

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
DTCC LEARNING MANAGEMENT SYSTEM  
ISSUED BY DELAWARE TECHNICAL AND COMMUNITY COLLEGE  
CONTRACT NUMBER DTCC17001-COLLEGELMS**

**I. Overview**

Delaware Technical and Community College (“Delaware Tech”) seeks professional services to provide a cloud-based Learning Management System (LMS) for Delaware Tech’s online, hybrid and face-to-face credit and non-credit bearing course offerings for a five year contract. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ [6981 and 6982](#).

Delaware Tech is looking for the best in breed product for a 21<sup>st</sup> century LMS. Best of breed qualities include the student experience, faculty experience, reporting capabilities, ease of administration and integration with existing products, security, and value. Delaware Tech anticipates conducting a manual import and partial integration and implementation for Fall 2017, and full integration and implementation will be completed by Fall of 2018. The system must be ADA compliant and functionally accessible and include both mobile and web clients.

Delaware Tech’s current LMS license and service contract is due to expire in 2017. Delaware Tech desires to select a LMS that will help us deliver high quality, innovative, and rigorous 21st century learning experiences. This selection process does not indicate dissatisfaction with the incumbent.

Delaware Tech has nearly 14,000 students (8,300 FTE) enrolled in approximately 3,000 courses across its four campuses and online.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: December 15, 2016
Deadline for Questions	Date: January 4, 2017
Response to Questions Posted by:	Date: January 13, 2017
Deadline for Receipt of Proposals (Time)	Date: January 24, 2017 at 1:00 PM (Local Time)
Estimated Notification of Award	Date: March 10, 2017
Estimated Commencement of Contract	Date: July 1, 2017
Estimated Contract Termination	Date: June 30, 2022

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Furthermore, the transmittal letter must disclose each Vendor location or subcontractor location (including the name of the subcontractor) where Delaware Tech data shall be stored. To ensure service to its students and redundant security, Delaware Tech shall require an awarded Vendor to maintain a primary and secondary storage capacity for Delaware Tech data and shall have a strong preference that at least the primary location for storage of Delaware Tech shall be located in the United States.

Delaware Tech reserves the right to deny any and all exceptions taken to the RFP requirements.

### **MANDATORY PREBID MEETING**

A mandatory pre-bid meeting has not been established for this Request for Proposal.

## **II. Scope of Services**

See Appendix B hereto for the Scope of Work for this RFP.

## **III. Required Information**

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of Delaware Tech.

### **A. Minimum Requirements**

1. Complete Pricing Proposal Form in Appendix A.
2. Complete Chart on Appendix B and address paragraph 1 through 13 of Additional Information on Features in narrative fashion.
3. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

4. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the Evaluation Requirements below.
5. Complete all appropriate attachments and forms as identified within the RFP including but not limited to the following: non-collusion agreement (See Attachment 2), RFP Exception form (See Attachment 3), Confidentiality Form (See Attachment 4), Reference Form (See Attachment 5), Subcontractor Information Form (See Attachment 6) for each subcontractor, Employing Delawareans Report (See Attachment 9), OSD application (See link on Attachment 10).
6. Proof of insurance and amount of insurance shall be furnished to Delaware Tech prior to the start of the contract period and shall be no less than as identified in the form of agreement in Appendix C.

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

7. Provide response to Employing Delawareans Report (Attachment 9)

8. The following information is required for each proposal:

i. Executive Summary:

This section will present a high-level synopsis of the Vendor's responses to the RFP. The Executive Summary should be a brief overview of the engagement, and should identify the main features and benefits of the proposed products and services.

ii. Company Overview:

Provide the following for your company:

- Official registered name (Corporate, D.B.A., Partnership, etc.), Dun & Bradstreet Number, Primary and Secondary SIC numbers
- Address
- Main telephone number
- Toll-free numbers
- Facsimile
- Website URLs
- Key contact name, title, address (if different from above address), direct telephone and fax numbers
- Person authorized to contractually bind the organization for any proposal against this RFP
- Brief history, including year established and number of years your company has been offering Learning Management System solutions
- Evidence of fiscal stability

iii. Project Team Staffing:

Include biographies and relevant experience of key staff and management personnel. Describe the qualifications and relevant experience of the types of staff that would be assigned to this project by providing biographies for those staff members. Some project staff members will have access to sensitive student information; describe how your company qualifies employees to work with sensitive student information.

iv. Scope, Approach, and Methodology:

This section should include a description of each major type of work being requested of the Vendor. Information provided in this section may be held in strict confidence if requested. The proposal should reflect each of the sections listed:

- Hardware and software requirements (if applicable)
- Project team list (including CV of team members)
- Alliance/partnerships, if applicable, with other Vendors
- Project implementation plan (including data migration from current system)

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

### v. Functional Requirements:

This section identifies key functional requirements as well as desired functionality. This list should not be viewed as all-inclusive and the RFP decision may include criteria not explicitly defined in this section.

Provide information on how your proposed solution meets the following needs: SEE APPENDIX B- SCOPE OF WORK with completed chart and narrative response to paragraphs 1 through 13 in "Additional Information on Features".

### vi. Detailed and Itemized Pricing:

In this section provide complete pricing. Provide a comprehensive five (5) year Total Cost of Ownership by completing Appendix A and annotate the following in narrative fashion:

- First year with limited users to allow for pilot, training and course development/migration
- Implementation costs, including estimates of required hardware/software and Professional Services
- Cost of batch migration of up to 5,000 courses
- Storage limitations per user (student and instructor), per course, per instance. Cost to expand each.
- Initial training and ongoing training options (to include annual user conferences)
- Cost of biannual course backups (including user data) and transfer of these archives back to College
- Travel costs, not to exceed or fixed.
- Support services available during contractual period
- Maintenance and recurring costs
- Onetime costs
- Disclosure of any annual maintenance escalation rates

### vii. References:

Complete Attachment 5 and provide a minimum of three (3) Higher Education references at least one reference from a community college. Identify the reference institution, contact, and applicable product(s) utilized at the institution.

### viii. Security:

This section should provide an overall description of the systems and organization's information security. Include how Delaware Tech data is protected on premise, in the cloud, and during transport. Include what security protocols are used, physical security measures, regulatory compliance, location of off-premise data centers, and 3<sup>rd</sup> party hosting vendors (if applicable). Include the vendor incident management plan in the event of a data breach. The evaluation of the vendor responses may require follow up questions by Delaware Tech.

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

ix. Data Ownership and Privacy:

This section should provide at a minimum:

- A statement of data ownership for all data entered or transferred to the system.
- All 3<sup>rd</sup> party vendors must be identified which would have access to the Delaware Tech specific user data.
- Provide applicable privacy statements.
- Provide a statement of how the user data may be transferred back to Delaware Tech once the system is no longer used and how periodic transfer back ups of Delaware Tech data may occur.
- A description of how the system will comply with the Family Educational Rights and Privacy Act and other privacy laws.

x. Hardware and Software:

This section should list all necessary hardware and software, if any required by Delaware Tech for the solution. Include operating systems, proprietary, open source software, and third party software requirements.

xi. Data Integration:

This section should provide details of the data integration points and methodology to Delaware Tech systems including the on premises Banner SIS. Include areas of responsibility and maintenance strategy for data integration(s).

Solutions will be evaluated upon how well they integrate with and into the current Delaware Tech technical environment.

Software and Cloud Environment:

• Active Directory LDAP
• Blackboard Transact - Card Management System
• CAS - Open Source Single Sign-on
• Ellucian Banner Student Information System (Version 8 with XE to be eventually running in parallel) <ul style="list-style-type: none"><li>○ Accounts Receivable</li><li>○ Document Management</li><li>○ Recruiter</li><li>○ Financial Aid</li><li>○ Communication Manager</li><li>○ Student/General/Self-Service Banner</li><li>○ XE Faculty Feedback</li><li>○ XE Grade Entry (possibly)</li><li>○ XE Student Advising/Student Profile</li><li>○ Degree Works</li><li>○ WebTailor</li></ul>

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

• Exchange 2013
• Microsoft Office 365
• Microsoft Server
• MS SQLServer
• OpenDNS
• Oracle databases – Campus EE License
• Oracle WebLogic/Fusion Middleware 12c
• Shibboleth - Federated Single Sign-on
• Uportal - Enterprise Portal

xii. Identity Management, System Authentication and Authorization:

This section must include how the users are authenticated and how identities are managed within the LMS. Specify the IDM lifecycle from identity creation to deletion within the LMS. Provide information on user application security, granularity and management. Specify user authentication methods. DELAWARE TECH uses the following authentication methods in order of preference:

- Central Authentication System (CAS)
- Shibboleth

Solutions which do not utilize one of the authentication methods above for Delaware Tech Faculty, Staff and Students will not be considered.

xiii. Data backup and Business Continuity:

This section should describe how the system maintains data backups and data restore capabilities at the individual and system level. Provide a brief overview of the company business continuity strategy and capabilities. Awarded vendors shall be required to provide data assurance and provide periodic backup files of Delaware Tech's data.

xiv. ADA Compliance:

Describe how the LMS meets WCAG 2.0 AA accessibility standards and where it is not compliant. Describe the company methodology to test for ADA compliance within the application. Provide the most current Voluntary Product Accessibility Template (VPAT). Vendors which do not supply a VPAT will not be considered further.

Please submit a completed copy of Section 1194.22 of the information technology Industry Council's VPAT (Voluntary Product Accessibility Template) along with your proposal.

VPAT's submitted should meet the following criteria:

- Include all applicable sections of the Section 508 standards for technical conformance (1194.21 through 1194.26 based on product

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

type), functional conformance (1194.31), and documentation (1194.41).

