Frameworks” to organize and govern our overall Cyber Security efforts. This provides the basis for all decisions on specific cyber security policies, procedures, and controls (administrative, physical, and technical) that we implement. All client data is stored in the United States at Rackspace, a SSAE-16 certified data center. We have standard database-wide encryption and PGP 4096-bit encryption (Diffie Hellman Algorithm) used for data security at transmission and at rest.

Financial Backing: In April 2019, Examity received a \$90 million investment from Great Hill Partners. Recognizing growth in the space, the firm’s intention was to invest significant capital into a leading online proctoring company. After a substantial due diligence period, evaluating nearly every competitor in the space, Examity was chosen to receive this investment. This is a testament not only to the solution and reputation we have developed since 2013, but also our future growth trajectory and long-term sustainability as a leader in the space. The investment will fuel our continued investment into the people, process, and technology necessary to provide best-in-class online proctoring to PASSHE members.

B. Qualifications and Experience

1. Company

Include a brief history and description of the company, including the number of years in business and any ownership structure or management structure. Discuss how the firm’s overall experience demonstrates its ability to successfully provide the solution.

Examity entered the online proctoring market in 2013. Although there were providers already in this space, each was only offering a limited solution. As we partnered with institutions and organizations, we realized that a new approach was required to meet the differing needs of these partners.

We developed Examity to provide flexibility for our customers without sacrificing security. Our solutions encompass a variety of identification and proctoring styles including automated and live proctoring. In addition, we received constant feedback that online students require immediate and ongoing support. With this in mind, we built our team of 1,500+ individuals to provide students with industry-leading 24/7/365 service.

We are excited and honored to have experienced more than 50% growth each year that we have been in business. This is a strong validation of Examity’s success. Some highlights of this accomplishment include:

- Named #6 most innovative education company in North America by Fast Company
- Ranked #1 fastest-growing EdTech company in the United States by Deloitte's Fast 500, for two consecutive years
- Received additional investment of \$90 million in April 2019

Examity is a privately held company headquartered in Newton, Massachusetts.

2. Experience

Describe your organization's experience (including number of years in operation) as it pertains to providing a Proctoring Solution for higher education institutions. Submit three detailed case histories that demonstrate the breadth, depth and creativity of the solution that your firm can provide to the State System. At least one case history must be of a higher education institution (a state system is highly preferred). Provide a description of any industry best practices your firm utilizes. Include any industry awards your firm received.

Examity has been a leading online proctoring solution since entering the market in 2013. We take great pride in our ability to handle more than three million assessments per year and maintain partnerships with over 500 higher education institutions, corporations, and certificate providers. Examity is currently integrated with and tests over 350 university partners, including Penn State University, The University of North Carolina System, The Texas A&M System and The Tennessee Board of Regents to name a few.

In order to illustrate our experience with delivering best-in-class online proctoring to higher education institutions and state systems, we have outlined three client stories below.

The University of North Carolina System

Examity was selected by UNC Online following an RFP process in August 2019. UNC Online had spent the past 10 years working with ProctorU as their online proctoring partner. The contract awarded is with The University of North Carolina System and the integration was a highly custom process with the UNC Online platform where students begin the process, meet the Examity proctor and then are launched to their respective institution's LMS to take their exam.

The agreement between Examity and The University of North Carolina System allows the opportunity to work with each individual school and thus integrate with their respective LMS if programs require online proctoring, but do not fall within or utilize UNC Online (such as NC State). Most recently the System has provided grants to assist with test security amid the COVID-19 pandemic where Examity is quickly integrating with East Carolina's Canvas, UNC Pembroke's Canvas, Elizabeth City State's Blackboard, and Appalachian State's Moodle to assist with November finals.

Since January 2020, Examity has online proctored nearly 10,000 exams in the UNC System.

The Texas A&M University System

In 2016 The Texas A&M University System, consisting of 11 schools, began searching for a remote proctoring provider for their online exams. Key requirements were that any solution needed to be “round the clock”, flexible, secure, easy to integrate with, and cost effective. After a thorough evaluation process, the A&M System was able to clearly identify Examity as an online test integrity solution that fit well for their system membership.

Examity was ultimately selected because of our ability to meet the above needs and technical requirements while providing 24/7 support. Today, 7 of the 11 institutions in the A&M System are using both our live and automated proctoring solutions.

University of Arizona

In 2015, the University of Arizona conducted an RFP to assess current proctoring partners. During the RFP process, Examity unseated competitors ProctorU and Software Secure (now PSI) to win the contract. In 2018, at the expiration of the contract, another RFP was issued and awarded again to Examity.

Examity currently works with 14 out of the University of Arizona’s 19 colleges, proctoring more than 500 courses led by over 250 instructors, and supporting 20,000+ students a year.

During our first full year with the university we proctored over 40,000 tests. In 2019, that number swelled to more than 80,000 with an average wait-time of 28 seconds for all live proctored exams. This is a true testament to our ability to scale. The University of Arizona uses Examity for both residential and online programs and takes advantage of all proctoring modalities.

Industry Best Practices

Examity encourages all of our new and current clients to follow the online proctoring best practices below:

- Incorporate Examity into your course syllabus
- Direct students to available guides, videos, and support for assistance
- Register and schedule exams as early as possible
- 24-hour exam windows
- Ensure device readiness via the systems check
- Avoid large simultaneous testing groups
- Make automated practice tests available to students

Examity believes a big part of why we have been able to maintain successful partnerships with West Chester, Millersville, and Shippensburg over the years has been because they have adhered and promoted these at their institutions.

3. References

Provide references from three of your clients from the past five years for services that are similar in scope, size and complexity to the Solution described in this RFP. At least one of these client references should preferably be from a higher education institution. Provide the following information for each client: client name and address; time period in which work was performed; and a short description of the work performed.

[Redacted client reference 1]

[Redacted client reference 2]

[Redacted client reference 3]

C. Technical Requirements

A. Monitoring Process

1. Provide a detailed description of the following processes:

Pre-test Authentication (verifying student identities)

Examity supports a pre-defined, secure student identification and authorization process at the start of each test session. We validate a student's identification through our multifactor authentication process, outlined below:

1. Capturing a student's government-issued photo ID and matching it against a picture of the student at the start of the exam.
2. Answering a series of security questions.
3. Completing a digital signature that we will compare against the typing rhythm captured at registration.

Authentication is fully integrated into both our automated and live proctoring solutions. In live proctored exams, an Examity proctor will follow a strict process of ID verification, including photo comparison, challenge questions, and a digital signature (measuring keystroke cadence). Next, the proctor will confirm the exam rules with the student and conduct a 360-degree room pan and a sweep of the desk to make sure no unauthorized materials are present. Once underway, the same proctor that performed the authentication will monitor the student throughout the exam session.

This information, including a full recording of the exam session will be available for review on the instructor dashboard. Our exam sessions are recorded from authentication through the end of the exam.

Our automated proctoring solutions start with auto-authentication. Students will follow simple steps to validate their ID through our multi-factor authentication process. Students snap pictures of their ID and face, answer challenge questions, and enter a digital signature (measuring keystroke cadence) to verify identity.

Scheduling and Managing Exams

Examity's best-in-class LTI integration with the LMS means minimal time is spent scheduling and managing exams. The following workflow shows the process an instructor or administrator undergoes to configure an exam:

Exam information such as course, exam name, exam window, duration, and exam URL, is automatically imported from the LMS in real-time via APIs. The exam view, shown on the following screenshot, allows instructors to select the security level and review the exam information we have imported:

Course: Intro Economics

Exam: Final

Exam Window: 02/06/2020 01:30 PM - 12/31/2020 01:30 PM

Exam Duration: 0 Hour, 30 Minutes

Link to Exam: <https://sites.google.com/view/biologyfinalexam/testing-platform-login>

Allow Test-taker to Upload File: No Yes

Security Level: Auto Premium

Features:

- Automated authentication
- Automated proctoring
- Post exam auditor review
- Video files available post exam

Exam Password: password\$

Passwords will be used by the proctor to validate the session. Exam Passwords should never be shared with the test-takers.

Buttons: New Scheduling Exception, Delete Exam, Save Changes

Instructors can choose to add additional rules:

Standard Rules:

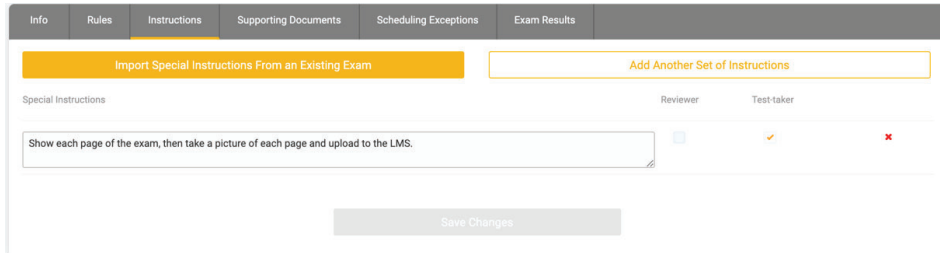
- Clear your desk and the surrounding area
- Stay connected to a power source
- No phones or headphones
- No dual monitors
- No leaving your seat
- You must be alone in the room
- No Talking
- Your webcam, speakers, and microphone must remain on throughout the test
- You must stay in view of the webcam for the duration of the test

Additional Rules:

- Handheld calculator
- Scrap paper
- Open book
- Bathroom breaks
- Drink on desk
- Online Calculator

Button: Save Changes

...or special instructions:

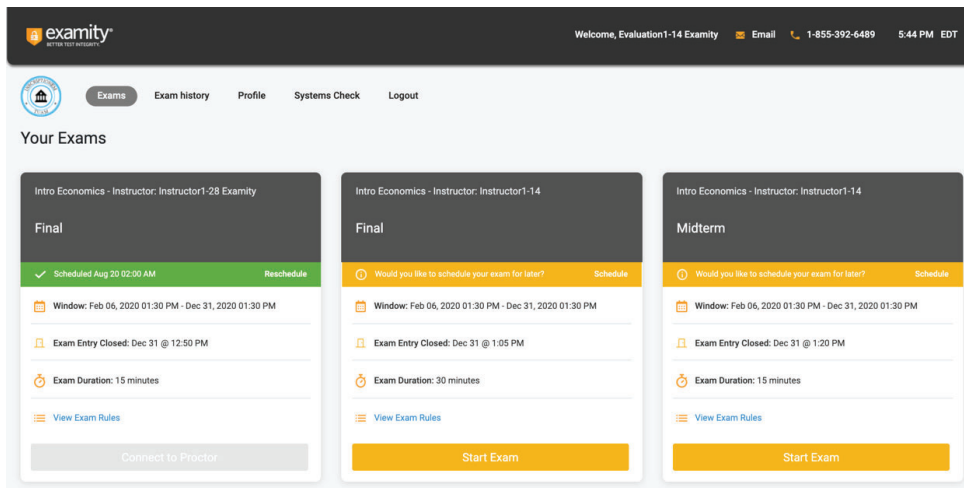


Instructors can even clone sets of rules that they repeatedly use, meaning more time teaching and minimal time configuring.

Student Registration (including exam instructions)

Students will access their Examyty dashboard through a single sign-on link in their course within the LMS. The first time a student logs in to Examyty, they will be prompted to complete a short profile. This is a one-time process where they will be asked to select their time zone, upload a government issued or student photo ID, answer challenge questions, and enter a digital signature.

