INVITATION TO NEGOTIATE
COVER SHEET

ITN NUMBER: 12R-008
TITLE: LEARNING MANAGEMENT SYSTEM
RFP MAILING DATE: FEBRUARY 15, 2012
MANDATORY PRE-ITN CONFERENCE: THERE WILL BE NO PRE-ITN CONFERENCE
(See Section 2.5)
QUESTION CUT-OFF AND TIME: MARCH 7, 2012 4:00pm LOCAL TIME
REPLY DUE DATE AND TIME: MARCH 21, 2012 3:00pm LOCAL TIME
OPENING DATE AND TIME: MARCH 21, 2012 3:15pm LOCAL TIME

Unless otherwise notified, Replies will be opened at:
Florida Gulf Coast University
Office of Procurement Services
10501 FGCU Boulevard South
Modular II
Fort Myers, FL 33965-6565

The following ITN Acknowledgement Form must be completely filled in.
Note: If the form is not completed (including signature) it may be grounds for rejecting your Reply.
FLORIDA GULF COAST UNIVERSITY
INVITATION TO NEGOTIATE
CONTRACTUAL SERVICES
ITN Acknowledgement Form

PROCUREMENT CONTACT FOR REPLY:
Richard Pence, email: rpence@fgcu.edu, Phone: 239.590.1133

SUBMIT REPly TO:
FLORIDA GULF COAST UNIVERSITY
PROCUREMENT SERVICES
10501 FGCU BLVD SOUTH
MODULAR II
FORT MYERS, FL 33965-6565
Telephone: (239) 590-1130 Facsimile: (239) 590-1140
Website: http://www.fgcu.edu/AS/Purchasing

 Replies not received at the exact above location, by the appointed hour and date, will not be considered.

Page 2 of 20

REPIES WILL BE OPENED at 3:15pm LOCAL TIME on Wednesday March 21, 2012 and may not be withdrawn within such date and time.

ITN NUMBER:
12R-008

ITN TITLE:
LEARNING MANAGEMENT SYSTEM

FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER:

SUBMIT ONE (1) ORIGINAL, ONE (1)
ELECTRONIC COMPACT DISK, AND TEN (10)
COPIES OF YOUR REPLY BY THE COVER SHEET PROPOSAL DUE DATE:

EMAIL ADDRESS:

I certify that this Reply is made without prior understanding, agreement, or connection with any corporation firm, or person submitting a Reply for the same services and is in all respects fair without collusion or fraud. I agree to abide by all conditions of this Invitation to Negotiate and certify that I am authorized to sign this Reply for the Respondent and that the Respondent is in compliance with all requirements of the Invitation to Negotiate, including but not limited to, certification requirements.

AUTHORIZED SIGNATURE (MANUAL)

AUTHORIZED SIGNATURE (TYPED) TITLE

GENERAL CONDITIONS

REPLY SUBMISSION: All Replies must contain this ITN Acknowledgement Form with a manual signature (or a facsimile) in the appropriate space above. Replies must be typed except for those areas where the ITN specifically allows hand written entries. If submitted by mail, do not include more than one Reply in an envelope. The face of the envelope shall contain the above address, the date and time of the ITN opening and the ITN number. Replies not submitted on any attached ITN form or in another specified media may be rejected. Any manual changes made to a proposed price must be initialed. All Replies are subject to the conditions specified herein. Any Reply that does not comply with these conditions will be rejected.

1. REPLY DELIVERY: Replies must be delivered and available to be publicly displayed at the address, date and time specified above unless the ITN specifically states otherwise. The time and date stamp clock located in Procurement Services shall be the official timepiece for determining if a Reply has been received in a timely manner. Replies, which for any reason are not available at this location at the prescribed time and date, will not be considered. It is the Respondent’s responsibility to assure that his Reply is delivered on the correct date and time at the specified location. If the ITN specifications specifically allow submission by fax, the date and time imprinted on the last page of the Reply received will be the official date and time of the Reply’s receipt. Delivery of a Reply to the University’s Postal or Receiving Department or any other place on the University campus is not acceptable. Timely delivery of the Reply itself to the specified location is required. Offers by telephone are not acceptable under any circumstances.

2. NO REPLY SUBMITTED: If a Respondent does not send a Reply to this invitation, respond by returning only this acknowledgment form with the statement, “NO REPLY” written on it and a brief explanation in the space provided above. Failure to respond three (3) times in succession to any competitive solicitation by not responding three (3) times in succession to any competitive solicitation may be denied until the notice of a decision is posted or until 20 calendar days after the ITN opening and ITN number. No interpretation shall be considered binding unless provided in writing by the University in response to requests in full compliance with this provision. The University’s performance and obligation to pay under this solicitation is not liable for any increased costs resulting from the Respondent accepting verbal direction.

3. REPLY ADDENDA: Any addenda issued to Respondents prior to the ITN opening date shall include an Addenda Acknowledgment Form. Since all addenda become a part of the Reply, all Addenda Acknowledgment Forms shall be signed by an authorized Respondent representative and returned with the Reply on or before the ITN opening date. Failure to sign and return any and all Addenda Acknowledgment Forms shall be grounds for rejection of the Reply.

4. TABULATION: Tabulations will be furnished upon written request with an enclosed, self-addressed, stamped envelope. In accordance with Section 119.071, Florida Statutes, public review of responses to a competitive solicitation may be denied until the notice of a decision is posted or until 20 calendar days after the competitive solicitation opening, whichever occurs first.