- Ensure that the VPAT corresponds to the current version of the IT product/service being offered.
- A list of known accessibility gaps
  - The specific steps and timelines by which these known these gaps will be remediated
  - A list of any workarounds for product accessibility gaps including:
  - Use of alternative business processes (e.g. offering phone support until your web-based support tools are accessible)
  - Use of a third-party product to replace or supplement functionality in your product (e.g. providing a programming interface which allows other applications to interact with content in your product)

### xv. Optional Products, Modules, and Services:

Provide detailed information or documentation (priced separately) of additional products, modules, or services offered that would complement the system being proposed.

- 24/7 Support for LMS Administrators
- 24/7 Support (email, phone, text) for students and faculty
- Training for LMS Administrators
- Training for faculty
- Plagiarism detection software
- Data analytics (ability to export data on a daily/weekly/monthly basis)
- ePortfolio
- Student learning outcomes and rubrics
- Assessment of student learning
- Student Success System/Early Alert to identify students-at-risk
- Web Conferencing System
- Video Content Management

The items listed above in this Section III A. provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

### **B. General Evaluation Requirements**

1. Capability with Delaware Tech's objectives for instruction and technology, See Appendix B chart;
2. Usability, functionality and user experience;
3. Fiscal stability;
4. Ability to meet Delaware Tech implementation goals;

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

5. System Security and Privacy;
6. References;
7. Conformance to RFP format and process; and
8. Pricing, See Appendix A.

**IV. Professional Services RFP Administrative Information**

**A. RFP Issuance**

**1. Public Notice**

Public notice has been provided in accordance with 29 *Del. C.* [§6981](#).

**2. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) . Paper copies of this RFP will not be available.

**3. Assistance to Vendors with a Disability**

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the Delaware Tech. Address all communications to the person listed below; communications made to other Delaware Tech personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors shall rely only on written statements issued by the RFP designated contact.

Kelly McVeigh Stanley  
Delaware Technical and Community College  
Director for the Center for Creative Instruction & Technology  
100 Campus Drive  
Dover, Delaware 19904-1383  
[kmcveigh@dtcc.edu](mailto:kmcveigh@dtcc.edu)  
(302) 857-1755

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

**5. Consultants and Legal Counsel**

Delaware Tech may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact Delaware Tech's consultant or legal counsel on any matter related to the RFP.

**6. Contact with Delaware Tech Employees**

Direct contact with Delaware Tech employees other than the Delaware Tech Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting Delaware Tech employees risk elimination of their

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

proposal from further consideration. Exceptions exist only for organizations currently doing business with Delaware Tech who require contact in the normal course of doing that business.

### **7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

### **8. Exclusions**

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
  - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the Delaware Tech determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

## **B. RFP Submissions**

### **1. Acknowledgement of Understanding of Terms**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

### **2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. Delaware Tech reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 3 paper copies and 1 electronic copy on a USB memory drive. .

All properly sealed and marked proposals are to be sent to the Delaware Tech and received no later than **1:00 PM (Local Time)** on January 24, 2017. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Kelly McVeigh Stanley

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Delaware Technical and Community College  
Director for the Center for Creative Instruction & Technology  
100 Campus Drive  
Dover, Delaware 19904-1383  
[kmcveigh@dtcc.edu](mailto:kmcveigh@dtcc.edu)  
(302) 857-1755

**Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. ENTER CONTRACT NUMBER” on the outside of the bid submission package.**

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

### **3. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

### **4. Proposal Costs and Expenses**

Delaware Tech will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor’s conference, system demonstrations or negotiation process.

### **5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through September 30, 2017. Delaware Tech reserves the right to ask for an extension of time if needed.

### **6. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

**7. Proposal Opening**

Delaware Tech will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of Delaware Tech personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

**8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within Delaware Tech.

**9. Concise Proposals**

Delaware Tech discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. Delaware Tech's interest is in the quality and responsiveness of the proposal.

**10. Realistic Proposals**

It is the expectation of Delaware Tech that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

Delaware Tech shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

**11. Confidentiality of Documents**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's proposal will be treated as confidential during the evaluation process. As such, vendor proposals will not be available for review by anyone other than the Delaware Tech/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

Delaware Tech is required to comply with the Delaware Tech Freedom of Information Act, [29 Del. C. § 10001, et seq. \("FOIA"\)](#). FOIA requires that the Delaware Tech's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a proposal is received by Delaware Tech and a decision on

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

contract award is made, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

Delaware Tech wishes to create a business-friendly environment and procurement process. As such, Delaware Tech respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow Delaware Tech to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, Delaware Tech will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be binding on Delaware Tech. Delaware Tech shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts Delaware Tech's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

### **12. Price Not Confidential**

Vendors shall be advised that as a publically bid contract, no Vendor shall retain the right to declare their pricing confidential.

### **13. Multi-Vendor Solutions (Joint Ventures)**

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the Delaware Tech and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by Delaware Tech, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work.

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Further, vendor shall be and remain liable for all damages to Delaware Tech caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

### **a. Primary Vendor**

Delaware Tech expects to negotiate and contract with only one “prime vendor”. Delaware Tech will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with Delaware Tech as a result of this procurement. Delaware Tech will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit Delaware Tech from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

### **b. Sub-contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by Delaware Tech.

### **c. Multiple Proposals**

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

## **14. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by Delaware Tech.

## **15. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the Delaware Tech's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

**a. RFP Question and Answer Process**

Delaware Tech will allow written requests for clarification of the RFP. All questions shall be received no later than **1:00PM EST on January 4, 2017**. All questions will be consolidated into a single set of responses and posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov) by the date of **January 13, 2017**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

**16. Delaware Tech's Right to Reject Proposals**

Delaware Tech reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in Delaware Tech's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as Delaware Tech may deem necessary in the best interest of Delaware Tech.

**17. Delaware Tech's Right to Cancel Solicitation**

Delaware Tech reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. Delaware Tech makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by Delaware Tech. Vendor's participation in this process may result in Delaware Tech selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

such negotiations does not, however, signify a commitment by Delaware Tech to execute a contract nor to continue negotiations. Delaware Tech may terminate negotiations at any time and for any reason, or for no reason.

### **18. Delaware Tech's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* [§ 6986](#), Delaware Tech may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of Delaware Tech.

### **19. Potential Contract Overlap**

Vendors shall be advised that Delaware Tech, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of Delaware Tech. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. Delaware Tech reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to Delaware Tech.

### **20. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by Delaware Tech prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of Delaware Tech at the proposal submission deadline. All proposals received are considered firm offers at that time.

### **21. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on Delaware Tech's website at [www.bids.delaware.gov](http://www.bids.delaware.gov). Delaware Tech is not bound by any statement related to this RFP made by any Delaware Tech employee, contractor or its agents.

### **22. Exceptions to the RFP**

Any exceptions to the RFP, or Delaware Tech's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

### **23. References**

Provide at least three (3) higher education references, at least one community college, consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

### **24. Award of Contract**

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

The final award of a contract is subject to approval by Delaware Tech. Delaware Tech has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by Delaware Tech and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

### **a. RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, Delaware Tech will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that Delaware Tech is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to Delaware Tech. The award is subject to the appropriate Delaware Tech approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with Delaware Tech; remaining vendors will be notified in writing of their selection status.

## **25. Cooperatives**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

## **C. RFP Evaluation Process**

An evaluation team composed of representatives of Delaware Tech will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

Delaware Tech reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that Delaware Tech may deem necessary to make a decision.

### **1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of Delaware Tech. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981 and 6982](#). In order to aid the Proposal Evaluation Team in its evaluation, DTCC would like vendors to provide access (at no cost to DTCC) to a demonstration environment of the vendor's learning management system. The Team may negotiate

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the President of Delaware Tech, who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § [6982](#), to award a contract to the successful vendor in the best interests of the Delaware Tech.

**2. Proposal Selection Criteria**

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor’s proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the Delaware Tech to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team’s consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 Del. C. §[6986](#).

**Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

<b>Criteria</b>	<b>Weight</b>
Capability with Delaware Tech’s objectives for instruction and technology	<b>20</b>
Usability, functionality and user experience	<b>20</b>
Fiscal stability	<b>5</b>

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

<b>Criteria</b>	<b>Weight</b>
References	<b>5</b>
Ability to meet Delaware Tech implementation goals	<b>10</b>
Pricing	<b>25</b>
System Security and Privacy	<b>10</b>
Conformance to RFP format and process; and	<b>5</b>
<b>Total</b>	<b>100%</b>

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

**3. Proposal Clarification**

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

**4. References**

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the Delaware Tech may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the Delaware Tech will pay travel costs only for Delaware Tech personnel for these visits.

**5. Presentations and Demonstrations**

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make presentations to the Evaluation Team and greater Delaware Tech community which shall include web-demonstrations of the Vendor's systems to the Delaware Tech community during February 13 – 24, 2017. The vendor representative(s) giving the presentation shall be technically qualified to respond to questions related to the proposed system and its components.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

All of the vendor's costs associated with participation in presentations and system demonstrations conducted for the Delaware Tech are the vendor's responsibility.

### **D. Contract**

1. The selected vendor will be required to enter into a written agreement with the Delaware Tech the form of which is attached hereto in Appendix C. Delaware Tech reserves the right to incorporate standard Delaware Tech contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the Delaware Tech. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

2. The selected vendor or vendors will be expected to enter negotiations with the Delaware Tech, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.

3. Delaware Tech's standard contract may be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements if acceptable to Delaware Tech. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

4. Within twenty (20) days after award, the successful vendor shall promptly execute the contract in Appendix C. No vendor is to begin any service prior to receipt of a Delaware Tech purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

5. If the vendor to whom the award is made fails to enter into the agreement provided in Appendix C or any other agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

### **E. Regulatory, Legal Compliance and Financial Security**

#### **1. Collusion or Fraud**

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the Delaware Tech participated directly or indirectly in the vendor's proposal preparation.