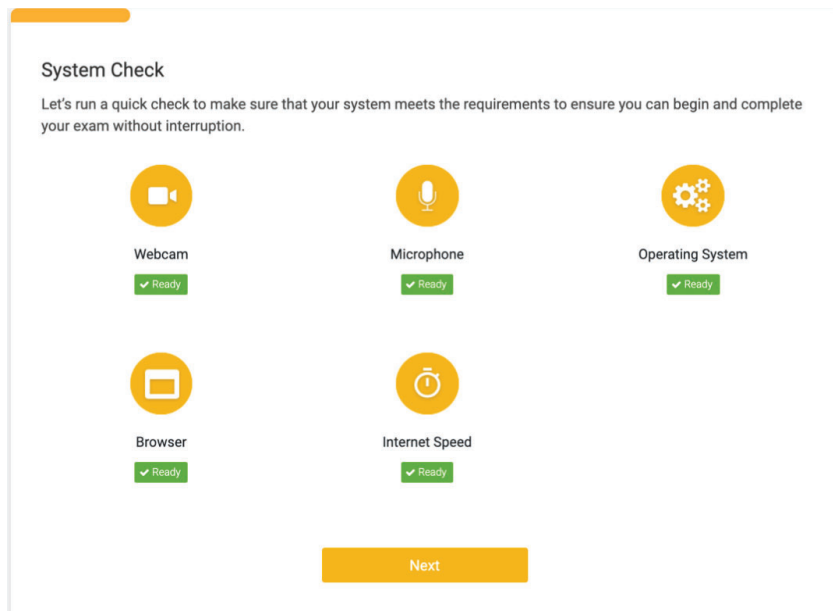
Once complete, students can take exams immediately or schedule for a later time, 24/7/365. Students can start or schedule any exam displayed on their dashboard, shown on the next screenshot:



All of their active exams will appear on this dashboard. For a Live Proctored exam, they'll simply click "Schedule" and select the best time for them within the exam window (set in the LMS), whether that is in advance or right away. After selecting the date and time, students will be presented with the full exam rules and special instructions. They will also receive a scheduling confirmation email with the same rules and instructions so they will be prepared on test day.

Automated Proctoring Exams do not need to be scheduled and can be taken any time by clicking "Start Exam" or if the student prefers, can be scheduled in advance. Exam rules and special instructions are also readily accessible on these exams with one click.

The exam confirmation will provide all of the information they need to prepare for an exam including a systems requirements check:



At Examy, we recognize that taking a test can be a stressful experience, so we strive to ensure there are no surprises on test day. As a best practice, we encourage students to run a systems check to ensure device readiness prior to testing. As you can see on the screenshot below, they will be prompted to do this prior to each exam. This is one of the reasons Examy has the fastest launch times in the industry. For automated exams, we encourage instructors to set up a free practice tests

with multiple attempts so students can become familiar with going through the process.

Data Security (during exams)

Examity uses a variety of methods to ensure the security of testing materials during the exam session. Throughout the exam, Examity will monitor both the desktop and the student, assisted by software that employs seven years of machine learning, AI, and predictive analytics. Observation is done both via the webcam to capture video and the student's microphone to capture sound. In addition, our lockdown browser functionality locks down the testing environment. This ensures the security of testing materials during the exam session by preventing the ability to copy/paste or print test materials.

Unique to Examity, if the student goes offline during the exam, our new software can automatically block the exam in order to protect the integrity of the exam while a student is unmonitored in any of our proctoring modalities. During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Keeping the same proctor throughout the exam, coupled with our low student-to-proctor ratio and auditing process, also ensures higher security.

Real-time Live Proctoring

Live proctoring provides the highest level of security in online testing. We agree with PASSHE's definition of having a trained human proctor monitor a full exam session with a student from end to end. Gimmicks such as "live look" or "pop-in," do not view a student from start to finish and therefore do not constitute real-time live proctoring.

Examity is the clear industry leader in live proctoring for four significant reasons:

- **At less than one minute, Examity has an industry-low student wait time** to meet a proctor by a significant margin, arguably the most important metric in live proctoring because it is the biggest factor in student satisfaction.
- **Examity does not switch proctors** through the authentication and/or test taking experience, causing disruption and more than one wait-time. The same proctor that authenticates the student will be with them for the duration of their exam, so **students only have to wait once** with Examity. Other competitive live solutions use one proctor to authenticate then place the student into a second queue to wait for the proctor who will monitor their exam. This misrepresents the complete wait time published and can lead to a poor student experience.
- Examity leads the industry with the **lowest average student-to-proctor ratio, at 2:1**. We achieve this by leveraging our team of over 1,500 proctors and support staff to always meet demand. While others in the space may derive their ratio from rotating proctors on and off, at

Examity, you can be confident that your students will always have the same proctor throughout the exam.

- **We do not utilize “pop-in” in proctors. Our proctors are dedicated to the students they have been matched with for their entire exam.** While solutions like “pop-in,” “live look,” or “hybrid” may give the appearance of a low ratio, that proctor could be monitoring dozens of students at one time, making it impossible to catch violations or even provide support to students who need technical assistance, significantly diluting the proctoring experience. These “proctors” would be on-call and not committed to the process.

Examity offers two live proctoring options depending on the level of security required:

Live Standard: Unique in the marketplace, beginning with live authentication, the proctor will follow a strict process of ID verification, including photo comparison, challenge questions, and a digital signature (measuring keystroke cadence). Next, the proctor will confirm the exam rules with the student. To verify that no unauthorized materials are present and ensure a “clean” test environment, the proctor will request a 360° room pan and desk sweep.

Once the exam begins, the proctor drops off the screen, and the session is recorded from start to finish. The exam is later reviewed in its entirety by a human proctor to ensure that no rules have been violated. Much different than just a software scan of the exam, Examity trained human proctors will review the full exam from beginning to end. Once reviewed by the proctor, our auditing team will also review the entire exam session recording and authentication before releasing the audio, video, and analytics to the instructor dashboard.

Live Premium: This modality begins with live authentication, having a trained human proctor ID verify a student using the same methods as listed above in Live Standard. To verify that no unauthorized materials are present and ensure a “clean” test environment, the proctor will request a 360° room pan and desk sweep.

Throughout the exam, the Examity proctor monitors the student’s surroundings and full desktop in real-time. Examity does not change proctors in the middle of an exam and the same proctor that greets the student at the beginning of the exam is the exact same proctor that monitors the entire exam, ensuring a seamless experience with minimal disruption.

The most critical advantage with Live Premium is that Examity proctors may intervene in real-time if a violation is detected. In addition, proctors can block the exam if the student goes offline or attempts to compromise exam integrity in order to protect the integrity of the exam. All of our proctors are IT-trained should troubleshooting be necessary. To ensure maximum quality of proctoring results, our human auditing team will review a recording of the exam session and authentication before releasing audio, video, and analytics to the dashboard. Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student’s screen.

Automated Proctoring

Examity's automated proctoring services use software backed by AI and machine learning, to monitor students throughout the entire exam. Examity is the clear industry leader in Automated Proctoring for this significant reason:

Support. Automated proctoring presents the opportunity to proctor limitless amounts of tests at one time. This is true; however, it begs the question, how can you support limitless amounts of students at one time? We do not offer "service hours" or require students and faculty to leave messages in hopes that someone will contact them back quickly. Our business is built on our ability to leverage our 1,500+ proctor and support staff to be available and ultra-responsive regardless of the volume of requests and the time of year.

We have two automated proctoring solutions depending on the level of security required:

Auto Standard: Standard starts with auto-authentication where students will follow simple steps to validate their ID through our multi-factor authentication process. Students snap pictures of their ID and face, answer challenge questions, and enter a digital signature (measuring keystroke cadence) to verify identity. After authentication is complete, Examity software takes over to capture audio, motion, and systemic changes to identify aberrant behaviors. Within hours of the conclusion of the exam, full video, audio, and analytics will be made available on the instructor dashboard. All videos have timestamped comments associated with specific violations, as well as hyperlinks that allow instructors to immediately jump to these incidents.

Auto Premium: Our Automated Premium starts with auto-authentication. After authentication is complete, Examity software takes over to capture audio, motion, and systemic changes to identify aberrant behaviors. As with our Standard product, all videos have timestamped comments associated with specific violations, as well as hyperlinks that allow instructors to immediately jump to these incidents. The benefit of Automated Premium is at the conclusion of the exam, for quality assurance, our auditing team will review video of the exam session and authentication before releasing the video, audio, and analytics to the dashboard.

Recording and Viewing Exams (by faculty)

All Examity proctoring modalities include full recordings of the test session from start to finish as a standard feature. Students are fully visible on camera, as is their computer screen. Our Automated Premium is what others in the industry would refer to as "Record and Review." With Examity, recordings in each of our proctoring modalities are utilized differently:

Automated Standard: Automated Standard exam sessions are fully recorded; however, they are not audited by Examity. Examity provides time stamped comments and violation screenshots, allowing administrators/instructors to review the session and view any flags that may have been issued.

Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student's screen.

Automated Premium: Automated Premium exam sessions are fully recorded. At the conclusion of the exam, for quality assurance, our auditing team utilizes the recording to review the test session as a second set of human eyes to make sure nothing was missed. Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student's screen.

Live Standard: Live Standard exam sessions are fully recorded. Because proctors are not present during the live exam, they will instead proctor recordings of the test session, reviewing exams from beginning to end. Once reviewed by the proctor, our auditing team will also review the entire exam session recording and authentication before releasing the audio, video, and analytics to the instructor dashboard. Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student's screen.

Live Premium: Live Premium exam sessions are fully recorded. To ensure maximum quality of proctoring results, our human auditing team will review a recording of the exam session and authentication before releasing audio, video, and analytics to the dashboard. Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student's screen.

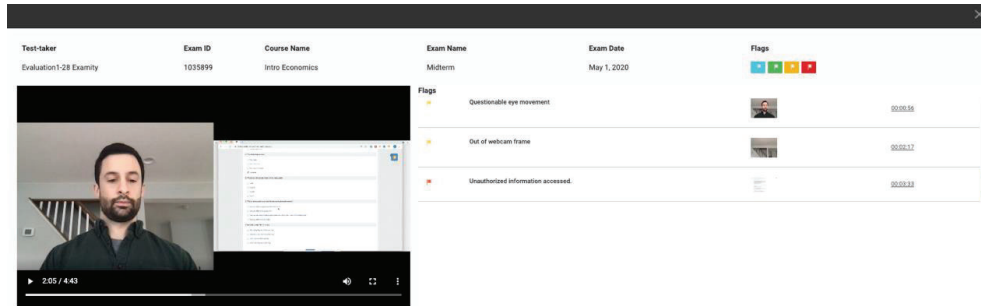
Violations (algorithms to detect and capture aberrant behavior)

During the exam, Examity will monitor both the desktop and the student, assisted by software that employs seven years of machine learning, AI, and predictive analytics. Observation is done both via the webcam to capture video and the student's microphone to capture sound. Flags are generated when movements, actions, or sounds indicate that inappropriate behavior has occurred.

Examity utilizes four distinctly colored flags that clearly identify all violations and technical issues that occurred during a proctoring session. Standard definitions of the Examity flags/alerts are noted below:

- Green flags are raised when there is no violation
- Yellow flags are issued when a rule is broken but cheating does not necessarily take place
- Red flags are given when the student exhibits clear cheating behavior
- Blue flags report when a technical issue arises

All flags have timestamped comments associated with the infraction, as well as hyperlinks that allow instructors to immediately review questionable incidents with one click. This is all viewable in our easy-to-use dashboard, as shown on the next screenshot:

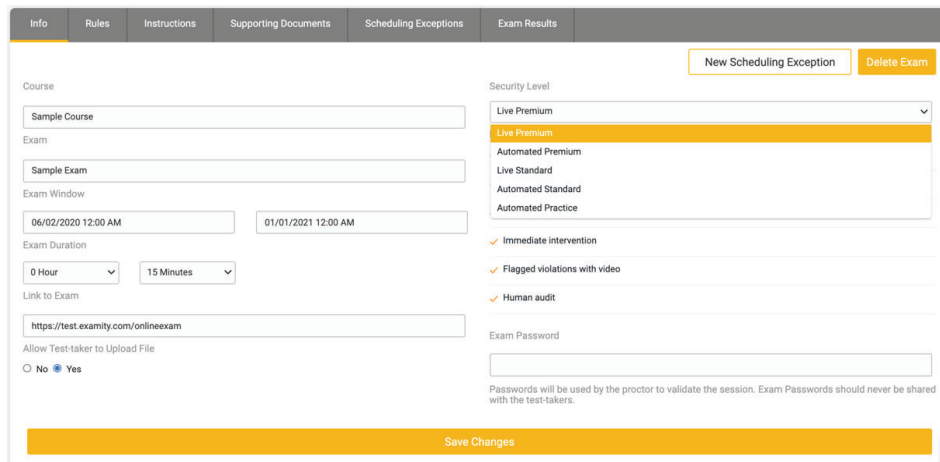


When a red flag is raised, indicating clear cheating behavior has taken place, this will be reported back to the designated university contact(s) by your dedicated account manager within 24 hours of the incident, often much sooner. Details of the incident, along with the exam ID, will be available on the instructor/admin dashboard. There are times when an auditor discovers a violation that went undetected by a proctor. In these situations, the auditor will contact your Exami account manager, who will follow the aforementioned steps.