5. PRICES, TERMS AND PAYMENT: Prices offered shall be firm for 120 days.

b) DISCOUNTS: A cash discount for prompt payment may be offered. However, such discounts shall not be considered in determining the lowest net cost for ITN evaluation purposes. Discounts will be computed from the date of satisfactory delivery at place of acceptance or from receipt of a correct invoice at the office specified, whichever is later. Respondents are encouraged to reflect cash discounts in the unit prices proposed.

c) MISTAKES: Respondents are expected to examine the specifications, delivery schedule and all instructions pertaining to supplies and services. Failure to do so will be at Respondent’s risk. In case of mistake in extension the unit price will govern.

d) INVOICING AND PAYMENT: The Vendor shall be paid upon delivery and acceptance of the goods, less deduction, if any, and submission to the University of properly certified invoices at the prices stipulated on the purchase order. Invoices shall contain the purchase order number. An original and one (1) copy of the invoice shall be submitted. Failure to follow these instructions may result in delay in processing invoices for payment. INTEREST PENALTIES: Payment shall be made in accordance with Florida Gulf Coast University Board of Trustees Prompt Payment to Vendor Rule, FGCU PR6.021, unless the ITN specifications or the purchase order specifies otherwise. Invoices returned to Provider due to errors will result in payment delay. Interest penalties of less than $1.00 will not be paid unless the Provider requests payment. Invoice payment requirements do not start until a properly completed invoice is provided to the University. A Vendor Ombudsman, whose duties include acting as an advocate of vendors who may be experiencing problems in obtaining timely payment(s) from the University, may be contacted at (239) 590-1140.

e) ANNUAL APPROPRIATIONS: The University’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

6. ADDITIONAL TERMS AND CONDITIONS: No additional terms and conditions included with the Reply shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this ITN. If submitted either expressly through invoices or design or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed the general and special conditions in this solicitation are the only conditions applicable to this ITN and the Respondent’s authorized signature affixed to the ITN Acknowledgement Form attests to this.

7. INTERPRETATIONS/DISPUTES: The University will not give verbal answers to inquiries regarding the specifications, or verbal instructions prior to the award of this solicitation. Any questions concerning conditions and specifications shall be directed in writing to Procurement Services for receipt by the question end date and time indicated on the cover page. Inquiries must reference the date of Reply opening and ITN number. No interpretation shall be considered binding unless provided in writing by the University in response to questions received in full compliance with this provision. The University is not liable for any increased costs resulting from the Respondent accepting verbal direction.
NOTE: ANY AND ALL SPECIAL CONDITIONS AND SPECIFICATIONS ATTACHED HERETO WHICH VARY FROM THESE GENERAL CONDITIONS SHALL HAVE PRECEDENCE. WHEN EXECUTED, THIS SHEET AND THE ACCOMPANYING REPLY CONSTITUTE AN OFFER FROM THE RESPONDENT.

Revised 2009
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1.0 INTRODUCTION

1.1 INTRODUCTION AND INTENT
Florida Gulf Coast University Board of Trustees, a public body corporate of the State of Florida hereinafter referred to as “University”, intends to negotiate a Learning Management System Agreement with a responsible and responsive Provider. By way of this Invitation to Negotiate, we invite Replies from qualified Providers who can provide a Learning Management System for the University Campus.

The University is seeking creative ideas, solutions, and options as to how best meet the needs of an increasing campus population. The University’s objective is to partner with a Provider that will share its commitment to quality products and services to the University community at prices comparable to other major universities while at the same time maximizing its return on investment over the life of the agreement.

1.2 GENERAL INFORMATION
Florida Gulf Coast University, a public, fully accredited member of the State University System of Florida, is a comprehensive University created to address the educational needs of the rapidly growing Southwest Florida population. FGCU’s main campus is located in Fort Myers, Florida, with centers located in Naples, Cape Coral, and Port Charlotte. Additionally, FGCU is structured around four major divisions—Academic Affairs, Administrative Services, University Advancement, and Student Affairs. The Academic Affairs division includes six colleges - College of Arts and Sciences, College of Business, College of Education, College of Health Professions, College of Professional Studies, and College of Engineering encompassing 50 undergraduate and 30 graduate programs. The University is accredited by the Southern Association of Colleges and Schools. The University’s vision is to achieve national prominence in undergraduate education with expanding recognition for selected graduate programs.

1.2.1 2010-2011 STUDENT HEADCOUNT
12,038

1.2.2 OFFICIAL/SUBMITTED FTE PROJECTIONS
FTE IS CALCULATED BY FLORIDA STATE UNIVERSITY SYSTEM STANDARDS WHEREY 1 FTE = 40 UNDERGRADUATE STUDENT CREDIT HOURS AND 32 GRADUATE STUDENT CREDIT HOURS

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2.0 SPECIAL INSTRUCTIONS TO RESPONDENTS

2.1 DEFINITIONS

“Customer” Anyone that utilizes the Learning Management System including but not limited to faculty, staff, and students.

“ITN” Invitation to Negotiate, method of formal competitive solicitation.

“Local Hosting” Servers hosting the Learning Management System would be placed on the University campus. Provider’s software solution would be installed and managed by University personnel and upgrades would be done in consultation with Provider.

“Managed Hosting” Provider would house and manage servers hosting the Learning Management System. University personnel would be responsible for managing instance configuration, integrations, communication, but not hardware.

“Respondent” Any company that responds in full to the requests of this ITN and wishes to be considered as a candidate for the Learning Management System Agreement as described herein.

“Reply” The material submitted by the Respondent in answering this ITN.

“University/FGCU” Florida Gulf Coast University, its employees, officers, and agents.

“University Sole Point of Contact” The Respondents single point of contact at the University for the purpose of this ITN.

“Provider” The company, its employees, and officers, engaged by Florida Gulf Coast University to provide a Learning Management System to the University.
2.2 PROPOSED CALENDAR OF EVENTS
Respondents should review and become familiar with the Calendar of Events Timeline. The dates and times of each activity within the Timeline may be subject to change. It is the responsibility of the Respondent to check for any changes. All changes to the Timeline will be made through an addendum to this solicitation and posted within the Florida Gulf Coast University Procurement Services website at: Procurement Services Website