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

### **2. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a Delaware Tech employee or agent of the Delaware Tech concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Delaware Tech shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with Delaware Tech employees, contractors or agents of the Delaware Tech concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

### **3. Solicitation of Delaware Tech Employees**

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the Delaware Tech to leave the Delaware Tech's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the Delaware Tech's contracting officer. Solicitation of Delaware Tech employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a Delaware Tech employee who has initiated contact with the vendor. However, Delaware Tech employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

### **4. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § [2502](#).

Prior to receiving an award, the successful vendor shall either furnish Delaware Tech with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street,

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

**5. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the Delaware Tech shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**6. Vendor Activity**

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

**7. Vendor Responsibility**

Delaware Tech will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of Delaware Tech.

**8. Personnel, Equipment and Services**

a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this RFP and, if applicable, contract for services.

b. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of Delaware Tech. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by Delaware Tech.

**9. Vendor Background Check Requirements**

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the Delaware Tech's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:

<https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. Delaware Tech's decision to allow or deny access to any individual identified on a registry database is final and at the Delaware Tech's sole discretion.

By Delaware Tech's request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

### **10. Affirmation**

All vendors submitting a proposal must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

### **F. PERFORMANCE BOND**

**There is no Performance Bond requirement.**

### **G. VENDOR EMERGENCY RESPONSE POINT OF CONTACT**

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of Delaware Tech, Delaware Tech may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of

## DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Delaware Tech, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

### H. RFP Miscellaneous Information

#### 1. No Press Releases or Public Disclosure

Delaware Tech reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to Delaware Tech with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of Delaware Tech.

#### 2. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

#### 3. Production Environment Requirements

Delaware Tech requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

### I. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Employing Delawareans Report
- Attachment 8 – Office of Supplier Diversity Application
- Appendix A – Pricing form
- Appendix B -- Scope of Work / Technical Requirements
- Appendix C – Form of Agreement

*[balance of page is intentionally left blank]*

**IMPORTANT – PLEASE NOTE**

- **Attachments 2, 3 (including exceptions to the Proposed Form of Agreement in Appendix C), 4, 5, 7, Appendix A, and chart and narrative responses to Appendix B must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved

**NO PROPOSAL REPLY FORM**

Contract No. DTCC17001-COLLEGELMS

Contract Title: DTCC  
MANAGEMENT SYSTEM

LEARNING

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3. We do not feel we can be competitive.
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- \_\_\_\_\_ 5. We do not wish to sell to Delaware Tech. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_ We wish to remain on the Vendor's List **for these goods or services.**

\_\_\_\_\_ We wish to be deleted from the Vendor's List **for these goods or services.**

**PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.**

**CONTRACT NO.:** DTCC17001-COLLEGELMS  
**CONTRACT TITLE:** DTCC LEARNING MANAGEMENT SYSTEM

**DEADLINE TO RESPOND:** January 24, 2017 at 1:00 PM (Local Time)

**NON-COLLUSION STATEMENT**

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to Delaware Tech.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the Delaware Tech.

COMPANY NAME _____	Check one)	Corporation
NAME OF AUTHORIZED REPRESENTATIVE (Please type or print) _____		Partnership
		Individual

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE BUSINESS LICENSE NUMBER \_\_\_\_\_

	Certification type(s)	Circle all that apply
COMPANY CLASSIFICATIONS:  CERT. NO.:	Minority Business Enterprise (MBE)	Yes No
	Woman Business Enterprise (WBE)	Yes No
	Disadvantaged Business Enterprise (DBE)	Yes No
	Veteran Owned Business Enterprise (VOBE)	Yes No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes No

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:  
(COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

**THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_





Contract No. DTCC17001-COLLEGELMS  
Contract Title: **DTCC LEARNING MANAGEMENT SYSTEM**

HIGHER EDUCATION REFERENCES

List a minimum of three higher education references one of which must be a community college and include the following information:

- Institution Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any Delaware Tech Employee or State of Delaware employee as a reference. If you have held a contract with Delaware Tech or the state of Delaware within the last 5 years, please provide a separate list of the contract(s).

1. **Contact Name & Title:**

**Institution Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of Work Performed:**


2. **Contact Name & Title:**

**Institution Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of Work Performed:**


3. **Contact Name & Title:**

**Institution Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of Work Performed:**


**DELAWARE TECH PERSONNEL MAY NOT BE USED AS REFERENCES.**

SUBCONTRACTOR INFORMATION FORM

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. DTCC17001-COLLEGELMS	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
9a. NAME OF PERSON SIGNING	10. BY ( <i>Signature</i> )	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

\* Use a separate form for each subcontractor

Contract No DTCC17001-COLLEGELMS  
Contract Title: **DTCC LEARNING MANAGEMENT SYSTEM**

**EMPLOYING DELAWAREANS REPORT**

As required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: \_\_\_\_\_
2. Number and percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_  
Percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_
3. Total number of employees of the bidder: \_\_\_\_\_
4. Total percentage of employees who are bona fide resident of Delaware: \_\_\_\_\_

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: \_\_\_\_\_
2. Percentage of employees who are residents of Delaware: \_\_\_\_\_

“Bona fide legal resident of this State” shall mean any resident who has established residence of at least 90 days in the State.

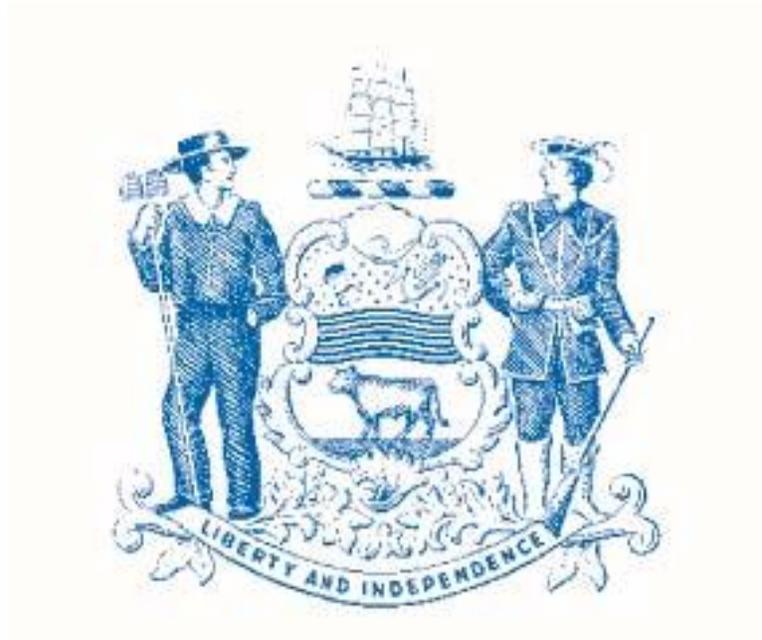
**State of Delaware**  
**Office of Supplier Diversity**  
**Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202  
Telephone: (302) 857-4554 Fax: (302) 677-7086  
Email: [osd@state.de.us](mailto:osd@state.de.us)  
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.  
THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.**

**AGENCIES MAY ELECT TO UTILIZE THIS FORM TO ENSURE PROPOSAL CONSISTENCY BETWEEN VENDORS. THIS FORM IS NOT A REQUIREMENT**

**APPENDIX A  
PRICING PROPOSAL FORM  
Pricing Sheet for DTCC 17001-COLLEGELMS  
Request for Proposal**

	AGREEMENT YEAR					
	FY17-18	FY18-19	FY19-20	FY20-21	FY21-22	TOTAL
LMS LICENSE FEE						
LMS SERVICE FEE						
COMBINED ANNUAL FEE						

**Annotations and Explanations:**

**APPENDIX B  
SCOPE OF WORK AND TECHNICAL REQUIREMENTS**

The following is a list of core features that the Delaware Tech needs in its LMS. For each item in the list, the Vendor must provide information on how its LMS meets the needed feature by responding to one or more the stated questions. The questions request descriptive information and additional documentation for features in the Vendor’s LMS system. Additional pages may be used if the space provided in the table below is not sufficient.

For each feature described in the tables below, state whether and how the proposed system meets the need as well as each of the following

- Indicate if functionality is included in the base system.
- If in development, indicate date it is expected to be released
- If additional license or 3<sup>rd</sup> party product is required, include details and indicate date available

This list of needs or goals in the section of the RFP is not an exhaustive list of features and capabilities expected from any LMS; many features of the LMS are basic. The College will use the submitted documentation and, where applicable, demonstration system as described in Section C to assess the features and capabilities of the Proposer’s current solution as well as to evaluate the usability of the proposed solution.

All descriptions need to reflect what is functional in your latest version of the software in a production version.

If invited to perform a live demo via web conference, you will be required to demonstrate any features described and products accessibility. Demonstrations will take place February 13 -24, 2017.