End-to-End Security (active restriction of students' computers)

Exami gives faculty the flexibility to select the appropriate level of security (from automated through to live) for each unique situation. Whether they are managing a quiz, a midterm, or a final exam, it's important to fit the solution to the specific needs of the instructor.

Instructors or administrators will simply select the level of proctoring from a dropdown menu in the exam shell, as shown on the next screenshot.



Exami provides the ability to either lock the security level at the institution level or give instructors a specific list of options to select on their own. We can also configure our solution to be managed by a

central administrator or by individual instructors. We would work with you during implementation to walk through the benefits of each configuration.

Examity's lockdown browser functionality locks down the testing environment. This ensures the security of testing materials during the exam session by preventing the ability to copy/paste, open new tabs, or print test materials.

During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Keeping the same proctor throughout the exam coupled with our average one proctor for every two students and auditing process also ensures higher security.

In addition, Examity has developed three unique features to protect exam content in all of our solutions based on three common integrity violations:

- Students attempt to close the proctoring window and return to the test, believing that proctoring will stop, and they can continue their exam.
 - For this strategy we have developed a trigger that automatically closes the LMS or test platform window, should the student close any of the proctoring windows or attempt to otherwise end the proctoring session early. Our system will log this event and the student will have to contact our support team.
- Students will disconnect their WIFI in order to force a disconnect with the proctoring session and continue with their exam.
 - This will trigger a "freeze" of the testing window. Examity places a barrier over the testing window informing the student of the disconnection (in the event that it was accidental) and providing the procedure to securely reconnect.
- Students will attempt to disengage screen sharing during the exam.
 - Our solution will force them into an Examity browser window that requests access to their screen. The student will not be able to continue their exam without reengaging the screen share.

Post-exam Auditing

To ensure maximum quality of proctoring results, our human auditing team will review a recording of the exam session before releasing audio, video, and analytics to the dashboard. This is available in our Live Premium, Live Standard, and Automated Premium options.

Content Protection

Examity uses a variety of methods to ensure the security of testing materials during the exam session. Throughout the exam, Examity will monitor both the desktop and the student, assisted by software that employs seven years of machine learning, AI, and predictive analytics. Observation is done both via the webcam to capture video and the student's microphone to capture sound. In addition, our lockdown browser functionality locks down the testing environment. This ensures the security of testing materials during the exam session by preventing the ability to copy/paste or print test materials.

Unique to Examity, if the student goes offline during the exam, our new software can automatically block the exam in order to protect the integrity of the exam while a student is unmonitored in any of our proctoring modalities. During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Keeping the same proctor throughout the exam, coupled with our low student-to-proctor ratio and auditing process, also ensures higher security.

ADA Assistance

Examity provides test integrity solutions with a strong focus on accessibility, ensuring equitable access for all students and instructors. Examity is fully compliant with Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA for student and instructor roles.

Accessibility is a fundamental part of our development process. We continuously assess and update our product and materials to meet the high standards and accessibility best practices established within the WCAG Guidelines. We completed a full internal audit of our product on May 8, 2020 and our completed Voluntary Product Accessibility Template (VPAT) from that audit is available upon request. An independent, third-party audit for Examity is planned for Q4 2020.

Testing was done using the NVDA (version 2019.3.1) screen reader and was optimized for this tool. We are not aware of any compatibility issues with other technologies.

With Examity, it is easy to add special accommodations for specific students. From extra time to assistive technology requirements, administrators can add unique accommodations with just a few clicks. During a live proctored exam, the accommodation will be viewed by the proctor before the student engages.

All proctors are trained on how to utilize each tool to assist a student's needs. Please note that extended time for students is at no cost as a courtesy. Our accommodation workflow is also available in our automated solutions.

Below is a list of common accommodations we support:

- Extended time (the vast majority)
- Use of chat for communication
- Use of screen readers
- Someone assisting with test (reading questions)
- Allowed to read questions out loud
- Additional breaks
- Medications during test
- Stretch breaks on camera
- Off camera breaks
- Diabetic testing, food & beverage allowed

Other Advanced Monitoring Features

Real-time analysis of video is done using tools originally developed by Google for training and deploying machine learning models in the browser. Examity's solution architecture, including our human auditing process, allows us to blend incoming customer data with the mass amount of data already processed in our systems from over seven years in the proctoring industry. This gives us the ability to apply deep learning networks for classification and regression analysis, to observe trends across utilization, academic integrity behavior, user satisfaction, and user experience. This mountain of data in conjunction with publicly available data sets from Microsoft allow us to continually train our algorithms so our clients get the most cutting-edge AI-drive solution on the market. We are leveraging this work to add new features over the next few months that will significantly improve student satisfaction while provided added layers of security.

2. Provide a description of the methods used to ensure integrity of exams, exam passwords, and the testing environment (both the student's location and access to online materials during the exam). These methods should include visual and auditory observation.

Examity has various methods to protect exam integrity.

Prior to the start of the exam, we ask students to perform a 360° room pan to make sure a student does not have access to any unauthorized resources and to confirm that they are alone in the room. Any materials not authorized by the instructor would have to be removed before the student could begin the exam.

Exam passwords are a key gatekeeper when it comes to online proctoring. Examity automatically imports the exam password set in the LMS. Once the student has been authenticated and the exam is launched, they will click our extension to insert the exam password. This ensures students cannot access the exam without being proctored.

Students are continually monitored during the exam session through webcam, microphone, and screen sharing.

Restricting access to digital resources can be accomplished through the use of our lockdown browser, available in live and automated proctoring sessions. By default, the webcam, audio, and browser applications along with accessibility applications are allowed or whitelisted. Instructors are able to input what sites should be whitelisted. Any devices that promote behavior such as mirroring, recording, and tracking key logs are prohibited by default. Whitelisting sites can be toggled on/off by faculty.

In addition, unique to Examity, if the student goes offline during the exam, our software can automatically block the exam in order to protect the integrity of the exam while a student is unmonitored in any of our proctoring modalities. During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Keeping the same proctor throughout the exam coupled with our average one proctor for every two students and auditing process also ensures higher security.

3. Provide a description of your actionable plan to intervene in an exam where the integrity of the exam has been compromised.

During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Our industry-leading student-to-proctor ratio, and our policy of never switching proctors ensures that intervention happens immediately, rather than waiting for a pop-in proctor. In addition, in all of our proctoring solutions, if a student goes offline during the exam, attempts to disable proctoring, or disengage screen sharing, our software can automatically block the exam in order to protect the integrity of the exam while a student is unmonitored.

4. Provide a description of your quality assurance processes to validate the proctor's results before submitting the results to the faculty.

To ensure maximum quality of proctoring results, our human auditing team will review a recording of the exam session and authentication before releasing audio, video, and analytics to the dashboard. Instructors will have access to this full recording, which shows the webcam view as well as everything that happened on the student's screen. Our auditing team undergoes a rigorous training process and their first 20 hours as an auditor is done with a supervisor.

When the onus is on the instructor to audit results, as is this case with our competitors, instructors must spend an average of 6 minutes per test. If you have an instructor with 100 students taking just one exam that's 10 hours of review time. Extrapolated across all faculty and proctored exams, the savings are astounding.

5. Provide a mechanism for a faculty member to share any video evidence of cheating, either by downloading clips, streaming online, or some other similar mechanism should they need to take a student before a review board. Note: Recorded sessions should be available for five years unless available for download.

If instructors require a video file, whether for case building or to provide to a senior administrator who is not a user, Examity can provide this via secure cloud drive, provided a request is submitted to your account manager by the proper institution authority.

Exam data, including videos, is available on the instructor/administrator dashboard for 30 days. All non-red flags are archived for an additional 30 days and then destroyed. All red flag videos are available on the dashboard for one year. Requests for all recordings shall be made by the institution to your dedicated account manager and will be available upon request, so long as all parties comply with all laws, including, without limitation, FERPA. Client data is stored (including PII and ID images) for the duration of the contract. Examity will deliver data in pipe-delimited encrypted format for consumption upon the termination of contract/service with the client. Following the handover, we follow standard data purge and destruction protocols and confirm in writing when completed.

6. Provide a description of mechanisms for protection of faculty content.

Examity uses a variety of methods to ensure the security of testing materials during the exam session. Throughout the exam, Examity will monitor both the desktop and the student, assisted by software that employs seven years of machine learning, AI, and predictive analytics. Observation is done both via the webcam to capture video and the student's microphone to capture sound. In addition, our lockdown browser functionality locks down the testing environment. This ensures the security of testing materials during the exam session by preventing the ability to copy/paste or print test materials.

Unique to Examity, if the student goes offline during the exam, our new software can automatically block the exam in order to protect the integrity of the exam while a student is unmonitored in any of our proctoring modalities. During a Live Premium exam, the most secure level of test security in the market, proctors may intervene in real-time if a violation is detected and can manually block the screen if necessary. Keeping the same proctor throughout the exam, coupled with our low student-to-proctor ratio and auditing process, also ensures higher security.

While some proctoring companies may offer a solution that purports to do find and eliminate test information from the internet, what they are actually doing is a twofold approach that only gives the illusion of removing illicit content. First, this solution generates an external website using your exam content that has been optimized for search engines. When a student attempts to cheat by searching for answers, they are brought to this site and reported. We view this as entrapment and don't believe it fosters a productive and transparent learning environment, it also unnecessarily exposes your intellectual property. Next, they will use your exam content to search the web for answer banks but

can only send DMCA copyright takedown notices to the offending party. This does not guarantee that your exam content will be taken down.

7. Provide a description of how students are prevented from copying, pasting, and printing during exams.

Examity's lockdown browser functionality locks down the testing environment. This ensures the security of testing materials during the exam session by preventing the ability to copy/paste, open new tabs and windows, or print test materials.

8. Provide a description of exam durations being offered.

Examity typically proctors exam between 1-3 hours. However, we can accommodate whatever exam length is required, including 5-8-hour exams. During implementation, we would work with administrators to ensure that our proctor operations team incorporates a plan in place to accommodate longer exams. When scheduling exams exceeding 3 hours, Examity requires coordination with the account manager to ensure successful outcomes.

Our low ratio and commitment to continuing with the same proctor makes a significant difference in the service for students taking long exams. We will be true consultants, offering suggestions in best practices for handling longer exams, minimizing security gaps and personnel handoffs.

9. How are student accommodations verified, provided, and monitored?

With Examity, it is easy to add special accommodations for specific students. From extra time to assistive technology requirements, administrators can add unique accommodations at the course level with just a few clicks. During a live proctored exam, the accommodation will be viewed by the proctor before the student engages.

All proctors are trained on how to utilize each tool to assist a student's needs. Please note that extended time for students is at no cost as a courtesy. Our accommodation workflow is also available in our automated solutions where things will need to be set up in the LMS.