A. ITN Issued And Advertised FEBRUARY 15, 2012
B. Deadline for ITN Respondents to Submit Written Questions to University MARCH 7, 2012 4:00pm LOCAL TIME
C. University Provides Response to Questions Via Addendum to be Posted on the Procurement Services Website. MARCH 13, 2012
Notice of Posting Will Not be Sent.
D. ITN Replies Due to University Procurement Services Department MARCH 21, 2012 3:00pm LOCAL TIME
E. Evaluation Committee Meets to Discuss and Evaluate Replies MARCH 22-28, 2012 TIME AND PLACE TO BE POSTED
F. Posting of Short List of Respondents, if Applicable. Short List Will be Posted on the Procurement Services Website. MARCH 29, 2012 Notice of Posting Will Not be Sent.
G. Negotiation Committee will View Finalist(s) Presentation(s) and Begin Negotiations with the Finalist(s), if Applicable APRIL 2-13, 2012 TIME AND PLACE TO BE ANNOUNCED
H. Best And Final Offer(s) (BAFO) Due in University Procurement Services Department APRIL 16-20, 2012
I. Intended Posting of Award MAY 31, 2012

2.3 INQUIRIES
The University will not give verbal answers to inquiries regarding negotiation considerations of verbal instructions prior to or after the selection process of this ITN. A verbal statement regarding same by any person shall be non-binding. Respondents are responsible to insure that the University Sole Point of Contact has their point of contact with all pertinent information including but not limited to name, physical address including city, state, and zip code, phone and facsimile numbers, as well as electronic mail address.

2.4 MEETINGS
Notice of meetings regarding this ITN will be posted electronically on the University’s Procurement Services Website at least seventy-two (72) hours prior to the meeting.

2.4.1 In accordance with University Policy, if any individual(s) require special accommodations in order to attend a scheduled meeting as a result of this ITN, they must contact the Sole Point of Contact stated herein no later than three (3) business days prior to the scheduled meeting.

2.5 QUESTION DEADLINE
A pre-ITN meeting will not be held. Written questions regarding this ITN must be submitted to the University Sole Point of Contact by no later than March 7, 2012; 4:00pm local time. The University will provide answers to all questions by no later than March 13, 2012 in the form of an Addendum, Exhibit E Addenda Acknowledgement Form, which will be posted on the Procurement Services Website.
2.6 **ATTENTION TO RESPONDENTS**
Any intended Respondent is solely responsible to check the University [Procurement Services Website](#) seventy-two (72) hours before the closing time of this ITN to verify that they have reviewed any and all addenda that may have been issued for this ITN.

2.7 **UNIVERSITY SOLE POINT OF CONTACT**
This ITN is issued by the Office of Procurement Services, Florida Gulf Coast University, herein referred to as “University Sole Point of Contact”.

The address for all correspondence with regard to this ITN is:
Office of Procurement Services  
Florida Gulf Coast University  
10501 FGCU Boulevard South  
Modular II  
Fort Myers, Florida 33965-6565  
Attention: Richard Pence  
Email: rpence@fgcu.edu  
Phone: (239) 590-1133  
Fax: (239) 590-1140

2.7.1 The Respondent shall not communicate with any officer, agent, or employee of Florida Gulf Coast University, to include but not be limited to, any officer, agent or employee of the Board of Trustees concerning this ITN, except with the Sole Point of Contact identified in this section. If this provision is violated, the University reserves the right to reject Respondent's Reply.

2.8 **DELIVERY OF ITN REPLY**
Each Respondent must submit one (1) original hard copy, ten (10) hard copies, and one (1) electronic compact disk of their Reply.

2.8.1 The original hard copy Reply shall contain an original manual signature of the authorized person signing the Reply. Failure to include an original signed copy may be grounds for rejection of the Reply without further evaluation.

2.8.2 The original hard copy Reply shall be in a separate envelope or box, clearly marked as the “Original.” Copies may be submitted in bulk. The outer carton of the Reply shall include the ITN number, 12R-008, ITN title, name of respondent, and due date.

2.8.3 Questions and requests for information may *not* be rearranged, regrouped, or divided in any way.

2.8.4 All information and required submittals included in the Reply SHALL BE in both hardcopy form and on the Compact Disk. Replies shall not refer the University to any form of electronic media for reference to obtain required information or submittals.

2.8.5 Respondent is responsible for the method and format of delivery and bear all risk to the documents until delivered completely.

2.8.6 Replies shall be addressed to:

Richard Pence
Associate Director of Procurement Services
Florida Gulf Coast University
10501 FGCU Boulevard South
Modular II
Fort Myers, FL 33965-6565
Phone: (239) 590-1133

2.8.7 Replies should be received no later than 3:00pm LOCAL TIME, MARCH 21, 2012.
2.8.8 Replies received after the submission date and/or time may not be considered.
2.8.9 Replies received at any location other than the address shown in 2.9.6 may not be considered.
2.8.10 Requests for extension of submission date and time will not be granted unless the University determines, at its sole discretion, that the original due date appears impractical. Notice of any extension will be provided in writing to all Respondents.
2.9 PARKING
Daily parking passes can be obtained at the Guard Station located at the main entrance to the University, or Parking Services located at the Campus Support Complex for any company and/or individual vehicles that will be parked on campus. Parking rules and regulations must be observed by all drivers. Website for parking services is: Parking Services.

2.10 EVALUATION CRITERIA
Evaluation of Replies leading to a short list of Respondents will be based on evaluation criteria (Section 5.1). Any information a Respondent deems essential to the evaluation of the services offered, for which no provision is made in the ITN, should be clearly stated in the Reply. While the University reserves the right to request additional information or clarification from Respondents at any time in the process, Respondents should not assume that they will be allowed to amplify or modify their initial written Reply after the opening date. The initial Reply must be a clear and easy to understand explanation of the products, services, benefits and prices offered and should include information as to how all specifications will be met.

2.11 INVITATION TO NEGOTIATE PROCESS
The ITN process is a flexible procurement process that is used when highly specialized services are required. Negotiations offer an opportunity for selected Respondent(s) to discuss their Replies with an Evaluation Committee and/or a Negotiation Committee and present a Best and Final Offer (BAFO) that may lead to a negotiated agreement. The goal of this comprehensive process is for identification of the optimal outcome or the solution that best meets the needs of the University. Only representatives of the participating Respondents who are authorized to negotiate and make agreements shall be involved in negotiations.