URL, Username and Password to LMS demonstration environment for proposal evaluation purposes:					
<b>DTCC Need</b>	<b>Solution meets need? Description</b>	<b>Native to Base system? Y/N</b>	<b>Requires additional License/3rd party?</b>		<b>Will be included in future upgrade? (release date)</b>
<b>Content and File Management</b>					
Effective creation, uploading, downloading, and management of course content					
Incorporation of multimedia in all elements including assessments and exam questions					
Permits customization in the presentation of content and the movement of content within and between courses in different file formats					
Ability to integrate adaptive learning content, open-source repositories, and third party assessment tools, including test banks					

Delaware Technical and Community College

Supports integration with Creative Commons and similar licensing engines that source usage license and copyright restrictions.					
Solution preserves accessibility features and markup when importing or exporting content.					
Provides for conditional and special release of content items					
Solution allows administrator to require users to add accessibility information (ALT-Tags) when uploading images.					
Solution provides the means to provide (or allow) captioned media and transcripts.					
Is compatible with publisher course packs and other learning management systems					
Allows drag and drop course materials from a desktop to a course in the LMS					
Instructors can associate (link) rubrics with assignments					
Users can search across pages and courses					
Instructors and Administrators can poll users (real-time and asynchronously)					
Provides for the creation of interactive learning objects, modules, or units					
Connects to externally authenticated sources for multimedia content such as Vimeo, YouTube, etc.					
	<b>Course Management</b>				
Allows for sharing and content control in the individual academic area and/or across the institution in the system					
Supports multiple course sections that pull from or link to the same centrally located content files.					

Delaware Technical and Community College

(Describe how updates to master course are pushed to child courses.)					
Ability to combine multi-section courses into one large course (merge courses)					
<b>Student-Centered Features</b>					
Competency-based education					
Personalized learning					
Grade and annotate online student assignment submissions (what file types are able to be annotated?).					
Grading of group assignments					
Peer evaluation tool					
Self-evaluation tool (ability for students to grade own work using assignment rubrics)					
Assignment submission from DropBox, Google Docs and Office 365, etc.					
System provides real-time data to instructors and students about students' performance/learning/data in a class to improve learning					
<b>Differentiated Instruction Properties, Design and Learning Customization</b>					
Instructor or instructional designer to customize learning content and/or its design					
Allows for branching activities and linear and non-linear design					
Forms of adaptive learning or differentiated instruction					
Scenario-based learning					
Degree of academic department autonomy with regard to branding and user experience					
<b>Learning Outcomes Reporting and Analysis</b>					
The solution supports the entry of institutional goals, program and course level learning outcomes, and supports hierarchical organization of the goals and outcomes.					

Delaware Technical and Community College

<p>The solution has a learning outcomes keyword and headings search function.</p>					
<p>The solution allows instructors to align course, program, and/or institutional level learning outcomes to assignments, rubrics, and specific questions on quizzes or exams.</p>					
<p>If an instructor selects existing course level outcomes that have been aligned with program or institutional outcomes, the solution recognizes the connection.</p>					
<p>If an instructor creates or adds in new course-level outcomes, it prompts him/her to align each new outcome with either a program and/or institutional level outcome.</p>					
<p>The solution delivers reports on institutional, program, and course level Learning outcomes, e.g., which content and assessments they are aligned to in the hierarchy.</p>					
<p>When an instructor has aligned quiz and exam questions to learning outcomes and after students have completed the assessment, the solution communicates areas of strength and weakness to both the instructor and the student.</p>					
<p>The solution allows for individual faculty to create their own rubrics or select common rubrics across the institution. In order to maintain consistent scoring interpretation, the common rubrics can be made read-only to the instructors; i.e., the scoring text descriptions cannot be edited, but the rubric can still be used to assess and score student work. If changes are needed the instructor would be able</p>					

Delaware Technical and Community College

to save it the common rubric as a new rubric.					
The solution offers administrative roles that align with the LMS organizational hierarchy. Role-based permissions allow designated staff to create, edit and manage outcomes at the appropriate course, program and institutional level, and develop and run ad-hoc reports.					
The solution has robust multi-level and cross-cutting learning outcomes attainment analytics and reporting features. This means that instructors can run their own assessment reports and administrators can look at student attainment of learning outcomes from exams and rubric-scored work at the student, course, program or institutional level.					
Data from assessments that are scored using common rubrics can be aggregated and viewed by course, program, or across the institution.					
Assessment data from individual or shared test questions that are mapped to shared learning outcomes can be aggregated at course, program and institutional levels.					
System provides early warning/student retention reports based on student performance on instructor-defined assessed content (assignments, exams, etc.). System allows administrator access to this data, per role-based permissions.					
System allows import of learning outcomes from accreditors, college, state and national organizations (e.g. AAC&U's essential learning outcomes, ISTE Standards)					
<b>Gradebook and Assessment</b>					

Delaware Technical and Community College

Solution supports custom view of grade center columns (instructor can move; hide; freeze; sort columns)					
Solution supports pre-defined and custom calculations for grade center columns (ex. Sum, Drop lowest/highest, Average)					
Solution supports predefined and custom grading schemas, and grade weighting by column and category					
Solution supports custom views of column groupings, based on multiple criteria (groups; performance; individual user; category and status; custom query)					
Solution provides attendance tool (or ability to mass-input a desired value into grade center column)					
Solution supports ability to clone columns with specific settings/configurations					
The solution supports creating custom columns independent of LMS content with all of the options that are available in auto-generated columns					
The solution supports column templates so that settings can be configured and multiple columns generated based on desired configuration					
The solution provides a way to import tests from and export tests to formatted Word documents (or similar commonly used format)					
The solution provides assessment autopsy/item level analysis to track detailed student activity to help students understand where / why students responded incorrectly; ability to assess Difficulty					

Delaware Technical and Community College

Index and Discrimination Index					
The solution allows instructors to provide a variety of feedback types (e.g., text, audio, video) on work submitted by students (assignments, discussions, quizzes, etc.)					
The solution provides student performance evaluation tools, activity reports, and automated alerts/notifications based on instructor defined performance metrics.					
The solution provides simple, intuitive tools for responses / comments to student writing that do not require downloading/re-uploading the document, and that are integrated with gradebook and rubrics (i.e., inline grading)					
The solution provides notification/confirmation to student that s/he has submitted an assignment/assessment.					
The solution has the ability to integrate all gradable course content with rubrics					
The system allows instructors to easily export all student submissions at the course level. Are instructors required to export each assignment separately?					
System allows for the automatic linking of results from content modules or web applications (e.g. SCORM, third party vendors such as Captivate or Articulate) into the gradebook					
Ability to organize students by section in the gradebook when multiple sections of classes are combined into one course					
<b>System, Course and Student Level Reporting and Analytics</b>					

Delaware Technical and Community College

Ability to export all course mid-term grades directly from courses and import into Banner (SIS)					
Course level reporting tools (e.g. activity, performance, grades) which can be run by students, faculty and administrators					
Options for exporting reports					
Ability to use product for Learning Analytics (as defined as the measurement, collection, analysis and reporting of data about learners and their contexts, for purposes of understanding and optimizing learning and the environments in which it occurs.)					
Elements and functionality of the analytics and reporting function of the solution including historical and predictive					
The solution has the ability to import, maintain, and export data to integrate and interact with the College's data warehouse (SQL Server DB) or other analytical tools					
<b>Portability and Persistent Spaces for Users</b>					
They system has the ability for students and faculty users to export content from the LMS in commonly recognized formats. Describe file formats.					
The system has an integrated e-Portfolio					

**Additional Information on Features**

The following are requests for additional information to be provided in narrative fashion about various aspects of the proposed solution. Vendors must respond to each of these requests. Vendors should state if the functionality described involves the use of a third-party product, or is not part of the core LMS and requires an additional module, and should provide the name of that product or module.

1. LMS System Overview

- a. Describe all tools and functionality that are part of the learning environment. Specifically, address those features that support effective class management and pedagogical functionality
- b. Describe some of the primary distinctive competencies or competitive advantages of this product over leading LMS products in the higher education LMS market.

2. Active Learning and Collaboration

Instructors need multiple engagement options to make course content relevant to students and to accommodate different learning strategies (e.g., personal reflection; group work; synthesis of major themes, etc.).

- a. Describe tools or features which support faculty and student collaboration and at what organizational level (e.g., course only, across courses, across departments or programs, across the institution, across communities).

3. Mobile

- a. List the mobile devices the proposed LMS supports and note for which devices an interface is specifically designed.
- b. Describe any differences between the functionality of the LMS web interface and its mobile applications. If there are multiple applications or other tools for different devices or platforms, list them and explain any differences in functionality.
- c. Describe whether and how the LMS supports delivery of multimedia and streaming video to mobile devices, including whether Flash is required and for which devices.
- d. Describe how the product is currently designed to enable and support mobile functionality for administrators, faculty and students.
- e. Describe the product's future roadmap for enabling and supporting mobile functionality for administrators, faculty and students.

4. ADA Requirements

- a. Describe how the solution complies with WCAG 2.0 AA.
- b. Describe how the LMS adheres to the regulations of Title II of the Americans with Disabilities Act and its amendments, as well as to the regulations of Section 504 of the Rehabilitation Act of 1973 and Section 508 of the Rehabilitation Act
- c. Describe the capabilities for students, faculty and administrators to customize the look of the display (size, color, etc.)

5. Gradebook and Assessment

- a. Describe how the proposed solution provides DTCC with capability to seamlessly manage the assessment lifecycle from learning content creation, to student interaction, to instructor review and feedback to student, to submitting final grades to the SIS.
- b. Describe how assessment tools accommodate a range of instructor needs, from those who require a simple, intuitive interface to view and enter grades, to those with unique or complex grading schemas.
- c. Describe options for instructors and College administrators to measure, analyze and visualize student learning against defined goals at the course, program and institutional level.
- d. Describe if data from course sections can flow up to a parent course's gradebook.

6. Manage Learning Content

- a. Describe how users are prompted to input alt tags on images, and whether they are required when adding content.
- b. Describe the solution's ability to import content from other learning management platforms. List standards supported.
- c. Describe the solution's ability to export content for use in another learning management platform.
- d. Describe standards your product supports for integration with other Systems or 3<sup>rd</sup> party software, i.e. supports open standards, including Learning Tools Interoperability (LTI®) standards. What support is provided for older versions of standards?