Below is a list of common accommodations we support:

- Extended time (the vast majority)
- Use of Chat for communication
- Use of Screen readers
- Someone assisting with test (reading questions)
- Allowed to read questions out loud

- Additional Breaks
- Medications during test
- Stretch breaks on Camera
- Off Camera Breaks
- Diabetic testing, Food & beverage allowed

10. Will the Solution be able to be used at off-campus premises (testing centers)?

We are currently working with a variety of clients who plan to utilize their own proctors through our system, including a testing center model. We are happy to discuss your needs further and share our roadmap timing and functionality.

B. Software/Hardware

1. Software/Hardware – Provide a detailed description of the following features:

Proctoring Solution Platform

Examity has been providing industry-leading online proctoring in higher education since 2013. Offering an all in one solution for all proctoring needs, what sets Examity apart is our robust support and superior scale. Our position in the marketplace was achieved by our unique and flexible offering of one platform and one workflow for all users, no matter what proctoring solution selected, automated through to live, allowing instructors and administrators to choose the level of security that fit their needs. While others in the market followed our lead and began to incorporate this multi-modal approach, time has shown that this approach is hard to mimic without truly investing in each solution, the student and instructor experience, and a top-tier support team.

Examity's platform, spanning ID verification and online proctoring, includes seamless LMS integration, comprehensive reporting, and industry leading 24/7/365 technical and customer support. With a strong emphasis on flexibility, Examity allows instructors to select the appropriate level of security (from automated through to live) for each unique situation.

- Multimodal Proctoring: Examity's solution provides instructors with the flexibility to select the solution (automated through to live) that best fits their needs – whether they are managing a quiz, a midterm, or a final exam.
- Extensive Integration Expertise: Examity's developed a true expertise for implementation through our work with hundreds of clients. We support and integrate with all commercial and proprietary learning management systems, including D2L. We are the only proctoring solution to achieve LTI 1.3 certification by IMS Global, the gold standard in interoperability, we are able to provide deeper integration and greater security for our partner.

- **Premium Support Services:** Examity's support is unmatched. We have a robust support structure in place to address any and all student concerns. Our team of over 1,500 helpful experts, provides students with 24/7/365 support through online chat, email, and phone, giving them the freedom to contact us however they feel the most comfortable.
- **Efficiency and Scale:** Examity's superior ability to scale, while maintaining the highest level of support and efficiencies, is the reason we are the market leader. It is an absolute necessity when providing proctoring and something that our competitors have not been able to replicate. It is also the reason why we can proctor over three million exams per year and still have an average wait time of less than one minute, the lowest in the industry.
- **Robust Reporting:** Examity provides one-touch access to reporting and analytics. From student satisfaction to violation reports and video files, our reporting provides you with the information you need to immediately assess and address student activity.

Hosting options

All client data, including videos are stored in the United States at Rackspace, a SSAE-16 certified data center with primary and backup facilities in Dallas and Chicago, respectively. Our data retention protocols include the process of transmission, encryption, control, and delivery of data elements via role-based authentication and authorization, enabled by single sign-on (SSO) from the client's systems. We have standard database-wide encryption and PGP 4096-bit encryption (Diffie Hellman Algorithm) used for data security at transmission and at rest.

The Examity platform itself is hosted on a hybrid cloud leveraging Azure and AWS.

LMS integrations

Examity's developed a true expertise for integration through our work with hundreds of clients. Examity has built a best-in-class LTI integration with all other commercial and proprietary learning management systems including, but not limited to, Brightspace, Blackboard, Moodle, and Sakai. Our single sign-on (SSO) creates a seamless integration with the LMS, eliminating the need for additional username and passwords. Instructors, administrators, and students will access Examity through their existing LMS credentials.

We automatically import all information needed to proctor exams via API, allowing information to be made available in real-time. Our import includes course data (instructor name, email, and course name), student data (first name, last name, and email address), and exam parameters (exam name, duration, URL to access the exam, test window, and password). We do not import the actual exam

As a testament to our dedication to data privacy and protection, Examity became LTI 1.3 certified in September of 2019. This certification is the gold standard in education technology. We are the first

and still only online proctoring provider to be certified at the new standards. This means that we provide the most secure LMS integration on the market. No other proctoring company can claim this. LTI, or Learning Tools Interoperability, is an education technology standard developed by the IMS Global Learning Consortium. It specifies the method for a learning system to integrate with outside applications like Examity. What's more, our integration gives you the flexibility to leverage whatever additional testing tools you currently use. While other tools rely on an embedded integration that limits your ability to test outside the LMS and locks universities into one workflow, Examity's solution can proctor inside or outside the LMS. In today's climate, universities require that we adapt as quickly as they do, so our solution is built to transition smoothly from one platform to another.

Publisher Platform integrations

Examity successfully proctors students in any test or publisher platform, including Cengage, Pearson, and McGraw-Hill products to name a few. Like other proctoring companies, we are not limited to proctoring only in an institution's LMS. Our solution architecture means integration is not necessary with these third-party platforms. Course, instructor, and student roster information resides in the LMS. Only the exam resides in the third-party test platform, so we have set up workflows in order to facilitate a seamless proctoring experience with the external applications of your choosing. Examity securely launches students into these platforms and continually monitors the exam as a proctoring layer on top. This process provides the greatest degree of compatibility possible as you add various programs.

Data Centers (locations)

All client data, including videos are stored in the United States at Rackspace, a SSAE-16 certified data center with primary and backup facilities in Dallas and Chicago, respectively.

Third-party or subcontractor partnerships or involvement

Examity proctors and supports the majority of exams with our own full-time employees based in two proctoring and support centers in India. We have engaged with two workforce contractors to support our global proctoring operations as demand has risen and the need for geographical diversity grows with COVID-19. These organizations build and train global teams for Examity, ensuring business continuity should any of our centers be closed due to forces beyond our control (COVID-19, etc.). Once hired, employees of these organizations serve as proctors and support operators who work 100% with Examity.

NIIT Technologies: A leading global IT solutions organization with 36 years of experience in 40 countries, NIIT Technologies helps companies transform at the intersect of unparalleled domain expertise and emerging technologies to achieve real-world business impact.

OP360: Providing intelligent business process outsourcing for companies of all sizes, OP360 helps companies access a highly skilled and reliable global workforce to ensure they meet their needs.

System scalability

Examity's superior ability to scale, while maintaining the highest level of support and efficiency, is the reason we are the market leader. It is an absolute necessity when providing proctoring and something that our competitors have not been able to replicate. It is also the reason why we are projected to proctor over 3.5 million exams in 2020 and still have an average wait time of less than one minute, the lowest in the industry.

Examity's High availability and scaling cloud environment is applied across infrastructure, application and operations. We have high availability with redundancy infrastructure across web, app and databases horizontal and vertical to scale the processing power, and memory elastically to handle high scale transactions. We are backed with a strong business continuity setup across technology and process operations, to handle the scale as well as availability to meet the requirements in Infrastructure and application throttling. Examity is hosted on Azure infrastructure.

System redundancy and availability

Examity maintains 99.95% up-time and has a robust configuration, patch, and change management process with full redundancy in place for performance and scalability. In the event of an unplanned outage of services, Examity will notify PASSHE contacts within 60 minutes of the outage and provide updates to PASSHE contacts every four hours that detail the corrective actions taken and the status of such actions. Examity will also provide details surrounding the root cause of the outage.

We have setup options to ensure database availability by utilizing replication and clustering. We accomplish this by building redundancy for our databases using replication to back up the data from the master database server to a replica database server. In the event of a failure on the master database server, the replica database server can take over and fulfill the role of the database while the master database server is being repaired. We configure our applications to support replication and failover to the replica database server. We also have an active-passive database server cluster configuration. In a cluster, the active database server is connected via fiber to SAN storage. The environment also includes a passive database server for failover. The operating system and application are stored on the server, while the database is stored on the SAN. Should we experience hardware or application failure in the active database server, the application will failover to the passive database server. Here, failover is measured in seconds, requires no manual intervention, and is often unseen by the application due to the minimal availability disruption associated with an automated failover. Only the cluster database service itself needs to restart to resume operation on the other node.

Backup and recovery strategy

We manage redundancy to handle power outages by providing redundant datacenter power and onsite diesel generators. Our data centers deliver a zero-downtime network, and our servers receive continuous internet connectivity, providing an unparalleled experience for our customers and their end-users. Engineers are on-site 24/7/365 to ensure backups are always running and to conduct emergency restores if needed. Our provisioning system allows us to deliver faster operating system re-installs for our customers as needed. Our datacenter has dedicated personnel that maintains onsite part inventories and guarantees the replacement of failed hardware within a single hour. We verify our compliance on an annual schedule. Examity maintains a 24-hour RPO and 24-hour RTO.

Disaster recovery, testing and business continuity plans

Below, we have highlighted some major components that ensure continuity of our proctoring solution.

Proctor and Support Teams:

Over the course of the pandemic, we have increased the number of centers we are leveraging to four, drastically increasing the geographic diversity to ensure business continuity and a high level of service. With data privacy and security being among our highest priorities, we have also architected a robust virtual private network and virtual machine infrastructure so that we may maintain the same industry-leading level of security if a hybrid “work from home” model is required. Moving forward, we will work on a flexible model that focuses primarily on geographically diverse proctoring centers, with the flexibility to quickly shift to a remote, work from home model when necessary.

Availability:

Our high-availability environment mitigates the risk of unplanned service disruptions through a combination of system processes, software, hardware, and infrastructure components, all backed by our dedicated 24/7/365 engineering support team. Our design eliminates single points of failure and decreases the impact of planned disruptions, such as upgrades or maintenance windows.

Examity maintains 99.95% up-time and has a robust configuration, patch, and change management process with full redundancy in place for performance and scalability. In the event of an unplanned outage of services, Examity will notify client contacts within 60 minutes of the outage and provide updates to client contacts every four hours that detail the corrective actions taken and the status of such actions. Examity will also provide details surrounding the root cause of the outage. Examity maintains a 24-hour RPO and 24-hour RTO.

2. Data – Provide a detailed description of the following features:

Data encryption in transit and at rest

Our data retention protocols include the process of transmission, encryption, control, and delivery of data elements via role-based authentication and authorization, enabled by single sign-on (SSO) from the client's systems. We have standard database-wide encryption and PGP 4096-bit encryption (Diffie Hellman Algorithm) used for data security at transmission and at rest.

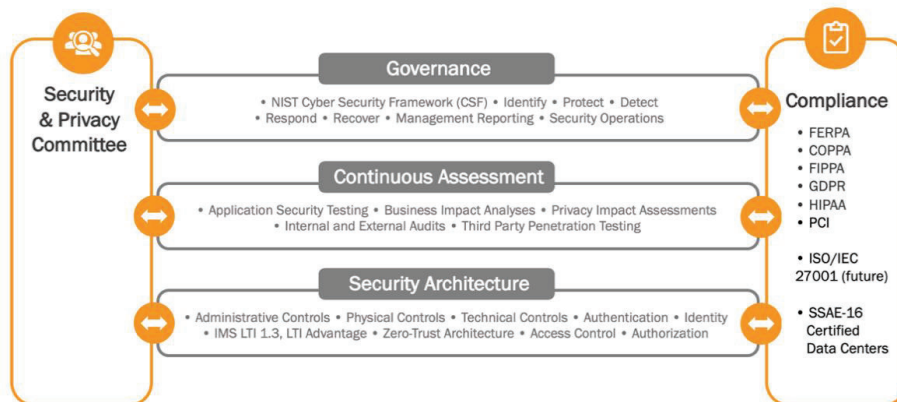
Security – data access and protection

All client data, including videos are stored in the United States at Rackspace, a SSAE-16 certified data center with primary and backup facilities in Dallas and Chicago, respectively. Our data retention protocols include the process of transmission, encryption, control, and delivery of data elements via role-based authentication and authorization, enabled by single sign-on (SSO) from the client's systems. We have standard database-wide encryption and PGP 4096-bit encryption (Diffie Hellman Algorithm) used for data security at transmission and at rest.