2.12 NEGOTIATION WITH RESPONDENTS
The shortlist Respondents may be invited to continue in the negotiation process. Negotiations offer an opportunity for the selected Respondents to discuss their offers and Replies in further detail with the University’s Negotiating Committee, or designee. This allows the University to secure services which best meets its needs, at a highly competitive and favorable cost. Each of the Respondents may be asked to submit a written Best and Final Offer, to memorialize all agreements reached during negotiations and to extend additional benefits to the University, if desired. Invitation to submit a Best and Final Offer is not automatic. After this negotiation a final Provider may be selected.

2.13 RIGHT TO NEGOTIATE
Upon evaluation of the Reply(s), the University has the right to enter into negotiations with one or multiple Respondents that appear to have submitted Reply(s) that best meet the needs and requirements of the University. Negotiations could include but are not limited to price and the terms and conditions of this ITN.

If for any reason a Respondent(s) and the University cannot arrive at a mutual agreement that would result in the issuance of an agreement, the University reserves the right to terminate negotiations, to reject the Reply(s), and to continue negotiations with other responsive Respondents that may lead to the issuance and award of a contract.

2.14 REPLY WITHDRAWAL
Reply(s) submitted prior to the Reply opening date may be withdrawn by the Respondent. Withdrawn Reply(s) may be resubmitted up to the time designated for the receipt of Replies, provided that they are then fully in conformance with the requirements of the ITN.

2.15 OPEN COMPETITION
The University encourages free and open competition among vendors. Whenever possible, specifications, response invitations and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the University’s needs and the accomplishment of a sound economical operation. The Respondent’s signature on this Reply guarantees that the prices quoted have been established without collusion with other Respondents and without effort to preclude the University from obtaining the lowest possible competitive price. The Respondent certifies that its officers or employees have not bribed or attempted to bribe or influence in any way an officer, employee or agent of the University.

2.16 CONTRACT AWARD
There is no obligation on the part of the University to make an award as a result of this ITN. The University reserves the right to award the contract to the responsible Respondent submitting a responsive Reply based on the criteria listed in Section 5.1, and in the best interest of the University.
2.16.1 The attached Agreement for Services, Exhibit D, is incorporated as a part of this ITN and shall be completed and signed by the awarded Respondent in substantially the same form.

2.17 **REPLY MATERIAL**
The material submitted in response to the ITN becomes the property of the University upon delivery to Procurement Services and is to be appended to any formal document that would further define or expand the contractual relationship between the University and the Provider.

2.18 **ORAL PRESENTATION**
After Replies have been opened, a limited number of Respondents submitting a Reply in response to the ITN may be required, at the request of the University, to make an oral presentation or provide written clarifications. Such presentations or clarifications will provide an opportunity for the Respondent to clarify the Reply. Respondents will not be allowed to change their initial Reply. Oral presentations may be recorded, and both recorded oral presentations and written clarifications will be affixed to the Respondent's Reply and become a part of same as if originally submitted. Procurement Services will initiate and schedule a time and location for any presentations that may be required.

2.19 **ERRORS AND OMISSIONS**
The Respondent is expected to comply with the true intent of this ITN taken as a whole and shall not avail itself of any errors or omissions to the detriment of the services. Should the Respondent suspect any error, omission, or discrepancy in the specifications or instructions, the Respondent shall immediately notify the University, in writing, and the University shall issue written instructions to be followed. The Respondent is responsible for the contents of its Reply and for satisfying the requirements set forth in the ITN.

2.20 **RESPONDENTS RESPONSIBILITY**
It is understood and the Respondent hereby agrees that it shall be solely responsible for all services that it proposes, notwithstanding the detail present in the ITN.

2.21 **UTILIZATION OF SMALL AND MINORITY BUSINESS**
The University is an equal opportunity institution and promotes procurement participation and contract award with Minority Business Enterprises (“MBEs”), to include but not limited to; small, minority, women owned, and service disabled veteran business enterprises. MBE’s should have a fair and equal opportunity to compete for dollars spent by the University to procure commodities and contractual services. Competition ensures that prices are competitive and that a broad vendor base is available. The University will use good faith efforts to ensure that MBE vendors are aware of procurement and contract opportunities. For more information please contact the Rick Pence at (239)590-1133 or rpence@fgcu.edu.

2.22 **ENVIRONMENTAL CONSIDERATIONS**
The University supports and encourages initiatives to protect and preserve our environment. Respondent shall submit as part of any Reply the Respondent’s plan to support the procurement of products and materials with recycled content. Respondent shall also provide a plan for reducing and or handling of any hazardous waste generated by Respondent’s company. In addition, Respondent is strongly encouraged to install equipment that is considered Energy Star or equivalent relative to conserving energy without compromising the temperature and quality of the product.

2.23 **ALTERNATE REPLY(S) ENCOURAGED**
Respondents are encouraged to submit alternate Reply(s) that, in the opinion of the Respondent, contain overall terms and conditions which are more beneficial to the University. It is at the sole discretion of the University to determine if an alternate Reply is more beneficial. The University is not bound to accept alternate Reply(s).

2.24 **DEViations TO BE CLEARLY NOTED**
Any deviation from the specifications must be clearly noted in the Respondent’s Reply under Section 4.0. All decisions as to the acceptance of deviations are solely within the discretion of the University, and the University may reject any Reply as non-responsive if the University determines the deviation will have an undesired effect on the quality of its Learning Management System.
RESERVATION OF RIGHTS

The University reserves the right to:

a) Waive minor informalities and any minor irregularities in any Reply received. A minor irregularity is a variation from the ITN which does not affect the financials of the Reply, or give one Respondent an advantage or benefit not enjoyed by other Respondents, or substantively change the requirements and/or specifications of this ITN, or adversely impact the interest of the University. Waivers, when granted, shall in no way modify the ITN requirements or excuse the Respondent from full compliance with the ITN specifications and other contract requirements if the Respondent is awarded the contract;

b) Reject any or all Reply(s), or any portion of any Reply;

c) Conduct discussions with, and negotiate the Best and Final Offers obtained from, responsible Respondents determined by the University to have a possibility of being selected for award;

d) Determine equipment or other equivalency to FGCU’s specifications in evaluating Reply(s)

e) Negotiate changes in the scope of work or services to be provided;

f) Award contracts to multiple Respondents;

g) Withhold the award;

h) Select the Respondent it deems to be most qualified to fulfill the needs of the University. The Respondent with the lowest cost proposed may not necessarily be the one most qualified, since a number of factors other than cost are important in the determination of the most acceptable Reply.