## Delaware Technical and Community College

- e. Describe how the proposed solution supports integration with publisher content such as ALEKS, McGraw Hill, Pearson (integration includes support of single sign on, grade and engagement data transfer).
  - f. Describe how the proposed solution supports integration with Adobe Connect, Examity, Turnitin, classroom response systems, Camtasia Relay, Library catalog systems, Online Test Proctoring systems, Online Course Evaluations, etc.
7. Groups/Organizations/Communities
- a. Describe the ability to use system for non-academic groups or communities. Describe which features are available.
8. Library Integration
- a. Describe how your solution can integrate with the following library services and systems. For each list which particular systems or services are supported by the solution.
    - i. virtual reference services;
    - ii. electronic reserves;
    - iii. integrated library systems;
    - iv. proxy middleware; and
    - v. third-party library databases.
9. System Administration
- a. Describe how the system supports the following:
    - i. Single Sign On from the portal and Banner XE
    - ii. Ability to schedule user and course data from Banner XE to LMS (i.e., real-time, 4xs daily)
    - iii. Ability for completed courses to be made read-only to students after the course end date
    - iv. Ability to manage file size and storage limitations across the installation, at the course level and by individual users
    - v. Ability support a multi-domain architecture where administrative functionalities can be delegated to departments/organizations (e.g. non-credit bearing courses)
10. Physical infrastructure behind the cloud hosting solution
- a. Provide a copy of, or link to, your Service Level Agreement (SLA).
  - b. Describe vendor's hosting facility's capacity and scalability in terms of institutions, courses, participants (administrators, faculty, students), and learning activities. Are there any limitations to file or database storage? If there are storage costs associated with this question, please include pricing.
  - c. Include information on scalability, redundancies, uptime and maintenance periods
  - d. How do you track and analyze technical issues? How do you communicate technical issues to client institutions?
  - e. Describe the process for pushing out all product upgrades.
  - f. What is the frequency schedule for release of major and minor upgrades?
  - g. Describe availability and timing of upgrade documentation.
  - h. Provide a report of any known security breaches of the proposed system during the last two years and your response.
11. Staffing and Support
- a. Describe how many FTE (Full Time Equivalent) staff members will be needed by DTCC to administer the solution and the skill sets that are presumed in this staff.
  - b. Explain the technical support options available and the associated response timeframes.
  - c. Provide data from the last 12 months on performance against response timeframes associated with the different service levels.

## Delaware Technical and Community College

- d. Describe how tiered support is accessed to resolve more complex issues. Indicate if the response time begins from initial contact/report, or at a given escalation point. Indicate your support team's follow-up timeframes while the issue is being addressed.
- e. Explain customer-focused information such as a central knowledge base and/or issue tracker available for customer use.
- f. Describe the avenues of support available to system administrators (support lines, discussion boards, mailing lists, user groups, etc.).
- g. Describe training and training materials that are available for administrators.

### 12. Product Support/Training

- a. Describe how technical and user support and training is provided for faculty and student end users.
- b. Describe how technical and customer support is provided for users
- c. Describe any ticketing systems in place for user by users
- d. Describe the faculty, staff, and student training services you provide.
- e. Describe where technical support fits within the context of your organization. Where are your Technical Support staff located? Is technical support outsources to another entity?

### 13. Security

- a. Does vendor have a dedicated information security group or function that is responsible for the oversight and implementation of information security? If so, please describe.
- b. Describe the security philosophy and architecture for your LMS.
- c. b. Explain which security protocols or standards are used to secure data collected and to secure transactions, protecting the transmission of information.
- d. List the methods of authentication available (e.g. LDAP, CAS, etc.) and your process for incorporating single sign-on from other campus systems (portals, legacy systems), including whether CAS and Shibboleth are supported.
- e. Describe the single sign-on process when incorporating extensions to the LMS, including whether LMS users need to separately sign into the extensions.
- f. Explain whether, and how many, different authentication methods can be used on the same system for different groups or organizations.

Delaware Technical and Community College

**Appendix C**

**Form of Agreement**

LEARNING MANAGEMENT SYSTEM  
SERVICE  
AND  
LICENSE AGREEMENT

This Learning Management System Service and License Agreement (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between Delaware Technical and Community College (“DELAWARE TECH”) and \_\_\_\_\_ (“Vendor”). At times herein DELAWARE TECH and Vendor may be referred to collectively as the “Parties”.

WHEREAS, DELAWARE TECH desires to enter into an agreement with a reputable partner that is capable of delivering high quality software and service for a cloud-based Learning Management System (“LMS”) for DELAWARE TECH’s online, hybrid and face-to-face credit and non-credit bearing course offerings as described in DELAWARE TECH’s request for proposals DTCC17001-COLLEGELMS (“RFP”) dated \_\_\_\_\_, attached hereto as Exhibit A and incorporated by reference herein as if fully restated;

WHEREAS, Vendor responded to the RFP with a proposal dated \_\_\_\_\_ (“Proposal”), attached hereto as Exhibit B and incorporated by reference herein as if fully restated herein;

WHEREAS, DELAWARE TECH desires to award the services set forth in the RFP to Vendor;

NOW THEREFORE, the Parties agree as follows:

1. Definitions.

In addition to the definitions ascribed elsewhere in this Agreement the terms below will have the following meaning when and if used in this Agreement:

“Materials” means any and all software, Source Code, technology, plans, research, products, processes, services, and/or business operations including, without limitation, product specifications, data, know-how, formulae, equations, algorithms, software, samples, measurements, compositions, sequences, processes, designs, sketches, photographs, graphs, drawings, samples, working models, prototypes, inventions and ideas, information and documentation, and other information provided for and/or used in the completion of this Agreement.

“Deliverable” means a tangible, verifiable work output such as a specification, programming, code, modification or other output developed for a Delaware Tech. A Deliverable does not include customization or enhancement of the Vendor-Owned Materials requested by Delaware Tech that is not intended to be owned by Delaware Tech.

“DELAWARE TECH Owned Materials” means those Materials owned by Delaware Tech or a and supplied to Vendor by or for Delaware Tech in connection with the Services that may be required for the Work. Delaware Tech Owned Materials specifically includes Materials

Delaware Technical and Community College

which would be confidential or proprietary in respect to a private entity.

“Vendor Owned Materials” means those Materials owned by Vendor which may be supplied by Vendor and /or licensed to Delaware Tech in connection with the Services.

“Student Owned Materials” means any and all Materials supplied to Vendor by Delaware Tech students (including, but not limited to, biometrics and identifying information) accessing any and all services and products produced by Vendor for Delaware Tech under and as contemplated in this Agreement (“Students”).

“Intellectual Property Rights” shall mean (a) copyrights and copyright applications, including any renewals, in either the United States or any other country; (b) trademarks, service marks, trade names, and applications or registrations for any of the foregoing in the State of Delaware, United States or any other country; (c) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; (d) patents, patent applications, continuations, divisionals, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States or any other country and (e) any other right, title or interest in and to intellectual property as may be applicable to this Agreement.

“Inventions” means inventions, discoveries, concepts, and ideas, whether patentable or not, including but not limited to processes, methods, formulae, software, techniques, blueprints, schematics, drawings, data, formulae, know-how, compositions, designs, sketches, photographs, graphs, samples, working models or prototypes, original works of authorship, as well as improvements thereof or know-how related thereto.

“Services” means all the LMS products and services specified in the RFP and all appendices thereto, the Proposal, this Agreement and all exhibits hereto, which may include without limitation online hosting, development, installation, training, analysis, design, programming, testing, implementation, licensing and consulting.

“Source Code” means the human-readable description of the structure and methods of operation of any software, including but not limited to, flowcharts, programmers’ notes, and such other materials as may be reasonably necessary for a competent programmer to modify and maintain such software.

“Work” means the Services, any and all LMS products as well as the documentation, research, notes, data, computations, estimates, reports or other documents or work product related to such deliverables including development activities created by or produced by Vendor for Delaware Tech under this Agreement.

2. Term. This Agreement shall commence on July 1, 2017 and terminate on June 30, 2022 unless terminated earlier pursuant to Section 16 hereof, or other provisions of this Agreement.

3. Services. Vendor agrees and grants the Services, including all LMS products, licenses, and services, in a good, professional manner to DELAWARE TECH. The Services shall include, but are not limited to, those obligations of Vendor specified in its Proposal, The RFP, including all attachments and appendices, and all other exhibits hereto. Vendor further agrees to perform such other duties as may be necessary or desirable, in DELAWARE TECH’s reasonable judgment, to implement and maintain high quality. The responsibilities of Vendor under this Section 3 shall be subject to and in accordance with all provisions of this Agreement. Vendor

Delaware Technical and Community College

shall be responsible for all obligations under this Agreement on its part, whether or not Vendor performs such obligations by or through a subcontractor or other entity. For all purposes of this Agreement, Vendor shall be responsible for the acts or omissions of its subcontractors or other entities providing goods or services under or with respect to this Agreement and for its or their representatives (both at any tier), whether or not permitted under this Agreement.

4. Compensation. In consideration of performance of the Services set forth in Section 3 hereof, DELAWARE TECH hereby agrees to make payment to Vendor in the total amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) for the Services for DELAWARE TECH which is allocated as follows:

- (A) \$ \_\_\_\_\_ for license fees and service fees for the period of July 1, 2017 through June 30, 2018;
- (B) \$ \_\_\_\_\_ for license fees and service fees for the period of July 1, 2018 through June 30, 2019;
- (C) \$ \_\_\_\_\_ for license fees and service fees for the period of July 1, 2019 through June 30, 2020;
- (D) \$ \_\_\_\_\_ for license fees and service fees for the period of July 1, 2020 through June 30, 2021;
- (E) \$ \_\_\_\_\_ for license fees and service fees for the period of July 1, 2021 through June 30, 2022;

Vendor will submit to DELAWARE TECH an annual invoice for the Services to be rendered hereunder on September 1 of each year of the Agreement, and DELAWARE TECH hereby agrees to make payment to Vendor within thirty (30) days after its receipt of such invoice subject to DELAWARE TECH's acceptance of the final product. Vendor is responsible for registering with the State of Delaware vendor financial system by following the instructions on EXHIBIT C entitled "W-9 Substitute Form".