Examity has a range of auditing & monitoring instrumentation of the environment, log analysis, anomaly detection, event management, SIEM, etc.

Specifically, we perform active 24x7 monitoring for security events, including but not limited to, regularly reviewing and analyzing audit logs, logging for ingress and egress communication, monitoring and login attempts and authentication failures, security monitoring and logging for access to critical system files, security monitoring and logging for suspicious activity (e.g. on the network, database, IDS, IPS), logging for access to personal or sensitive information, access to critical data.

The following chart is an illustration of Examity's approach to security, including leadership oversight and adherence to rigorous certifications and protocols.



Data breaches

A dedicated communication and resolution team handles our documented incident response plan and data breach management protocol. In the event of a data breach, clients will be notified within 24 hours. The dedicated account manager handles all communications through the life cycle of the incident, root cause, and resolution documentation, and executes the process with the management, IT, Engineering, and other third-party personnel that need to be included in the resolution process. Our incident management plan is reviewed annually.

Ownership of data

PASSHE will be the data controller, retaining ownership over the data, Examity is simply the data processor and, at the termination of services, will ensure that all client data delivered as outlined below.

Termination of services; what happens to the data?

Client data is stored (including PII and ID images) for the duration of the contract. Examity will deliver data in pipe-delimited encrypted format for consumption upon the termination of contract/service with the client. Following the handover, we follow standard data purge and destruction protocols and confirm in writing when completed.

Restrictions on amount of data stored on the proposed solution

There are no restrictions on the amount of data stored, only the time period. Exam data, regardless of size is available on the instructor/administrator dashboard for 30 days. All non-red flags are archived for an additional 30 days and then destroyed. All red flag videos are available on the dashboard for one year.

3. Security – Provide a detailed description of the following features:

Restrictions on number of users accessing the proposed solution

Our team is typically staffed to handle 11,000 exams/day. We are able to increase our capacity with notice. We can support incremental demand and organic growth with our normal capacity planning. If there is an anomaly influx of 500 exams in a 24-hour period, Examity can make that work.

While we understand clients may wish to maintain a simultaneous testing schedule, this is not a best practice in the online proctoring industry and we strongly recommend asynchronous testing. Online students are dealing with technology and require flexibility. Examity recommends a 24-48-hour

window at a minimum. This is a result of our experience proctoring millions of exams combined with established best practices for online assessments.

Those that feel strongly about testing at the same time, might also consider overlapping student start times in 30-minute increments so that many students overlap.

Student Privacy

At Examity, ensuring trust in the exams that we proctor has always been our top priority. We have a Chief Information Security officer that heads up our privacy and data protection strategy with a particular consideration for test taker demographics. We understand the privacy questions and concerns that come with the use of data for online proctoring and exam monitoring, and we know how important it is to be clear about what we do with student data, and, more importantly, what we don't do.

What We Do:

- We use students' names, email, photo ID, digital signature, and challenge questions to validate their identity before taking an exam.
- We use students' phones and email to make sure our support team provides effective support.
- We use students' names and email to confirm that they are registered to take an exam as well as send them reminders about it.
- We use their time zone to show them the right exam schedule.

What We Don't Do:

- We do not sell, share, or market student data to third-parties.
- We do not analyze student data to infer more information about them.
- We do not store student data past the length of our contract with your institution/organization.
- We do not use student information to sell or market to them.

Security-related policies and procedures to which the Offeror's employees are required to adhere

Examity complies with international privacy regulations and laws, including those listed below. That means that you can feel secure that our privacy and security practices meet the highest standards for online proctoring.

FERPA: Family Educational Rights and Privacy Act of 1974

FIPPA: Freedom of Information and Protection of Privacy Act

GDPR: The General Data Protection Regulation

COPPA: The Children's Online Privacy Protection Act

HIPAA: The Health Insurance Portability and Accountability Act

Web usability and ADA compliant accessibility of the proposed solution

Examity provides test integrity solutions with a strong focus on accessibility, ensuring equitable access for all students and instructors. Examity (20.5) is fully compliant with Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA for student and instructor roles.

Accessibility is a fundamental part of our development process. We continuously assess and update our product and materials to meet the high standards and accessibility best practices established within the WCAG Guidelines. We completed a full internal audit of our latest product version (Examity 20.5) on May 8, 2020 and our completed Voluntary Product Accessibility Template (VPAT) from that audit is available upon request. An independent, third-party audit for Examity 20.6 is planned for Q3 2020.

Testing was done using the NVDA (version 2019.3.1) screen reader and was optimized for this tool. We are not aware of any compatibility issues with other technologies.

Proctoring tools must be IMS Global Certified

We are the only proctoring solution to achieve LTI® 1.3 certification by IMS Global, the gold standard in interoperability, we are able to provide deeper integration and greater security for our partner.

Examity was also the first online proctoring provider to adopt the LTI® Proctoring Services standard by IMS Global Learning Consortium. Built on the innovative IMS Learning Tools Interoperability® standard, LTI Proctoring Services aligns with best-in-class learning management systems and assessment platforms to deliver a credible and secure user experience for students, administrators, and proctors.

The IMS LTI Proctoring Services standard is designed to enable assessment platforms to integrate seamlessly and securely with proctoring technologies. The standard will allow Examity to further streamline the entire proctoring and test-taking process, facilitating an easier exam setup, simplifying the user experience for students, and reducing instructors' time reviewing proctoring results.

C. Technical and Customer Support

Provide a detailed description of the following:

How is training provided to LMS staff, distance education services staff, faculty and students? Are ongoing training resources such as user documentation, how-to videos, and step-by-step instructions readily available in formats that allow for easy dissemination on institution's website, by e-mail, or by hard copy?

We are dedicated to ensuring all users are comfortable with our software and processes. With this in mind, we look at training as an ongoing process for our clients at no additional cost. At the start of the engagement, we will offer complete training for all team members (virtual, on-campus, group, and one-on-one). Understanding that team members change, and programs may grow, we always offer additional training for your team.

Onboarding: As part of the onboarding process, instructors and administrators are given unlimited, live training sessions with a dedicated account manager. These sessions last between one to one and a half hours. As your programs grow, the Examity account manager will also provide one-on-one or group training to all future users. In addition, the Examity account manager is accessible for any questions that may arise once training is complete. At the conclusion of the training, instructors and administrators are provided everything, including language to use in syllabi, email toolkits, and announcements.

Ongoing: On an ongoing basis, Examity will continue to provide consulting services and documentation for admins, instructors, and students in support of best practices for online learning and proctored assessments. Consulting services and documentation are always customized to your needs, ensuring a smooth onboarding process for all. These services are considered a part of the overall solution that Examity will provide; there are no additional charges for our custom training or documentation.

Resources: Typical documentation materials include: LMS-specific instructor/admin guide, video tutorials, instructor/admin email templates, student guide, syllabus language and free automated practice tests. We also maintain a robust student FAQ repository on our website for easy access. In addition, we have the largest and most effective support team in the industry to provide 24/7/365 support to your students if any issues arise.

Materials are updated regularly based on product updates and feedback from support staff and account managers. For instance, if we see an increase in support tickets for a particular issue, we can update the product itself or the communication materials in order to provide the best possible experience.

Technical support for faculty, staff, and students

Support is the cornerstone of the Examity solution. Being able to provide a high level of support is one of the most important value-drivers in online proctoring. This is achieved through scale and training.

Our business is built on our ability to leverage our 1,500+ proctor and support staff to be available and ultra-responsive regardless of the volume of requests and the time of year. We do not offer “service hours” or require students and faculty to leave messages in hopes that someone will contact them back quickly.

Examity’s support team goes through a rigorous training process and have come to us with years of experience from companies such as Dell, Google, and Microsoft. This allows them to answer everything from simple platform questions to providing complex technical troubleshooting.

Because the needs of faculty and students are different, we created two separate support structures:

Student Support: Examity offers students support 24/7/365 via live chat, email, or phone. With a straightforward workflow, the Examity dashboard is easy to navigate for all steps in the student process - from profile creation to exam launch. If the need comes up, students are encouraged to contact Examity for assistance, i.e. profile setup help, scheduling or rescheduling an exam, or making sure their computer meets our system requirements. If a student is authenticating or taking an exam with a live proctor, Examity will troubleshoot with the student in real-time. All technical support issues are tracked within Examity’s ticketing system and are reviewed by management.

Faculty/Administrative Support: Examity provides faculty and administrators with a dedicated account manager, who can facilitate support during both normal and non-traditional hours, and especially during heavy testing periods. Your dedicated account manager will be with you from the very beginning, from implementation and training to ongoing support throughout our contract. We do this because we believe that a strong relationship with open communication yields the best results. The Examity platform is very easy to navigate and requires minimal ramp up time but having a dedicated representative at your fingertips instills a sense of comfort and confidence for institutions.

Technologies required on devices being used by students (i.e., web cam, microphone, etc.)

Examity requires a laptop, desktop computer or Chromebook, 2GB or more of RAM, microphone and speakers, and a webcam.

Support of devices, operating systems, and web browsers

Examity supports Windows 7 or later, Mac OS X 10.8 or later, and ChromeOS.

Examity is fully browser-based, requiring no additional software. We currently support Google Chrome. Microsoft Edge is currently in testing, and Firefox is on the product roadmap.

Third-party integrations

Examity has built a best-in-class integration with all commercially available learning management systems and many proprietary systems. Examity successfully proctors students in any test or homework platform, including Cengage, Pearson, and McGraw-Hill products unlike other proctoring companies who can only proctor in an institution's LMS. Our solution architecture means integration is not necessary with these third-party platforms. Course, instructor, and student roster information resides in the LMS. Only the exam resides in the third-party test platform, so we have set up workflows in order to facilitate a seamless proctoring experience with the external applications of your choosing. Examity securely launches students into these platforms and continually monitors the exam as a proctoring layer on top. This process provides the greatest degree of compatibility possible as you add various programs.

Active Directory

For some clients, we do provide custom integrations with their Student Information System (SIS) using LDAP Active Directory as well in order to pull data elements not typically found in the LMS. For instance, if a client would like student ID photos to be pulled in via RESTful APIs from the SIS, rather than uploaded by the student. We can discuss with you what the appropriate integration would be to best fit your needs.

Customer Support Operations (assistance for users with difficulties accessing or using the solution, account manager's role)

Examity offers students support 24/7/365 via live chat, email, or phone. With a straightforward workflow, the Examity dashboard is easy to navigate for all steps in the student process - from profile creation to exam launch. If the need comes up, students are encouraged to contact Examity for assistance, i.e. profile setup help, scheduling or rescheduling an exam, or making sure their computer meets our system requirements. If a student is authenticating or taking an exam with a live proctor, Examity will troubleshoot with the student in real-time. All technical support issues are tracked within Examity's ticketing system and are reviewed by management.

In addition, Examity provides faculty and administrators with a dedicated account manager, who can facilitate support during both normal and non-traditional hours and especially during heavy testing periods.

Available ordering methods – online ordering, order tracking, search options, order history

Examity can support a variety of payment options. In Examity's "student pay" model, students are asked to submit payment once a date and time for their exam has been confirmed. Students will be prompted to enter a credit or debit card through an Examity pay screen.

Examity also has a "university pay" model in which billing is on a monthly basis and invoiced according to usage for that month. Invoices will not include taxes for which an exemption applies.

We can also structure a hybrid model where the client would be responsible for proctoring fees and billed monthly and students would be responsible for any additional fees associated and prompted for payment upon scheduling. Examity fees are only tied to proctored exams; there are no recurring fees for anything additional such as implementation, training, or ongoing support.