JOINT VENTURES

In the event multiple Respondents submit a joint Reply to this ITN, a single Respondent shall be identified as the Prime Respondent. If offering a joint Reply, Prime Respondent must include the name and address of all parties of the joint Reply. Prime Respondent shall provide all bonding and insurance requirements, execute any Agreement, complete the ITN Acknowledgement Form, have overall and complete accountability to resolve any dispute arising within this ITN and subsequent Agreement. Only a single contract with one Respondent will be accepted. Prime Respondent responsibilities shall include, but not be limited to, performance of overall contract administration, preside over other Respondents participating or present at University meetings, oversee preparation of reports and presentations, and file any notice of protest and final protest as described herein. Prime Respondent shall also prepare and present a consolidated invoice(s) for services performed. University shall issue only one check for each consolidated invoice to the Prime Respondent for services performed. Prime Respondent shall remain responsible for performing services associated with their Reply to this ITN.

Respondent must be authorized by proposed manufacturer to sell, warranty, service (depending on scope of award) item(s) proposed. A certification stating such authorization must be submitted with the Reply or in time for Reply opening or upon request. Failure to submit a completed certification may result in disqualification of Reply submitted.

PUBLIC RECORDS

Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

SCOPE OF SERVICES

STATEMENT OF PURPOSE

The goal of this ITN is to establish an agreement with a Learning Management Services Provider while maintaining the highest quality of service for University students, faculty, staff, and administration.

The ITN process will determine the next provider of Florida Gulf Coast University’s learning management services. By “services” this process refers to the bundled elements required to provide an enterprise level higher education managed solution for e-learning, specifically:

1. Learning Management System (LMS) software license, inclusive of open source options, if applicable;

2. LMS system managed hosting for the licensed product, inclusive of Software as a Solution (SaaS) options; and
3. Help desk services to provide all LMS users (faculty, students, staff) with 24/7 by 365 days a year access for technical support.

3.2 PROGRAM OPPORTUNITIES
The University intends to enter into an agreement with qualified Provider(s) to provide Learning Management System for a negotiated contract term, but not less than five (5) years.

Respondents may submit Reply(s) to either of the following, or both if applicable:

1. Exhibit B LMS Local Hosting Matrix,
2. Exhibit C LMS Managed Hosting Matrix
3. Either way, Respondents must Reply to Exhibit A LMS Functional Requirements Matrix.

4.0 REPLY CONTENT & FORMAT
In order to maintain comparability and facilitate the review process, it is requested that Replies be organized and tabbed in the manner specified below.

Replies shall be submitted on a point-by-point basis in tabular form. All such materials must be directly related to FGCU specifically and/or information relevant to colleges and universities in general.

Respondents should note that additional information may be requested at a later date. In addition, Respondents should understand that any resulting contract between University and Respondent will not be “boilerplate” and will require customization based on specific University requirements.

4.1 (TAB A) TITLE PAGE
The title page should include the ITN Number; ITN Subject; the name, address, telephone number of the Respondent; the due date and time; and either “original” or “copy”, whichever is applicable.

4.2 (TAB B) TABLE OF CONTENTS
Include a clear identification of the material by section and by page number.

4.3 (TAB C) SIGNED ITN ACKNOWLEDGEMENT FORM
The completed and signed ITN Acknowledgement Form stating the legal name of the Respondent and a statement as to whether the Respondent is a sole proprietor, a partnership, a corporation, or any other legal entity. The Respondent shall be registered with the Secretary of State and authorized to do business in the State of Florida. The Reply shall be signed by a person or persons legally authorized to bind the Respondent to a contract.

4.4 (TAB D) RELEASED ADDENDA TO THE ITN
Any addenda issued to Respondents prior to the ITN opening date shall include an Addenda Acknowledgment Form. Since all addenda become a part of the Reply, all Addenda Acknowledgment Forms shall be signed by an authorized Respondent representative and returned with the Reply on or before the ITN opening date. Failure to sign and return any and all Addenda Acknowledgment Forms may be grounds for rejection of the Reply.

4.5 (TAB E) W-9 FORM
It is a requirement of this ITN that all Respondents submit a completed Internal Revenue Service W-9 Form (Request for Taxpayer Identification Number and Certification) with Reply.

4.6 (TAB F) EXECUTIVE SUMMARY
Provide a cover letter indicating your firm’s understanding of the requirements/scope of services of this specific ITN package. The letter must be a brief formal document that provides information regarding the firm’s interest in and ability to perform the requirements of this ITN. A person who is authorized to commit the Respondent’s firm to perform the services included in the Reply must sign the letter. Please provide a list of all persons authorized to give presentations for you with contact information to include at least phone, fax, and email address. A person who is authorized to commit the Respondents firm must sign the letter, and any other documents requiring signatures in accordance with this ITN.
4.7 **EXPERIENCE AND QUALIFICATIONS OF THE RESPONDENT**
A brief yet detailed corporate overview addressing the following:

4.7.1 State the current name and contact information under what other or former name(s) the Respondent is currently operating under or has operated under.

4.7.2 Number of years in business, including operation under other names, providing services same as or similar to those described herein.

4.7.3 Overall size of organization and organization chart of the positions that would directly affect this ITN.

4.7.4 Summarize the qualifications of the organization. Where the project team includes subcontractors, qualifications of the proposed subcontractors shall also be provided. Past working relationships on similar projects should be indicated.

4.7.5 Provide the credentials of the individuals from your organization that will have a direct role in the performance of this ITN. Include a resume for each individual mentioned detailing specific experience with similar projects as well as service personnel. Reply must identify the person or persons to perform work with the University and identify the portion of responsibility each person would be expected to be responsible for. It is expected that the services provided will require a close, positive working relationship with the University and that the personnel identified would not be changed without notifying the University in writing.