5. Independent Contractor. In the performance of this Agreement, Vendor shall be acting as an independent contractor and not as an agent or employee of DELAWARE TECH. Vendor shall not subcontract nor permit anyone other than employees of Vendor to perform any of the Services without the prior written consent of the Campus.

6. Government Approvals. Vendor shall obtain and pay for all necessary permits and licenses, including, but not limited to, a State of Delaware Business License, pertaining to the Products, Licenses, and Services and equipment and shall post such documents as required by law. Vendor agrees to comply with all federal, state and local laws, ordinances, rules and regulations without additional cost or expense to DELAWARE TECH. Vendor agrees to indemnify, hold harmless, and defend DELAWARE TECH, its agents, employees, officers, and trustees, harmless from and against all liability, demands, claims, expenses, suits, losses, damages, causes of action, fines, and judgments (including attorneys' fees) resulting directly or indirectly from Vendor's non-compliance herewith.

7. Taxes. Vendor shall accept full and exclusive liability for the payment of any and all wages, tax contributions for unemployment insurance, retirement benefits, and life pensions, and annuities which may now or hereafter be imposed by the United States or any state, whether measured by the wages, salaries, or remuneration paid to persons employed by Vendor or otherwise in preparation of the Services. Vendor shall comply with all federal and state laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books, and records and save DELAWARE TECH harmless from the payment of any and all such taxes and contributions, or penalties.

Delaware Technical and Community College

8. Personnel. Vendor's employees assigned to perform Services under this Agreement shall remain employees of Vendor and shall in no event be considered agents or employees of DELAWARE TECH. Vendor agrees that its employees assigned to perform the Services under this Agreement will have and maintain appropriate credentials and certifications related to the Services performed. All Vendor employees and contractors shall abide by all DELAWARE TECH policies while on campus or when interacting with DELAWARE TECH employees. DELAWARE TECH reserves the right to demand the removal of any Vendor employee or contractor whose conduct DELAWARE TECH in its discretion deems inconsistent with any College policy or state or federal law and Vendor shall cause such individual to be removed from providing the Services hereunder.

9. Intellectual Property and Confidentiality.

A. Vendor owns and retains all right, title and interest in Vendor-Owned Materials. DELAWARE TECH owns and retains all right, title and interest in DELAWARE TECH Owned Materials. DELAWARE TECH Students own and retain all right, title and interest in DELAWARE TECH Student-Owned Material. DELAWARE TECH acknowledges and agrees that, unless otherwise agreed by Vendor in writing, Vendor is the sole and exclusive owner of all rights, including but not limited to all patent rights, copyrights, trade secrets, trademarks, and other proprietary rights in the systems, programs, specifications, user documentation, and other Vendor-Owned Materials used by Vendor in the course of its provision of services hereunder. DELAWARE TECH also acknowledges and agrees that in entering into this Agreement, DELAWARE TECH acquires no ownership rights in Vendor-Owned Materials. DELAWARE TECH shall not copy, transfer, sell, distribute, assign, display, or otherwise make Vendor-Owned Materials available to third parties. Vendor acquires no rights of ownership in or to the DELAWARE TECH Owned Materials or the Student-Owned Materials; or anything that is provided to Vendor by DELAWARE TECH, including but not limited to business processes, software and related documentation. Any modifications or enhancements to the DELAWARE TECH Owned Materials or the Student Owned Materials including those suggested or implemented by Vendor, shall belong to DELAWARE TECH. Vendor agrees that its rights to use any such materials or data provided by DELAWARE TECH, including all DELAWARE TECH Owned Materials is limited to such use as is necessary to permit Vendor to perform Services and obligations in this Agreement.

B. DELAWARE TECH has the responsibility for providing Vendor with the copyright notice language to appear on websites, delivered course content and/or assessments, and on any related practice and/or demonstration materials. Vendor will have the responsibility for ensuring that the copyright notice language provided to Vendor by DELAWARE TECH will appear in an accessible and prominent area in the LMS. . Any copyright notice language or other language acknowledging Vendor's ownership or other legal rights of Vendor which appears on websites, course content and/or assessments, and in any practice and/or demonstrational materials will be limited to such language as is necessary to protect Vendor's legal rights. Unless provided to Vendor by DELAWARE TECH, no language acknowledging the legal rights of any third party shall appear on materials without the prior written consent of DELAWARE TECH.

C. Notwithstanding anything in the Agreement, RFP, or Proposal, to the contrary, any and all Deliverables shall be the sole and exclusive property of DELAWARE TECH. Notwithstanding the foregoing, the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by Vendor prior to, or acquired during, the performance of the Agreement shall be Vendor-Owned Material.

Delaware Technical and Community College

D. Upon DELAWARE TECH's request or upon the expiration or termination of this Agreement, Vendor shall deliver or return all copies of the Work to DELAWARE TECH. Vendor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product.

E. Vendor and DELAWARE TECH intend this Agreement to be in part a contract for services and each considers any tangible work products identified as Deliverables ("Deliverables") during the Term of this Agreement to be a work made for hire. If for any reasons the Deliverables would not be considered a work made for hire under applicable law, Vendor does hereby sell, assign and transfer to DELAWARE TECH, its successors, and assigns, the entire right, title and interest in and to the copyright and any registrations and copyright applications relating thereto and renewals and extensions thereof, and in and to all works based upon, derived from or incorporating the Deliverables, and in and to all income, royalties damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world. Vendor agrees to execute all documents and to perform such other proper acts as DELAWARE TECH may deem necessary to secure for DELAWARE TECH the rights in the Deliverables.

F. Other than Deliverables and Vendor-Owned Materials, the tangible property and work products created by Vendor pursuant to this Agreement ("Work Product") shall mutually belong to DELAWARE TECH and Vendor and each shall be free to use such Work Product without permission of or payment of royalty to the other. As to tangible products and work products identified as Deliverables during the Term this Agreement all Deliverables shall be owned exclusively by DELAWARE TECH.

G. DELAWARE TECH recognizes that Vendor's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its engagements (collectively "Vendor Know-How"). DELAWARE TECH's business also depends substantially upon the accumulation and application of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops through collaboration with contractors and other service providers (collectively "DELAWARE TECH Know-How"). Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of DELAWARE TECH, then Vendor will own such Vendor Know-How know-how developed by Vendor in the course of this Agreement. Similarly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of Vendor, then DELAWARE TECH will own the DELAWARE TECH Know-how developed by DELAWARE TECH during the course of this Agreement. To the extent such Know-How is contained or reflected in the Work Product, each party hereby grants the other a fully paid up, perpetual license to use such Know-how. Neither party will sublicense or sell Know-How of the other party to any third party, and will not use or exploit the Know-How of the other party to compete with the information technology and professional services of Vendor or the educational services and delivery of DELAWARE TECH.

H. Vendor acknowledges and understands that in connection with this Agreement, Vendor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the DELAWARE TECH's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by DELAWARE TECH and DELAWARE TECH Students to Vendor, including without limitation information concerning the DELAWARE TECH's business strategies, political and legislative affairs, students, employees, vendors, contractors, student records, customer lists, finances,

Delaware Technical and Community College

properties, methods of operation, computer and telecommunications systems, software and documentation, student materials, student name and other identifying information which is generated by the student, such as biometrics. Confidential Information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

I Vendor shall use the Confidential Information only if and when required for the performance of the Services, and for no other purpose whatsoever, and only by Vendor employees engaged in that performance. Vendor may also share Confidential Information with its corporate affiliates and with agents and contractors who are bound by similar obligations of confidentiality and who need such information as part of Vendor's performance under this Agreement.

J. Vendor shall not, in any manner whatsoever, disclose, permit access to, or allow use of Confidential Information to any person or entity except as specifically permitted or required under this Agreement.

K. Vendor acknowledges and understands that DELAWARE TECH is required to protect certain Confidential Information from disclosure under applicable law, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), the Gramm Leach Bliley Act ("GLBA"), or the Delaware Freedom of Information Act ("DFOIA"), including regulations promulgated thereunder, as the laws and regulations may be amended from time to time (collectively the "Privacy Laws"). The Confidential Information that is protected under FERPA was provided to the Vendor as it is handling an institution service or function that would ordinarily be performed by DELAWARE TECH's employees. Vendor agrees that it shall be obligated to protect the Confidential Information in its possession or control in accordance with the Privacy Laws and as a "school official" under FERPA. The Vendor further agrees that it is subject to the requirements governing the use and redisclosure of personally identifiable information from education records as provided in FERPA.

L. Vendor may disclose Confidential Information as required by legal process. If Vendor is required by legal process to disclose Confidential Information, Vendor shall immediately notify DELAWARE TECH, and before disclosing such information shall allow DELAWARE TECH reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

M. Vendor's obligations with respect to Confidential Information shall survive the expiration or the termination of this Agreement.

N. Vendor acknowledges that its failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause DELAWARE TECH grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this section may be a material breach of this Agreement.