After working with over 350 universities, we understand that managing budget restrictions is absolutely critical for a successful online testing strategy at any institution. Institutions need the right proctoring solution at the right time. That's why each school will have an account manager that will work with them to ensure our billing approach matches their budget and financial planning. While some solutions on the market may try to force-fit one pricing model that makes proctoring available across all courses, this can often lead to overuse of the tool, quickly resulting in cost overruns. Examity will work with your administrators to ensure the right courses use our solution and the appropriate proctoring security levels are utilized. Our account managers act as strategic advisors so that the right solution is in place for each testing scenario with considerations made for exam integrity and budget. This includes monthly usage reports by proctoring level, monthly and daily exam counts, and stop gaps in place to help each school manage their budget.

III.4. Reporting Needs

Provide a description and samples of available data reports. Do they include the length of exams, number of exams, list of students registered? Are customized reports available

Examity offers unmatched, one-touch access to reporting and analytics that can provide insight to the student experience. From student satisfaction to violation reports and video files, our reporting provides you with the information you need to immediately assess and address student activity.

Our standard reports include:

- **Schedule Status:** View how many of your students scheduled a proctoring session for your exam. You may send reminder emails to those students who have not yet scheduled a session via this report
- **Schedule Details:** This report provides a summary of scheduled appointments with a run-down of the details.

- Exam Status: This is the most comprehensive report, providing you with scheduled appointment details and the flags/comments associated with proctored exams.
- Evaluations: Students are prompted to take a satisfaction survey after they have completed an exam with Examity.
- Launch Times: This report will show you the time it takes between authentication beginning and when the student clicks “Begin Exam.”

Examity can also create customized dashboards for client administrators who only require very high-level reporting user response time and system performance. Common metrics include usage by proctoring level, overall exam count (daily or monthly), wait and launch times, monthly billing, and/or violations.

D. Value-Added Services

Describe in detail any value-added services that the Supplier can provide. This includes but is not limited to competitive advantages, efficiencies, and optional services distinct from the main technical requirements.

Automated Practice Exams:

Examity provides unlimited automated practice exams to allow students to get familiar with our platform prior to their exam. Our training sessions and instructor materials provide clear instructions for how to set up these exams. There are no costs for these automated exams. We also maintain a robust student resource center with user guides and troubleshooting tips, as well as an FAQ repository on our website for easy access.

Pencil-to-paper Exams:

Examity is the only provider on the market that has proven to effectively accommodate pencil-to-paper exams at scale. Examity’s recommended method of proctoring pencil-to-paper exams is using Live Premium. We ensure that exams are kept confidential and secure using special instructions, all while being monitored and facilitated by a human proctor. Examity will consult each instructor by providing best practices around paper exams and what configuration best fits their requirements.

The following is one configuration that we recommend, which involves using Examity to both store and submit the exam: When configuring their exam in Examity, instructors will click “Yes” to allow the student to upload the completed exam.

Info Rules Instructions Supporting Documents Scheduling Exceptions Exam Results

Course: Intro Economics

Exam: Final

Exam Window: 02/06/2020 01:30 PM - 12/31/2020 01:30 PM

Exam Duration: 0 Hour, 15 Minutes

Link to Exam: https://test.examity.com/onlineexam

Allow Test-taker to Upload File: No Yes

Security Level: Live Premium

Exam Password: password\$

Save Changes

Next, they'll upload the exam into supporting documents.

Info Rules Instructions Supporting Documents Scheduling Exceptions Exam Results

Supporting Document(s)

Upload New

Save Changes

Then, instructors will provide any instructions to be read by the proctor to ensure the exam is submitted securely.

Info Rules Instructions Supporting Documents Scheduling Exceptions Exam Results

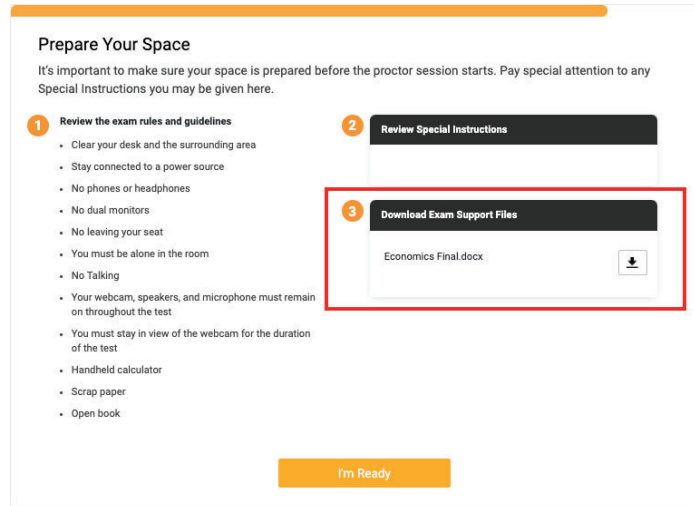
Import Special Instructions From an Existing Exam Add Another Set of Instructions

Special Instructions: Instruct students to show each page of the exam, then take a picture of each page and upload to the LMS.

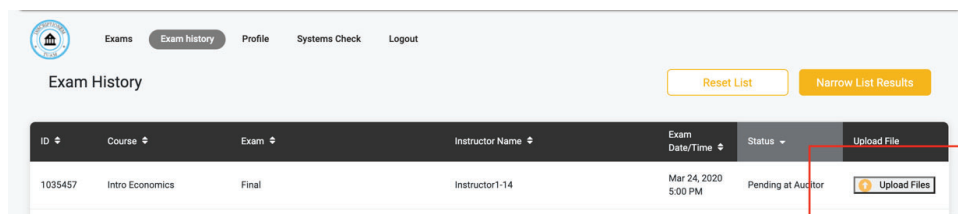
Save Changes

That's it! Once the exam is complete, instructors will access the uploaded file from their dashboard and view exam results just like any other exam.

Student Experience: Students will be launched into Examity from the LMS and select their exam from the dashboard, just like any other exam. During the authentication process, as a part of the environment check, students must show both sides of any scrap paper to the proctor to make sure it is blank. Once the authentication process is complete and the test environment is secure, the Excel, Word, or PDF document will be available to students for download.



Proctors will monitor the student during the exam to ensure the test is taken fairly as in all proctoring scenarios. At the conclusion of the exam, the student will follow the proctor's instructions, as provided by the instructor to either scan the exam or snap pictures using their phone and add to their desktop. To submit, students return to their dashboard and click "Upload Files" next to the exam.



Examity's solution ensures the same level of security provided in written exams as any other type of exam. There several ways to modify this workflow and your dedicated account manager will work with you to determine the best fit for you and your students.

Addressing Potential Bias in AI:

Automated proctoring from any provider on the market relies on robust AI and machine learning to provide effective proctoring. With the use of AI, there is inherent bias due to how models are trained. Examity is the only proctoring provider actively working to reduce bias in our AI. Bias in AI is currently an active area of research in the machine learning community, who have identified at least five significant causes of bias in AI models: sample bias, exclusion bias, experimenter bias, prejudice bias, and measurement bias.

As we monitor and refine our models, addressing bias is a chief concern, and we are working to address bias through the following:

- **Supervised Learning:** As we build our models, we assess the data that we train the models with - more specifically - providing clear examples of cheating and not cheating - so that the machine learns to distinguish between the two.
- **Diverse Data Sets:** The data that we apply to our model comes from a diverse test-taker population, representing many different types of learners. These data sets present strong representation across race, gender, and age. In truth, we do not have a single standard type of test-taker, which reduces the risk of bias in our data selection.
- **Data Monitoring:** In Q4 of 2020, we will begin working on the concept of an AI model that will audit our proctoring results and assess potential bias within our data. We are in the early stages of exploring how we build and feed this model.

Implementation Timeline

Examity is available to begin implementation immediately after contract signing. Examity has a 30-day end-to-end implementation process and is confident we can meet the implementation completion targets of your member institutions.

Examity is committed to a smooth implementation, including training for proctors. To ensure a successful rollout, Examity coordinates a five-point implementation process for every new partnership. This process includes the following steps:

- **Parameters:** Examity feels it is crucial to begin any partnership with a shared understanding of goals and logistics. To this end, Examity will host an initial kick-off call with a PASSHE institution to understand their needs. These meetings bring together individuals involved in the technical integration, implementation, and support at each institution and Examity. We then outline targeted launch dates, identify appropriate contacts and roles, and create an overall solution workflow.
- **Integration:** Organization is vital to a successful rollout, which is why we create a task and milestones document to outline the process. Examity's senior technical success manager will discuss this document with each institution and go over our integration stages, which consists of requirements, data configuration, system validation/testing, and deployment.
- **Communication:** Examity considers regular ongoing communication with our clients to be an essential part of our services. Examity will provide support throughout the relationship, including quarterly business updates and reviews, contract and billing management, and consultation on strategic best practices for usage.

- Training: We are committed to making sure all users are comfortable with our software and processes. With this in mind, we look at training as an ongoing process for our clients. We offer complete training, including virtual, onsite, group, and one-on-one, for all of your team members. We also know that teams can change, and programs may grow, which is why we will always offer additional training whenever you need it. Examity also provides custom communication and training documentation and videos for administrators, staff, and test-takers.
- Support: Examity's support team is unmatched. Along with your account manager, you will have access to on-demand support 24/7/365. Prior to launch, you'll be introduced to the roles and responsibilities of our support team, so that we can help with all of your needs.

Throughout this process, Examity team members are assigned action items for each part of the implementation. Weekly or bi-weekly meetings are scheduled (as needed) depending on the size and scope of the assigned action items.

On the next page, we've included our proposed timeline for implementing services.

Examity Implementation Timeline

Stage 1: Kick Off & Requirements

	Owner	Stage 1	Stage 2	Stage 3	Stage 4
Kick-off Meeting: Review milestones, roles	Examity	✓			
Define integration requirements	Examity/Client	✓			
Review integration & flow with Client	Examity	✓			
Review courses, exams, and test-taker data	Examity		✓		
LMS info & security data exchange	Examity/Client		✓		
Access and review LMS - specific detail	Examity		✓		

Stage 2: Configuration & Data

	Owner	Stage 1	Stage 2	Stage 3	Stage 4
Create test simulation plan	Examity			✓	
Actual exam data and user files review	Examity/Client			✓	
System configurations setup automation completion	Examity			✓	
Courses, exams and test-taker data automation setup	Examity			✓	

Stage 3: System Validation/Testing

	Owner	Stage 1	Stage 2	Stage 3	Stage 4
Internal test cycles (test-taker, admin, exam rules)	Examity				✓
System testing (test-taker, admin, exam rules)	Examity				✓
User acceptance testing (admin/test-taker)	Examity/Client				✓

Stage 4: Deployment

	Owner	Stage 1	Stage 2	Stage 3	Stage 4
Final site review and sign off	Examity/Client				✓
System launch complete	Examity				✓

Partnership Agreement

Include a detailed response to Appendix C, Exhibit A, OMNIA Partners Response for National Cooperative contract via the State System's eProcurement Exchange by the Submission Date/Time listed in Section I.3 of this RFP. Responses should highlight experience, demonstrate a strong national presence, describe how offeror will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and reported to OMNIA Partners.

Examity is the ideal online proctoring provider to execute the ambitious goals outlined in Appendix C, Exhibit A, OMNIA Partners Response for National Cooperative contract. OMNIA Partners has a sterling reputation as this country's largest and most experienced cooperative purchasing organization in the public sector. Its work as a trusted resource and partner for organizations and institutions across the country has unlocked unquestionable value for its participants by providing access to leading vendors at competitive prices. Participants across state and local government, higher education, K-12 education, and non-profits have not only reaped economic benefits from the economies of scale provided by the organization, but also innumerable strategic benefits by being part of a cooperative that prioritizes the public good. Examity not only aligns with the values that OMNIA Partners demonstrates in this pursuit, but also in our approach to collaborative, synergistic partnerships that drive value for all stakeholders.