4.7.6 State whether or not the Respondent is registered with the Florida Distance Learning Consortium for preferred pricing.

4.7.7 Identify and detail any relevant information not already mentioned in this section that the Respondent wishes to be considered.

4.8 **REFERENCES**
Please provide five (5) similar current and former market references. Please include only references within the current and previous five (5) calendar years. Information provided for each account shall include:

4.8.1 Contract/Project name
4.8.2 Client Name for which contract is performed
4.8.3 Address of Client
4.8.4 Specific information as to the services provided with the contract
4.8.5 Dates of contract
4.8.6 Owner’s contract/project manager or other associated representative
4.8.7 Contact person name, direct-line phone number, fax number, and email address
4.8.8 Dollar value of contract

The University reserves the right to contact any and all references and to obtain, without limitation, information on the Respondent’s performance on relevant jobs.

4.9 **FINANCIAL STABILITY**
At the University’s request, provide Respondents audited financial statements for the past three (3) fiscal years preceding Reply for both corporate and local offices.

4.10 **TECHNICAL REPLY**
Tab J, Technical Reply should consist of the following:
Exhibit A, Functional Requirements Matrix;
Exhibit B, LMS Local Hosting; and/or
Exhibit C, LMS Managed Hosting

4.11 **ALTERNATE REPLY, RECOMMENDATIONS, OR ADDITIONAL INFORMATION THE RESPONDENT WISHES TO SUBMIT WITH THEIR REPLY**
5.0 EVALUATION

5.1 EVALUATION CRITERIA
Replies will be evaluated, and then the successful Respondents will be selected on the basis of the criteria identified below. The University reserves the right to reject any Respondent which does not meet the qualifications stated in the ITN. The University shall be the sole judge of compliance and/or qualifications.

The criteria allows for an overall possible score of 1000 points. Functionality = 600 points. Technical Features = 400 points. The Committee will utilize the criteria below to create a shortlist of vendors.

### I. FUNCTIONAL REQUIREMENTS

#### EXHIBIT A LEARNING MANAGEMENT SYSTEM

<table>
<thead>
<tr>
<th>COMMUNICATION</th>
<th>Functionality = 600 points</th>
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</thead>
<tbody>
<tr>
<td>200 Points consisting of:</td>
<td></td>
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<tr>
<td>• Announcements</td>
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<tr>
<td>• Calendar</td>
<td></td>
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<tr>
<td>• Chat</td>
<td></td>
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<tr>
<td>• Community Networking</td>
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<td>• Discussion Forums</td>
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<td>• IM Enabled</td>
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<td>• Internet e-mail</td>
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<td>• SMS Messaging</td>
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<tr>
<td>• Teams and Groups</td>
<td></td>
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<tr>
<td>• Whiteboard</td>
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<tr>
<th>ASSESSMENT/ASSIGNMENTS</th>
<th>Technical Features = 400 points</th>
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<tbody>
<tr>
<td>200 points consisting of:</td>
<td></td>
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<tr>
<td>NOTE: (Gradebook will be designated 100 points of the 200 possible in this section)</td>
<td></td>
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<tr>
<td>• Assignments/Tests</td>
<td></td>
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<tr>
<td>• Dropbox</td>
<td></td>
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<tr>
<td>• Gradebook</td>
<td></td>
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<tr>
<td>• Rubrics</td>
<td></td>
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<tr>
<td>• Student Tracking/Item Analysis</td>
<td></td>
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<tr>
<td>• Third Party Test Management</td>
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</tbody>
</table>

<table>
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<tr>
<th>CONTENT</th>
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<tbody>
<tr>
<td>200 points consisting of:</td>
<td></td>
</tr>
<tr>
<td>• Blogs</td>
<td></td>
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<tr>
<td>• Bookmarks/Glossary</td>
<td></td>
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<tr>
<td>• Copying Client</td>
<td></td>
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<tr>
<td>• Course Management</td>
<td></td>
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<tr>
<td>• Mobile Content</td>
<td></td>
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<tr>
<td>• Online Journal</td>
<td></td>
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<tr>
<td>• Online Marking Tools/Notes</td>
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<tr>
<td>• Search Functionality</td>
<td></td>
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<tr>
<td>• Student/Faculty Portfolios</td>
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<tr>
<td>• Syllabus</td>
<td></td>
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<tr>
<td>• Wikis</td>
<td></td>
</tr>
<tr>
<td>• WYSIWYG Editor</td>
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| TOTAL POINTS | 600 |
### II. TECHNICAL REQUIREMENTS
**LOCAL HOSTING AND MANAGED HOSTING WILL BE EVALUATED INDEPENDENTLY**

#### EXHIBIT B  LOCAL HOSTING REQUIREMENTS

| INFRASTRUCTURE | • Servers  
|                | • Secure servers and security  
| 150 points consisting of: | • Space  
| | • Memory  
| | • Operating systems  
| | • Load handling  
| | • System redundancy recommendations and estimated recover time  
| | • Concurrent load capacity  
| | • Scripting languages  
| | • Database technology  
| | • Browser compatibility  
| | • Mobile apps compatibility  
| | • Pre-production setup, testing (including mirrored FGCU environment, sandboxes, etc.) and implementation plan  
| | • System diagram  
| | • Expansion plans  
| | • Pre-production system administration plan  
| | • Implementation plan  
| | • ANGEL course migration to new LMS  
| | • Authentication  
| | • Course and student data auto import, update, etc. (comparable to Angel's XEI tool.) SQL?  
| | • SCORM and IMS standardization  
| | • Updates  
| | • Upgrades  
| | • System and course backup  
| | • System and course restore  
| | • Integration components  
| | • Customization/branding  
| | • Implementation support/on-site consultants  
| | • System admin training  
| | • Documentation  
| | • On-Line Resources  
| | • User and “Train-the-Trainer” programs  
| | • Standard, on-going tech support availability  
| | • Ticket response time  
| | • Comparable successful institutional transition  