O. Vendor agrees and acknowledges that it is not the custodian of any Confidential Information that may be in Vendor's possession or control. Vendor shall forward any request for disclosure of Confidential Information to:

Richard Krlevich  
Vice President for Information and Instructional Technology  
Office of the President  
P.O. Box 897

Delaware Technical and Community College

Dover, Delaware 19904  
(302) 857-1754  
richard.kravevich@dtcc.edu

P. Except to the extent otherwise required by applicable law or professional standards, the obligations under this section to maintain secrecy of Confidential Information do not apply to information that (1) is or becomes generally known to the public, other than as a result of disclosure by Vendor, (2) had been previously possessed by Vendor without restriction against disclosure at the time of receipt by Vendor, (3) was independently developed by Vendor without violation of this Agreement, or (4) Vendor and DELAWARE TECH agree in writing to disclose. Each party shall be deemed to have met its nondisclosure obligations under this section as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

Q. Vendor agrees to use Student-Owned Materials and DELAWARE TECH Owned Materials and Student and DELAWARE TECH Confidential Information only as necessary to perform its responsibilities under this Agreement, keep it confidential in accordance with this Agreement and use reasonable commercial efforts to prevent and protect the contents of these materials, or any parts of them, from unauthorized disclosure. Further, Vendor will take industry standard measures to protect the security and confidentiality of such information including controlled and audited access to any location where such confidential and proprietary data and materials reside while in the custody of Vendor and employing security measures to prevent system attacks (e.g., hacker and virus attacks).

R. Vendor will implement security measures at its offices and all other associated facilities in connection with Vendor software and LMS to ensure the strictest confidentiality of DELAWARE TECH Owned Materials, Student Owned Materials, DELAWARE TECH and Student Confidential Information and all other confidential information and materials. These measures will include, without limitation, encryption, use of a sign-on and access privilege system and other measures described in this Agreement, and such other measures as Vendor deems necessary in its professional discretion. Unless otherwise provided by separate agreement, upon termination of this Agreement or upon earlier request by DELAWARE TECH, Vendor shall return to DELAWARE TECH, all DELAWARE TECH Owned Materials, DELAWARE TECH Confidential Information, all data, software provided to Vendor by DELAWARE TECH, student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement; alternatively and at DELAWARE TECH's option, Vendor shall destroy any or all of the aforementioned beyond recoverability. Vendor may retain one full version of part or all of the aforementioned data for the sole purposes of demonstrating contractual compliance. Any data referred to in this section that is still within Vendor's actual or constructive control shall be subject to the terms of this Agreement in perpetuity. Except as otherwise provided herein, Vendor shall not retain any electronic or other copies of any of the data or information contemplated herein without the prior written authorization from DELAWARE TECH. To ensure DELAWARE TECH and DELAWARE TECH student's access to the LMS and their data, Vendor shall ensure that DELAWARE TECH Owned Materials, Student Owned Materials, DELAWARE TECH and Student Confidential Information and all other confidential information and materials are stored in a safe and secure primary location in the United States of America, if possible, and a secondary location which is controlled by Vendor or the subcontractor(s) disclosed in Vendor's Proposal. Vendor shall notify DELAWARE TECH of any changes to data storage locations, facilities, or methods which differ in any way with that set forth in Vendor's Proposal. Vendor shall further have the obligation to immediately notify DELAWARE TECH of any disputes, litigation, claims, controversies, matters, arbitrations, mediations, or disagreements of any kind

Delaware Technical and Community College

between Vendor and any subcontractors hereunder. All notifications shall be directed to the individual named in subsection O of this Section 9 or his successor.

S. Vendor will notify DELAWARE TECH as soon as commercially practical of any actual or suspected breach of security with respect to Confidential Information, DELAWARE TECH Owned Materials, or Student Owned Materials. Vendor will notify DELAWARE TECH as soon as commercially practical of any unusual circumstances surrounding the LMS system delivery, including but not limited to Vendor-based or Vendor subcontractor technical problems, power outage affecting authentication, suspicion concerning identity of person logging on, Vendor or Vendor's subcontractor system intrusions (e.g., attack by hacking, virus infection). Notifications to be made under this subsection shall be made in the most expeditious manner possible (telephone with email confirmation is preferred) to the appropriate contact as may be agreed. All notifications shall be directed to the individual named in subsection O of this Section 9 or his successor.

T. Neither party shall be obligated to maintain any information in confidence or refrain from use, if: (a) the information was lawfully in the receiving party's possession or was known to it prior to its disclosure from the disclosing party as shown by written records; (b) the information is, at the time of disclosure, or thereafter becomes, public knowledge without the fault of the receiving party; or (c) disclosure is required by subpoena or pursuant to a demand by any governmental authority.

U. Except as specifically permitted by this Agreement, Vendor acknowledges that any unauthorized use, reproduction or disclosure of DELAWARE TECH's Intellectual Property Rights and Confidential Information could result in irreparable injury to DELAWARE TECH and further agrees that there may be no adequate remedy at law for any breach of its obligations hereunder and upon any such breach or any threat thereof by Vendor, DELAWARE TECH will be entitled to seek appropriate equitable relief, including immediate injunctive relief and monetary damages resulting from material breach of the terms of this Section, as well as any other rights and remedies that may be available to DELAWARE TECH by law.

V. Vendor agrees to indemnify and hold harmless and defend upon request DELAWARE TECH, its officers, agents and employees with respect to any claim, action, cost or liability or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or services under this Agreement and for a violation or breach of the provisions set forth in this Agreement.

W. Vendor agrees to indemnify, release, hold harmless, and defend DELAWARE TECH its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages' fees resulting from any use or disclosure of Confidential Information by Vendor or any person acquiring such information, directly or indirectly, from Vendor as a result of a breach of this Agreement. If Vendor fails to maintain confidentiality, DELAWARE TECH may immediately terminate this Agreement without waiving or relinquishing a right or remedy to seek damages from breach.

10. Software.

Vendor hereby agrees, warrants, and represents:

A. That it shall perform all of the Services in a professional manner in accordance with industry standards for software development and related services, and that the software development and related services will conform to the specifications contained in the RFP.

Delaware Technical and Community College

B. Vendor is the owner or authorized user of Vendor software and all of its components, and Vendor software and all of its components, to the best of Vendor's knowledge, do not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.

C. Vendor software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.

D. Vendor has used industry standards for vulnerability testing and software quality code reviews to ensure that software is free of any and all "time bombs," computer viruses, copy protect mechanisms or any disclosed or undisclosed features which may disable Vendor software or render it incapable of operation (whether after a certain time, after transfer to another central processing unit, or otherwise).

E. If hosted services, Vendor hereby warrants and represents:

**Software Warranty.** Vendor warrants that Vendor has used industry standards for vulnerability testing and software quality code reviews to ensure that computer software purchases, as delivered, does not contain any program code, virus, worm, trap door, back door, timer, or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of Vendor-selected conditions, or manually on the command of Vendor.

**Security.** Vendor shall (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services.

**SAS 70 or SSAE 16.** On an annual basis, Vendor shall obtain SAS 70 or SSAE 16, or any successor standard, or industry equivalent that is generally recognized in its industry, reports (the "Reports") for all facilities from which the Services are provided. If a Report states that a facility has failed to materially satisfy one or more control objectives, Vendor will, as DELAWARE TECH's sole remedy, use commercially reasonable efforts to cause the facility to materially satisfy all control objectives. If, despite Vendor's efforts, the facility cannot materially satisfy all relevant control objectives, Vendor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives. Failure to do so may be considered a material breach of this Agreement in the sole and reasonable discretion of DELAWARE TECH. DELAWARE TECH or an appointed audit firm (Auditors) has the right to audit Vendor and its sub-vendors or affiliates that provide a service for the processing, transport or storage of DELAWARE TECH OWNED Materials or Student Owned Materials or Confidential Information. Audits will be at DELAWARE TECH's sole expense which includes operational charges by Vendor, except where the audit reveals material noncompliance with contract specifications, in which case the cost, inclusive of operational charges by Vendor, will be borne by Vendor. In lieu of DELAWARE TECH or its

## Delaware Technical and Community College

appointed audit firm performing their own audit, if Vendor has an external audit firm that performs a certified SSAE 16 (or applicable audit) review, DELAWARE TECH has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified SSAE 16 review for testing the controls that have an impact on its data.

11. Indemnification. In addition to those obligations to provide indemnification in other Sections of this Agreement, Vendor for itself and on behalf of its agents, employees, subcontractors, affiliates, directors, shareholders, members, partners, associates, representatives, trustees, and insurers (“Releasing Parties”) shall indemnify, hold harmless, release, and defend DELAWARE TECH and its agents, employees, subcontractors, affiliates, directors, shareholders, members, partners, associates, representatives, trustees, and insurers (“Released Parties”) from and against any and all claims, judgments, costs, litigation, controversies, damages, losses, and expenses, including reasonable attorneys' fees which are in any way occasioned by any of the following: (i) the negligent performance of this Agreement by any of the Releasing Parties; (ii) the breach of any provision, warranty, guaranty or promise under this Agreement by Vendor or any other of the Releasing Parties, including but not limited to compliance with law, regulations, and necessary approvals required hereunder; and (iii) any other act or omission related to this Agreement by Vendor or any of the Releasing Parties (“Released Claims”).

By way of example only, Released Claims shall include, but are not limited to, any of the following: (1) claims involving bodily injury, illness, or death, or for property damage, including the loss of use; (2) claims caused in whole or in part by any of the Releasing Parties' breach of contract, tort, other negligent act or omission; (3) claims caused by a subcontractor, or that of anyone employed by them or for whose acts Vendor or any of the Releasing Parties may be liable. Vendor shall have no obligation under this Section to indemnify or hold harmless DELAWARE TECH for any Released Claims caused by the gross negligence or will misconduct of DELAWARE TECH or any of its agents or employees.

If DELAWARE TECH's use of Vendors's software or Services becomes, or in Vendor's opinion is likely to become, enjoined as a result of a claim pursuant to this Section, Vendor, at Vendor's expense, shall either procure DELAWARE TECH's the right to continue using the software or Services, or replace or modify the same so that it becomes non-infringing (provided replacement or modified software or Services have substantially comparable functionality to the original software or Service) or, in the event performing the foregoing options are not commercially reasonable, refund to DELAWARE TECH the fees paid for the particular software or Services out of which the claim arose.