Below we have outlined what makes Examity the ideal online proctoring partner to make this collaboration with OMNIA Partners and Pennsylvania State System of Higher Education a success. We believe a successful partnership comes from selecting the vendor with the greatest depth and breadth of experience, a clear plan for adoption and implementation, and a defined proposal for tracking our progress together.

Experience: Examity has over 500 clients, including 361 institutions and organizations across the U.S. with test-takers in all 50 states. We've been providing best-in-class live and automated proctoring to these clients since 2013 and we are on track to proctor 3.5 million exams in 2020. Our depth of experience can be captured in the partnership-approach we take with our clients, often developing custom workflows to meet their goals. Unlike others in the market, we don't think of online proctoring as an out-of-the box solution that requires clients to modify their approach. At Examity, we recognize that organizations and institutions are complex groups that require flexibility on the part of their providers. Our ability to adapt allows us to tailor our solution and implement exactly what our clients envision. While we partner with numerous clients at the institution level, we also have a wide variety of partnerships with prominent higher education systems, membership groups, content providers, admissions and placement exams, NCLEX prep nursing exams, standardized exams, and test platforms. Such partners include Kaplan, the College Board (ACCUPLACER), and GMAC. These partnerships depend on our ability to effectively implement with, market to, and advocate for their constituents. Examity has the experience to understand how to

effectively achieve the goals of the cooperative while uniquely solving challenges at the individual level. We will bring this experience to bear in working with OMNIA Partners and PASSHE to drive adoption and make our solution as accessible as possible.

Adoption: The recipient of this contract will need to effectively collaborate with OMNIA partners to develop and deploy effective marketing, sales, and administration plans. Our team will work with your assigned Director of Partner Development to develop a comprehensive strategy to promote the Master Agreement to your constituents. This will involve stakeholders from sales, marketing, training, operations, and support. Our marketing team will ensure that compelling marketing messaging (including collateral and thought leadership) is executed through an omnichannel approach including, web, trade shows, advertising, social media, email, and PR.

Our approach will also include robust training for the OMNIA Partners sales team to ensure they understand our product as thoroughly as our own teams. Examity will collaborate with OMNIA Partners to reach participating and prospecting public agencies through individual and joint sales calls, customer service, and training sessions. We will also work with OMNIA Partners contracting teams as outlined in Appendix C.

Our sales team will be effectively trained and briefed to actively sell through this Master Agreement to ensure that organizations and institutions can take advantage of this cooperative. Examity has a nationwide sales presence that will drive new business as well as further adoption by existing cooperative members. Our well-tested integration process will ensure seamless implementations and our proven ability to scale will provide the robust infrastructure to maintain our industry-leading wait times and support metrics.

Tracking Success: As with any deployment, whether at the individual or cooperative level, tracking success is critical. Our success metrics for this agreement can be broken into two categories: new business growth and increased adoption with existing members. OMNIA Partners will receive monthly briefings on usage statistics, exam counts, billing, and other KPIs that may be defined by OMNIA Partners for current clients, as well as sales metrics reviewing pipeline and recently closed deals. We have experience with a diversity of membership groups to draw on, but we are also open to the reporting mechanism that would most suit OMNIA Partners and our shared goals.

To conclude, Examity will bring seven years of broad and deep experience in online proctoring, coupled with proven strategies for driving adoption, and clear reporting for tracking success to ensure a long and successful partnership with OMNIA Partners and PASSHE members.

Addendum #1



Notice of RFP Addendum

Date: **October 16, 2020**
 Solicitation Name: **Online Proctoring Solutions**
 Solicitation Number: **RFP #2020-COOP-LAV-45**
 Subject: **Addendum #1**

To All Offerors:

In accordance with Section I-5 C. of the above referenced RFP, this Addendum #1 provides answers to all questions submitted by potential Offerors.

No other changes are being made to the RFP. Proposals must be received by the Issuing Office (via the State System's [eProcurement Exchange](#)) on or before October 26, 2020; 2:00 P.M. EDT.

QUESTIONS/ANSWERS

#	Question	Answer
1	Is the respondent to be directly involved in the proctoring itself rather than simply providing the platform / technology for the proctoring?	The RFP requests proposals for both Live Online and Automated Proctoring Services.
2	Can companies from Outside USA can apply for this? (like, from India or Canada)	Yes.
3	Do we need to come over there for meetings?	No.
4	Can we perform the tasks (related to RFP) outside USA? (like, from India or Canada)	Yes.
5	Can we submit the proposals via email?	Emailed proposals will not be accepted. Please see Section I.5.1. of the RFP. Proposals must be submitted online via the State System's eProcurement Exchange.
6	Is it a requirement that vendors submitting a proposal agree to Administration Agreement with OMNIA Partners? If not, how does the respondent indicate they are opting-out?	Yes, it is a requirement of the RFP that Offerors agree to execute an Administrative Agreement with OMNIA Partners. If an Offeror cannot agree with this requirement, they should not submit a proposal.

7	Is it necessary to agree to, and comment on, both the OMNIA contract, as well as PASSHE State contract BB-3.1?	Exceptions to contract terms may be submitted, however, they may not necessarily be accepted.
8	Could an existing signed contract with PASSHE based on PASSHE State contract SPC-1.2 be used instead of all other contracts as a basis of contract under this RFP?	No.
9	Along those lines, we are wondering why PASSHE State contract BB-3.1 was included as a basis of contract in this RFP, instead of PASSHE State contract SPC-1.2?	Contract BB-3.1 allows more flexibility under this solicitation.
10	If the OMNIA contract is a mandatory requirement, does it allow us to include our own standard terms and conditions of purchase that would apply as between the purchasing entity and ourselves?	Please refer to the RFP, Section II.2.E. and Section IV.2.G. Offerors should be familiar with the terms of the OMNIA Partners Appendix C documents, specifically Exhibit A.
11	Can you please explain the contractual structure under this RFP? Would the OMNIA contract prevail if there's a conflict? Or would the State contract prevail? Would there be any other terms that we could include, and where would these rank in order of precedence?	The State System's contract will be the governing contract and will take precedence over any Offeror's terms. Per Section IV.5 of the RFP, submit any user agreements, license agreements, etc. under Folder #3 at the eProcurement Exchange.
12	Will the PASSHE System allow each of the 14 universities to implement their preferred proctoring solution, or will all 14 universities be required to use a specific solution as a result of this RFP?	Each university may select a preferred proctoring solution from one of the selected Offerors awarded a contract from this solicitation.
13	Can you provide a list of the LMS systems used among the 14 universities?	All 14 universities use Brightspace by D2L.
14	Can you provide a list of any or all 3rd party testing platforms used among the 14 universities?	This information is not available.
15	Will payment of proctoring fees be paid by the PASSHE system, each school, or the students?	Payment will be made by each university.
16	Can you provide a break-down of the use of live online proctoring compared to automated proctoring or record and review proctoring in terms of an annual percentage or actual numbers?	This information is not available.
17	Will the evaluation team be comprised of university personnel or all PASSHE System personnel?	The evaluation team is comprised of both university and Office of the Chancellor personnel.

18	Do you prefer a product that doesn't require proctor remote access to students' computers?	No preference.
19	For the Evaluation Criteria (V.2) A-F, have you assigned a percentage of the total score for scoring Technical Criteria? Technical is weighted 67% of the total score (33% to cost). However, is there a weighting for A-F in the evaluation criteria?	No additional weighting will be used.
20	Could Word versions be provided of the Commonwealth of Pennsylvania Standard Contract (PASSHE-BB-3.1) and the OMNIA Partners contract (Appendix C; Exhibit A, B, and C – OMNIA Partners Natl Contract) to provide responses and redline exceptions (if any)?	Word versions of the contracts have been made available at the Documents Tab at the eProcurement Exchange.
21	Will each individual school contract for services directly with the vendor via the PASSHE agreement or will PASSHE be executing 1 agreement and order form for the system of schools to utilize?	One Master Outline Agreement will be issued to each awarded Offeror. Universities will issue individual purchase orders for services against the Master Outline Agreement.
22	Appendix A Data Security Addendum - Is this a contract addendum that should be reviewed by all prospective vendors and exceptions, if any, submitted with proposal?	Yes.
23	What Higher Education institutions are served by Omnia partners currently and would be able to buy off of this contract? Can Omnia Partners provide a list of institutions that it currently serves in Higher Education?	Over 60,000 public agencies have accessed a contract in the OMNIA Partners' portfolio in the last 12 months. This includes, states, cities, counties, k-12 school districts, colleges and universities. A list of all participants will be provided to the awarded supplier(s).
24	Would PASSHE/OMNIA also consider a hybrid live/automated service option where a live proctor is engaged when our Automated AI detects suspicious activity?	Yes.

25	<p>We recognize that this is a state-wide RFP and as such an accurate answer to this question may be challenging. However, an estimate is appropriate and is useful to us in understanding current proctoring practices at the institutions.</p> <p>Would you please estimate the number of exams proctored annually for each of the proctoring modalities below? Or, you may state an estimate of the total number of exams annually proctored and estimate the percentage proctored by each modality. Thank you.</p> <p>MODALITY:</p> <ul style="list-style-type: none">Live, online proctoringAutomated virtual proctoringRecord & Review virtual proctoringTesting Center at your schoolTesting Center at another educational institutionProfessional testing center (i.e. PearsonVUE, Prometric)Approved proctoring professional (i.e. Human Resources Director at a Corporation)Instructor-as-ProctorOther	Volume estimates are not available.
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Addendum #2



Notice of RFP Addendum

Date: **October 20, 2020**
Solicitation Name: **Online Proctoring Solutions**
Solicitation Number: **RFP #2020-COOP-LAV-45**
Subject: **Addendum #2**

To All Offerors:

Section III.3.B. of the above referenced RFP is being amended as follows:

The requirement that the Proctoring Solution must be IMS Global Certified has been deleted.

Software/Hardware

Proposals should specify all software and hardware requirements such as computing graphics, RAM, and storage capacity. The Proctoring Solution must be compatible with all current operating systems and must be entirely browser-based and support all current versions of popular browsers (i.e., Firefox, Chrome, and Safari). The Proctoring Solution must have been implemented in a higher education environment for more than two years, and must provide a smooth workflow process for administration, faculty and students. It must be customizable with university logos. ~~The Proctoring Solution must be IMS Global Certified.~~

No other changes are being made to the RFP. Proposals must be received by the Issuing Office (via the State System's [eProcurement Exchange](#)) on or before October 26, 2020; 2:00 P.M. EDT.