| ADMINISTRATION | • Pre-production system administration plan  
| 150 points consisting of: | • Implementation plan  
| | • ANGEL course migration to new LMS  
| | • Authentication  
| | • Course and student data auto import, update, etc. (comparable to Angel’s XEI tool.) SQL?  
| | • SCORM and IMS standardization  
| | • Updates  
| | • Upgrades  
| | • System and course backup  
| | • System and course restore  
| | • Integration components  
| | • Customization/branding  

| SUPPORT/CONSULTATION/TRAINING | • Implementation support/on-site consultants  
| 100 points consisting of: | • System admin training  
| | • Documentation  
| | • On-Line Resources  
| | • User and “Train-the-Trainer” programs  
| | • Standard, on-going tech support availability  
| | • Ticket response time  
| | • Comparable successful institutional transition  

| TOTAL POINTS | 400 |
### EXHIBIT C  MANAGED HOSTING REQUIREMENTS

#### INFRASTRUCTURE
150 points consisting of:

- Servers
- Secure servers and security
- Space
- Memory
- Operating systems
- Load handling
- System redundancy and recover time
- Concurrent load capacity
- Scripting languages
- Database technology
- Browser compatibility
- Mobile apps compatibility
- Pre-production setup, testing (including mirrored FGCU environment, sandboxes, etc.) and implementation plan
- System diagram
- Expansion plans
- Disaster recovery plan

#### ADMINISTRATION
150 points consisting of:

- Pre-production system administration plan
- Hosted technician qualifications/certifications
- Local staff resources required
- Test phase plan
- Implementation plan
- Angel course import migration to new LMS
- Authentication
- Course and student data auto import, update, etc. (comparable to Angel's XEI tool.) SQL?
- SCORM and IMS standardization
- Updates
- Upgrades
- System and course backup
- System and course restore
- Integration components
- Customization/branding
- System availability (24x7?)

#### SUPPORT/CONSULTATION/TRAINING
100 points consisting of:

- Implementation support
- System admin training
- Documentation
- On-Line Resources
- User and “Train-the-Trainer” programs
- Standard, on-going tech support availability
- Ticket response time
- Comparable successful institutional transition

### TOTAL POINTS  400
5.2 EVALUATION COMMITTEE
The Evaluation Committee is composed of a diverse group of faculty, staff, and students. Committee members are not to be contacted during the evaluation process. The Evaluation Committee will determine a short list of Respondents from the evaluation and forward those short listed to the Negotiation Committee.

5.3 DEMONSTRATIONS
The short listed Respondents will demonstrate to the University community how its proposed system will work in the University’s environment and workflow. The shortlisted Respondent(s) will be required to:

5.3.1 Attend onsite presentations/Interviews (3 parts)
   a. Terms/Pricing (1.5 hours)
   b. Technical (1.5 hours)
   c. Features (3 hours)

5.3.2 Respondent must be able to demonstrate administrative and faculty restoration of ANGEL 7.4 .bak archive files as part of the on-site demonstration

5.3.3 Present system features and functionality online (webinar), this session will be recorded and available to members of the University community via the LMS Ad Hoc Task Force site. All webinar sessions will be conducted after all shortlisted vendors have presented on site.

5.3.4 Provide University Customers demonstration accounts. Accounts will be available one week prior to on-site visits and continue to be available during the demonstration period.

5.4 NEGOTIATION COMMITTEE
A Negotiation Committee will be appointed by the University so that negotiations may begin with the Respondents short-listed in Section 5.2. Negotiations may commence simultaneously or in order of rank. In the event the University chooses to negotiate in order of rank, there is no guarantee that the Negotiation Team will negotiate with all short-listed proposers if an acceptable combination of terms, equipment, services and pricing is established with a higher ranked proposer. The Negotiation Team reserves the right to negotiate any term, condition, and specification or cost while negotiating with Respondents. Respondents may be asked to provide a Best and Final Offer (BAFO). The BAFO will reflect the Respondents initial Reply, any negotiations that have taken place, as well as any additional offers the Respondent wishes to include.

The Negotiation Committee will evaluate all BAFO Reply(s) to determine which Reply best meets the needs of the University based on the criteria stated in Section 5.1 and recommendations from the Evaluation Committee.

Based upon the results of this section, the Negotiation Committee, at its sole discretion, may forward a suggestion of the top ranked Respondents to the University leadership team for consideration.

6.0 CONTRACT CONDITIONS

6.1 TERM OF CONTRACT
The contract resulting from this ITN will be for a negotiated term, but not less than five (5) years. Renewals shall be at the sole discretion of the University and upon successful negotiations of the terms.

6.2 CONFIDENTIALITY
From the date of issuance of the ITN until the Reply opening date, the Respondent must not make available or discuss their Reply, or any part thereof, with any employee or agent of the University, unless allowed by the Office of Procurement Services, in writing, for purposes of clarification only.

6.2.1 The Respondent is hereby notified that any part of the Reply or any other material marked as confidential, proprietary, or trade secret, can only be protected against disclosure to the extent permitted by Florida law. If an exemption is desired or expected, the law providing such an exemption should be identified in the Reply.
6.3 ADDITIONAL TERMS AND CONDITIONS
No additional terms and conditions included with the Reply shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this ITN. If submitted either purposefully through intent or design or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed the general and special conditions in this solicitation are the only conditions applicable to this ITN and the Respondent's authorized signature affixed to the ITN Acknowledgement Form attests to this.

6.4 RECIPROCITY
With the consent and agreement of the Provider, the use of the contract resulting from this solicitation may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities issued and administered by Florida Gulf Coast University Board of Trustees. Each governmental agency allowed by the Provider to use this Agreement shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received and accepted. No agency receives any liability by virtue of this solicitation and subsequent contract award.

6.5 PUBLIC ENTITY CRIMES
The University shall not award a contract to a person or affiliate, who is on the Convicted Vendor List.

6.5.1 A person or affiliate who has been placed on the convicted vendor list by the Department of Management Services, State of Florida, may not submit a Reply to provide any goods or services, submit a Reply for construction or repair of a building, submit a Reply for leases of real property, or be awarded or perform work as a Vendor, supplier, subcontractor or consultant to the University for a period of 36 months from the date of being placed on the convicted vendor list.