12. Subcontracting and Assignment.

A. Except as explicitly set forth in this Agreement or Vendor's Proposal, Vendor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of DELAWARE TECH. Such written approval will be in the form of a modification or addendum to this Agreement. DELAWARE TECH shall not be responsible for the fulfillment of Vendor's obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that DELAWARE TECH deems necessary to protect its interests. Vendor shall remain responsible for performance of all Services under this Agreement, and shall be subject to liability to DELAWARE TECH for acts and omissions of subcontractors.

B. Vendor agrees that all Services provided by Vendor under this Agreement including any amendment(s) to this Agreement will be performed by employees or consultants or subcontractors of Vendor who have executed work-for-hire agreements with or who have assigned their work to Vendor as appropriate.

## Delaware Technical and Community College

Vendor shall only engage consultants or subcontractors who have agreed to comply with Section 9 of this Agreement as if they were a party hereto. Vendor and DELAWARE TECH agree that DELAWARE TECH is a third party beneficiary of such engagement agreements and DELAWARE TECH has the right, but not the obligation, to enforce such engagement agreements in its own name. Vendor acknowledges and agrees that it is responsible under this Agreement for the acts and omissions of its consultants.

C. Neither party may assign this Agreement without the prior written consent of the other party, this subsection shall apply to assignment of this Agreement to any parent, subsidiary, affiliate or purchaser of all or substantially all its assets, or via a merger which assignment shall terminate this Agreement unless consented to DELAWARE TECH.

13. Insurance. Vendor agrees to maintain general liability insurance in the amounts of at least one million (\$1,000,000) per occurrence and at least three million (\$3,000,000) in the aggregate covering the Services at all times during this Agreement. In addition, Vendor agrees at all times during this Agreement to maintain at least one the following lines of insurance in the amounts of at least one million (\$1,000,000) per occurrence and at least three million (\$3,000,000) in the aggregate: Professional liability or Technology Errors and Omissions; Miscellaneous Errors and Emissions; or Product Liability. The parties further acknowledge that failure to maintain such coverage or failure to maintain such coverage by Vendor in the minimum amounts set forth herein shall be a breach of this Agreement. Certificates of insurance shall be filed with DELAWARE TECH before Vendor starts its performance hereunder. Certificates shall name DELAWARE TECH an additional insured (except for worker's compensation insurance) and contain a provision that no cancellation or material change in the policies will become effective except upon thirty (30) days written notice to DELAWARE TECH. If Vendor fails to maintain such insurance or deliver the certificates, DELAWARE TECH may immediately terminate this Agreement.

14. Business Continuity Plan. Vendor represents and warrants that it currently has certain business continuity plans in place throughout its organization that will be used in case of a disaster or other event that could result in the interruption of Vendor's capability to perform its obligations to DELAWARE TECH under this Agreement. Vendor agrees that its plans include reasonably prudent back-up business resumption and disaster recovery; that it continually maintains its business continuity plans to ensure that they remain current. Vendor further agrees to inform DELAWARE TECH immediately in the event it suffers a disaster or business interruption. Vendor acknowledges that DELAWARE TECH, at its option, may regard Vendor's failure to comply with the requirements in this Section as a material breach of this Agreement, and that, in such event, DELAWARE TECH may pursue all available legal remedies, including injunctive and other damages.

15. Advertising. Vendor agrees that it will not, in the course of the performance of this Agreement or thereafter, use DELAWARE TECH's name in any advertising or promotional media as a customer or client of Vendor, without the prior written consent of DELAWARE TECH.

16. Termination. This Agreement may be terminated as follows:

- A. If Vendor fails to fulfill in timely and proper manner its obligations under this Agreement, or if the Vendor violates any of the covenants, agreements, provisions, warranties, or stipulations of this Agreement, DELAWARE TECH shall thereupon have the right to terminate this Agreement by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or

Delaware Technical and Community College

other material prepared by the Vendor under this Agreement shall, at the option of DELAWARE TECH, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to DELAWARE TECH. On receipt of the contract cancellation notice from DELAWARE TECH, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless DELAWARE TECH provides a written acceptance of the vendor response. If DELAWARE TECH does accept the Vendor's method and/or action plan to correct the identified deficiencies, DELAWARE TECH will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the DELAWARE TECH's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion DELAWARE TECH may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

- B. In the event that a single entity, person, or group acquires (i) more than fifty percent (50%) of the voting shares, membership or partnership interests or ownership of Vendor on a non-diluted basis, or (ii) acquires more than fifty (50%) of the assets of Vendor, or (iii) the sale of part or all of the Vendor Owned Materials, Vendor's Intellectual Property Rights, or any other property, rights, licenses, or sublicenses necessary to operate the LMS by Vendor, DELAWARE TECH shall thereupon have the right to terminate this Agreement by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- C. By DELAWARE TECH, without cause and for any reason, upon twenty (20) days written notice. If this Agreement is terminated pursuant to this subsection B, Vendor shall continue to provide Services to the effective date of termination.

17. Funding Out. This Agreement is contingent on the continuation, and availability of the funding appropriated by the General Assembly of State of Delaware to DELAWARE TECH. Accordingly, if the funding or appropriations cease or are exhausted based upon previously available funds or appropriations, the Agreement will terminate due to lack of funding. In such circumstances, DELAWARE TECH shall terminate this Agreement by giving Vendor written notice of such unavailability of funds. All payment obligations of DELAWARE TECH will cease upon the date of termination specified in such notice; provided, however, that Vendor shall be paid all amounts due and owing under this agreement through the date of termination.

18. Insolvency. In addition to and not in conflict with the provisions in Section 16 of this Agreement, either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

19. Non waiver. The failure of either party to insist upon the performance of any terms or conditions of this Agreement, or to exercise any right or privilege conferred hereby, shall be construed as a waiver of such terms, conditions, rights or privileges, but the same shall instead continue and remain in full force and effect.

20. Notices. All notices or other communications shall be in writing and shall be deemed to have been duly given if sent certified mail, return receipt requested, to the respective addresses herein designated, or to such other addresses as may be designated, in the manner provided for in this Section by either party:

Delaware Technical and Community College

IF TO DELAWARE TECH:

Gerard McNesby  
Vice President for Finance  
Delaware Technical and Community College  
Office of the President  
P.O. Box 897  
Dover, Delaware 19904  
(302) 857-1672  
gerard.mcnesby@dtcc.edu

If to Vendor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 21. Anti-discrimination. The parties agree that, in the performance of this Agreement, no person shall, on the basis of race, color, creed, religion, sex, national origin, age, disability, genetic information, marital status, veteran status, sexual orientation, gender orientation, gender identity or pregnancy, be subjected to any discrimination prohibited by law.
- 22. Family Educational Rights and Privacy Act. Vendor shall not disclose or release any educational record or other information concerning a student to any person, group or entity other than DELAWARE TECH without the student’s prior written consent and shall otherwise comply with the provisions of the Family Educational Records Privacy Act of 1974, as amended, and DELAWARE TECH’s policies concerning student access to educational records and confidentiality of student records. Vendor shall defend, indemnify and hold DELAWARE TECH harmless from all liability associated with Vendor’s breach of this provision.
- 23. Choice of Law and Venue. This Agreement shall be deemed to be entered into and shall be construed in accordance with the laws of the State of Delaware. Vendor hereby consents to the personal jurisdiction of the state courts of the State of Delaware which shall have the exclusive jurisdiction of any disputes under this Agreement and appoints the Delaware Secretary of State as its agent for the service of process on its behalf.
- 24. Severability. If it is determined that any provision hereof is in conflict with the law, then such provision shall be given effect only to the extent permitted by law. Nevertheless, the remaining provisions shall remain in full force and effect.
- 25. Binding Effect. The terms, covenants, and conditions herein shall bind and insure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided herein, their assignees.
- 26. Force Majeure. Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of such party, provided that the party relying upon this provision: (i) gives prompt written notice thereof, and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that in the event

Delaware Technical and Community College

a force majeure event extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate this Agreement upon written notice.

27. Interpretation. In the event of any conflict between the terms of this Agreement, the RFP, or the Proposal, the terms of this Agreement shall govern and control.

28. Entire Agreement. This instrument and the Exhibits attached hereto contain the entire Agreement of the parties and may not be modified except in writing and signed by both parties.

IN WITNESS WHEREOF, the parties, through their acknowledged and duly authorized agents, hereto have set their hands and seals of this Agreement as of the date first written above.

DELAWARE TECHNICAL AND  
COMMUNITY COLLEGE

VENDOR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Dr. Mark T. Brainard

NAME: \_\_\_\_\_

TITLE: President \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A**

**DTCC 17001-COLLEGELMS**

**REQUEST FOR PROPOSAL**

**EXHIBIT B**  
**PROPOSAL**

**EXHIBIT C**

**W-9 SUBSTITUTE FORM INSTRUCTIONS**

Required for State of Delaware vendor/consultant financial system set-up.

**Below are instructions to vendors for filing W-9 forms with the State of Delaware Division of Accounting in order to receive payments through the accounting system.**

**These instructions have been updated as of February, 2013.**

**Step 1:** Go to following website: <http://accounting.delaware.gov/>

Step 2: Under Services section on left, click on Delaware Substitute Form W-9

Step 3: Click the link below to complete and submit a State of DE Substitute W-9

<https://w9.accounting.delaware.gov/W9form.aspx>

Complete information on Substitute Form W-9 and submit

Please note that if you answer yes to “Would you like to receive payment by direct deposit” bank information will automatically be requested.