EXAMITY SERVICES AGREEMENT AS AMENDED

This Services Agreement (the "Agreement") is entered into as of the _____ day of _____, (the "Effective Date"), by and between _____, with an address of _____ ("Customer") and Examity Inc., with an address of 153 Needham St., Newton, MA 02464 ("Examity") and is incorporated into Customer's Purchase Order # _____. Customer and Examity hereby agree as follows:

1. **Services:** Examity owns certain proprietary products (including proprietary hardware and software) related to the monitoring of online examinations, including without limitation the Examity web site (the "Examity System"). Utilizing the Examity System, Examity agrees to provide the online examination services to Customer further detailed on Exhibit A attached hereto (the "Services").
2. **Examity Obligations:** Examity shall provide the Services as detailed on Exhibit A attached hereto. Nothing contained herein shall prohibit Examity from providing the same or similar Services to any other parties, including without limitation competitors of Customer. Examity shall make each examination recording available to Customer and the applicable class professor ("Customer Parties") through the Examity System for thirty (30) days after such recording is made. All recordings will be archived for an additional thirty (30) days (except that any red-flagged examination will be archived for an additional one (1) year period) and will be available upon request from Examity so long as all parties comply with all laws, including without limitation the Family Educational Rights and Privacy Act (FERPA). After such period, recordings will be destroyed in accordance with Exhibit A Data Security Addendum. Requests for all recordings shall be made by the Customer Parties to the applicable Examity account manager. Examity represents that it is duly authorized and empowered to execute, deliver and perform the Agreement; that such action does not conflict with or violate any provision of law, rules or regulation, contract, deed of trust, or other instrument to which it is a party or to which any of its property is subject; and that this Agreement is a valid and binding obligation enforceable in accordance with its terms. Examity agrees that it will make best or reasonable efforts to accommodate Service requests as referenced in Section 3 below, but it cannot guarantee that all requests (even requests made prior to twenty-four hours before an examination) will be accommodated. Examity shall provide the Services as maintained in Exhibit D, Service Level Agreement.
3. **Customer Obligations:** Prior to any examination, Customer shall provide, in electronic form, to Examity a Purchase Order and the examination, the names of all students taking the examination and all examination rules and requirements. Each request for Services for an examination, along with all submissions as referenced above, shall be made no later than twenty-four (24) hours prior to such examination; provided, however, that Examity shall make reasonable efforts to accommodate any requests made within twenty-four (24) hours of an examination. Customer represents and warrants that it is duly authorized and empowered to execute, deliver and perform the Agreement and provide the student and exam information referenced above; that such action does not conflict with or violate any provision of law, rules or regulation, contract, deed of trust, or other instrument to which it is a party or to which any of its property is subject; and that this Agreement is a valid and binding obligation enforceable in accordance with its terms. Customer commits to purchase the Services as set forth on Exhibit A attached hereto.
4. **Process:** Examity will provide Customer with unique identifying login information for each student for an examination. Each student will register on the Examity web site prior to an examination and log in to an examination using the information referenced above. Examity will use reasonable efforts utilizing the Examity System to verify each student's identity but shall have no liability or responsibility therefor. Once an examination is complete, Examity shall, within 72 hours after completion, provide the examination proctoring and auditing results to the applicable Customer Parties. Along with such results, Examity shall provide a report (the "Reports") listing any student behavior, actions or inactions, which Examity determines, in its sole discretion, could or may constitute cheating or dishonesty with respect to the applicable examination. Examity shall have no other responsibility with respect to any examination or the Services, and Customer hereby acknowledges that actual determinations of student cheating or dishonesty shall be made by Customer or the applicable Customer Parties, and Examity shall have no

liability or responsibility with respect thereto. Examity makes no representations that the Reports will be accurate or determine student dishonesty. Examity shall not take, or be responsible for taking, any disciplinary action against any student.

5. Fees: In consideration for the Services, Customer or Customer's students, as applicable, shall pay to Examity the fees set forth on Exhibit B attached hereto. Examity shall bill Customer monthly for all fees due, and payment shall be due upon receipt of the applicable invoice. If Customer notifies Examity in writing in advance that it wants Examity to charge Customer's students in any specific instance or in all instances, Customer's students shall pay to Examity the applicable fees, and Customer shall be responsible for any amounts not paid for by such students.
6. Term: Subject to Section 7, the term (the "Term") of this Agreement shall be as set forth on Exhibit C attached hereto, SP#4900000529, and in Purchase Order # _____.
7. Termination: This Agreement may be terminated, with or without cause, by either party upon one hundred and twenty (120) days written notice to the other party; provided that, if either party breaches any of the terms of this Agreement, the non-breaching party may, in addition to any other remedy, terminate this Agreement immediately. Upon termination or expiration of this Agreement, all amounts due Examity shall be paid within thirty (30) days. Upon termination or non-renewal by Customer, or upon termination for Customer breach by Examity, all commitments, as set forth on Exhibit A, not met shall be paid to Examity within thirty (30) days. All examination materials shall be delivered to Customer by Examity promptly after termination or expiration of this Agreement. This provision shall survive termination or expiration of this Agreement.
8. Intentionally Deleted.
9. Ownership: Customer and Examity hereby agree that the Examity System is owned in its entirety by Examity.
10. Confidentiality: Customer agrees to protect the Examity System and keep confidential any and all data or other information that Customer obtains from the Examity System. Customer further agrees that it will not share, disburse, exchange, sell or otherwise disclose any Examity provided proprietary information, including without limitation individual student login information, to any third party. Examity agrees that it will not share, disburse, exchange, sell or otherwise disclose any Customer provided proprietary information, including without limitation examinations, university rules and student information, to any third party. Each party is responsible for ensuring that its employees, officers, managers and agents adhere to this provision. This provision shall survive termination or expiration of this Agreement.
11. Disclaimer of Warranties and Limitation of Liability: THE EXAMITY SYSTEM AND SERVICES, INCLUDING, WITHOUT LIMITATION, ALL CONTENT, SOFTWARE, AND FUNCTIONS MADE AVAILABLE ON OR ACCESSED THROUGH OR SENT FROM THE EXAMITY WEB SITE, ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, EXCEPT AS SPECIFICALLY REFERENCED ABOVE, EXAMITY MAKES NO REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) ABOUT: (A) THE EXAMITY SYSTEM AND SERVICES; (B) THE CONTENT AND SOFTWARE ON AND PROVIDED THROUGH THE EXAMITY SYSTEM AND SERVICES; (C) THE FUNCTIONS MADE ACCESSIBLE ON OR ACCESSED THROUGH THE EXAMITY SYSTEM AND SERVICES; AND (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE EXAMITY SYSTEM OR SERVICES. EXAMITY DOES NOT

WARRANT THAT THE EXAMITY SYSTEM, ANY OF THE EXAMITY SYSTEM'S FUNCTIONS OR ANY CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE EXAMITY SYSTEM OR THE SERVERS THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXAMITY, AND ITS MANAGERS, OFFICERS, EMPLOYEES AND OTHER REPRESENTATIVES, SHALL NOT BE LIABLE FOR THE USE OF THE EXAMITY SYSTEM AND SERVICES INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THIS AGREEMENT. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), SHALL EXAMITY BE LIABLE TO CUSTOMER OR ANY CUSTOMER PARTY FOR INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOST OR INACCURATE DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR THE PARTIES' RELATIONSHIP. IN NO EVENT WILL EXAMITY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION OF ANY KIND, EXCEED THE TOTAL AMOUNTS PAID TO EXAMITY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

12. General Provisions.

- a. Independent Contractor. Customer and Examity are and at all times will act as independent contractors in all matters relating to this Agreement. None of the parties is an agent or franchisee of any other party for any purpose and has no power or authority to bind or commit any other party to any obligation in any way. No party is, nor will act as, an employee of the other party for any purpose within the meaning or application of any federal, state, or local employment laws, unemployment insurance laws, social security laws, workers' compensation laws, or industrial accident laws, or under any other laws or regulations that impute any obligation or liability to a party by reason of any employment relationship.
- b. Waiver and Amendment. Except as otherwise expressly provided, this Agreement may be amended and observance of any provision of this Agreement may be waived (either generally or in any instance, retroactively or prospectively) only upon written consent of the parties.
- c. Entire Agreement. The parties intend that Customer's Contract #4900000529, Customer's Purchase Order # _____, and this Agreement be controlling over and supersede additional or different terms of any order, confirmation, invoice or similar document, unless expressly agreed upon in writing by both parties. This Agreement supersedes all proposals, oral or written, all negotiations, memoranda of understanding, letters of intent, conversations or discussions between or among the parties relating to the subject matter of this Agreement.
- d. Counterparts; Delivery. Customer and Examity hereby agree that this Agreement is executed upon the Effective Date of Customer's Purchase Order, regardless of the date of the parties' signatures. This Agreement also may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Assignment. Neither party may assign this Agreement or the rights and obligations hereunder, including without limitation by operation of law, without the prior written consent of the other party; provided, however, that Examity, and its successors and assigns, may assign this Agreement and the rights and obligations hereunder without the consent of Customer in the event of an Acquisition. "Acquisition" is hereby defined as (a) any merger, business combination, consolidation or purchase of outstanding equity of Examity, or its successors or assigns, in a

business combination after which the voting securities of Examity, or such successor or assign, outstanding immediately prior thereto represent (either by remaining outstanding or by being converted into voting securities of the surviving or acquiring entity) less than 50% of the combined voting power of the voting securities of Examity, or such successor or assign, or such surviving or acquiring entity outstanding immediately after such event (other than as a result of a financing transaction); (b) any sale of all or substantially all of the equity or assets of Examity, or its successors or assigns (other than in a spin-off or similar transaction); (c) any other form of business combination or acquisition of the business of Examity, or its successors or assigns, in which Examity, or its successors or assigns, is the target of the acquisition; or (d) a conversion into a corporation, or a merger to effectuate the same.

- f. Intentionally Deleted.
- g. Validity. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the rest of the provision or the other provisions of this Agreement, and shall be construed as if such invalid, illegal or unenforceable provision or portion thereof had never been contained herein.
- h. Notices. All notices given under this Agreement must be in writing and signed by a person authorized to sign on behalf of the party and sent via express or certified mail to the addresses set forth above.
- i. Survival. This Section 12 shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto affixed their respective signatures effective as of this ____ day of _____.

CUSTOMER

Name:

Title:

EXAMITY INC.

Name: Nicholas Malone

Title: Chief Financial Officer

Exhibit A

Services

Examity shall authenticate, live monitor (as applicable) and record (as applicable) online examinations for Customer classes as requested by Customer Parties. Services shall be available 24 hours a day, 7 days a week, subject to the terms and conditions of this Customer's Contract #4900000529, Customer's Purchase Order, and this Agreement.

There shall be four forms of service, which shall be requested by Customer:

- Automated Standard proctoring
- Automated Premium proctoring
- Live Standard proctoring
- Live Premium proctoring

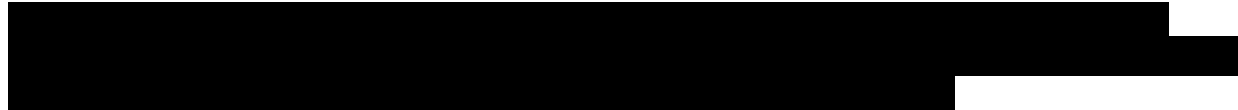


Exhibit C

Term

[REDACTED]

[REDACTED]

Exhibit D

Service Level Agreement

Maintenance

Examity maintains 99.9% up-time and has a robust configuration, patch, and change management process with full redundancy in place for performance and scalability. We have a robust infrastructure in place to track the health of our solution and supporting software. We use New Relic, a full-stack observability platform to access, visualize, and troubleshoot our software stack through one resource.

Incident event monitoring is funneled through OpsGenie, ensuring critical incidents are never missed, and the appropriate team members are alerted to take action.

Incidents will fall into one of three categories, as follows:

1. Third-party vendor performance issue or outage
2. Examity data performance issue or outage
3. Partner system/environment performance issue or client system outage

Four key audiences receive Ops Genie alerts. Distribution across these teams is dependent on the incident's type and severity. These audiences are:

1. Examity Application Steady State Team
2. Examity IT Team
3. Examity Operations Team
4. Examity Management Team

Once incidents are received and assigned, the event and proposed resolution are tracked on a status page that all Examity team members and partners have access to.

Communication

In the event an incident results in a significant disruption or outage of proctoring services, Examity will notify client contacts within 60 minutes of the incident and provide updates to client contacts every four hours that detail the corrective actions are taken and the status of such actions.

Communication will be anchored with updates to Examity's status page, which provides real-time, 24/7 reporting of Examity's service delivery. In addition, Examity's status page will distribute email alerts and text messages to all clients that have subscribed to the page.

Along with status page communications, your dedicated account representative will connect with the appropriate client contact(s) where appropriate. Once the service disruption has been resolved, Examity will also provide details surrounding the root cause of the incident.

The Examity System will maintain a 99.95% uptime, exclusive of scheduled maintenance. Examity shall provide Client with no fewer than ten (10) business days' notice of any regularly scheduled maintenance.