6.6 WARRANTY AND ABILITY TO PERFORM
Provider shall warrant that there is no action suit, proceeding, inquiry or governmental agency, public board or body, pending or, to the best of the Respondent's knowledge, threatened, which would in any way prohibit, restrain, enjoin or diminish the successful respondent's ability to execute and/or perform the terms and conditions of the contract resulting from this ITN.

6.7 INDEMNIFICATION
The Provider shall indemnify and hold harmless the Florida Gulf Coast University Board of Trustees, its officers, agents and employees from any and all liability, judgments, orders, claims, demands, expenses, damages or causes of action caused by the Provider, its officers, employees, and agents or subcontractors resulting from the Provider's breach of resulting Agreement, as well as strict liability or negligence in performing or failing to perform in connection with this Agreement.

Furthermore, Provider will indemnify, defend, and hold harmless the Florida Gulf Coast University Board of Trustees, and their officers, employees and agents against any action brought against same with respect to any claim, demand, cause of action, debt or liability, to the extent that it is based upon a claim that the LMS used hereunder infringes or violates any patents, copyrights, trade secrets, licenses, or other property rights of any third party. University shall promptly provide Provider with written notice of any such claim which University believes falls within the scope of this paragraph.

In the event that the LMS or any portion thereof is held to constitute an infringement and its use is enjoined, Provider shall have the obligation to, at its expense, (i) modify the infringing LMS without impairing in any material respect the functionality or performance, so that it is non-infringing, (ii) procure for University the right to continue to use the infringing software, or (iii) replace said software with equally suitable, non-infringing software. If none of the foregoing alternatives are available to Provider, University shall receive a repayment of all monies paid to Provider, and Provider shall accept return of the LMS at its expense, once University has arranged for the continuation of the functions performed thereby. Provider agrees to indemnify University for any liability or expense due to claims for personal injury or property damage (iv) arising out of the furnishing or performance of the LMS or the services provided hereunder or (v) arising out of the fault or negligence of Provider.
To the extent allowable by law, University will indemnify Provider for the negligent acts of its officers and employees while acting in the scope of their employment by University. Nothing contained herein shall be construed or interpreted as; (i) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (ii) the consent of the University or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the University or of the State of Florida beyond the waiver provided in section 768.28 Florida Statutes.

Without intending to create any limitation relating to the survival of any other provisions of this Agreement, Provider shall agree that the terms of this paragraph shall survive the expiration or earlier termination of this Agreement. Each party shall promptly notify the other in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section apply. Such notification shall include all notices and legal process it receives in the most expeditious means available to the affected party. Each party agrees that the other may employ attorneys of its own choice to appear and defend the action and that no party shall do anything to compromise the defense of the action or any settlement thereof and shall provide all reasonable assistance which the other may require. The foregoing indemnity shall not apply to settlement of claims made without the consent of both parties.

6.8 **SEVERABILITY**
If any provisions of the Agreement resulting from this ITN is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provisions shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of the Agreement.

6.8.1 In the event any provision of this Agreement shall be held invalid or unenforceable by an court of competent jurisdiction, or by an administrative hearing officer in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof.

6.9 **INDEPENDENT PROVIDER**
Nothing herein is intended or shall be construed as in any way creating or establishing a partnership or employee relationship between the parties or in any way making the Provider the agent or representative of the University for any purposes in any manner whatsoever. Provider is, and shall remain independent with respect to all services performed under this Contract.

6.10 **INSURANCE**
At all times during the term of this Contract, the parties hereto shall comply with the following insurance requirements:

A. Each party shall maintain workers’ compensation insurance for all such party’s employees, including coverage under the applicable law of the jurisdiction where the work will be performed. Each party shall also require that all of its subcontractors maintain similar worker's compensation coverage. For the purpose of this section, self-insurance approved by the appropriate state agency or regulatory body is deemed to satisfy these requirements.

B. Vendor shall maintain general liability insurance. Limits shall be a minimum of: (i) $1,000,000 per occurrence for bodily injury or property damage; (ii) $1,000,000 per occurrence for products or completed operations; and (iii) $2,000,000 annual aggregate for products or completed operations’ claims. Coverage shall include those perils generally associated with a commercial general liability policy and specifically include contractual liability coverage. Coverage shall contain no exclusions for cross liability between insureds. Vendor shall also require that all of its subcontractors maintain similar general liability insurance.

C. Vendor shall maintain automobile liability insurance. Limits shall be a minimum of: (i) $1,000,000 per accident combined single limit or (ii) $1,000,000 per occurrence for bodily injury and $500,000 per occurrence for property damage. Coverage shall include liability assumed under this Contract.
D. With regard to the above, Vendor’s insurance shall: (i) be underwritten by a licensed insurer reasonably acceptable to the University; (ii) be primary for University’s exposure relative to any insurance purchased or maintained by the Vendor; (iii) be evidenced by a certificate of insurance containing a signature by a duly authorized representative of the insurer providing such insurance cannot be canceled, non-renewed or materially altered without thirty (30) days written notice by certified mail to the University; (iv) Florida Gulf Coast University Board of Trustees shall be named as additional insured as well as the certificate holder. With regard to the general liability insurance and automobile liability insurance, Vendor’s insurance shall be endorsed so the insurer will waive.

6.11 **SCOPE CHANGES**

The University may upon mutual agreement with the Vendor, require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. Such equitable adjustments require the written consent of the Provider, which shall not be unreasonably withheld.

6.12 **DEFAULT**

The failure of either party to the Contract to comply with any of the provisions herein shall place that party in default. Prior to terminating this Contract, the non-defaulting party shall notify the defaulting party in writing, stating the provision or provisions that give rise to the default. The defaulting party shall be entitled to a period of thirty (30) days from the receipt of the Notice of Default to cure the default. The failure of either party to exercise this right shall not be construed as a waiver of such right in the event of further default or non-compliance. Both parties have the right to exercise any and all legal remedies available to them by applicable laws. Expenses associated with litigation will be borne by the prevailing party.

6.13 **FORCE MAJURE**

Neither Provider nor University shall be responsible for terms or conditions herein when cancellation is due to causes beyond their reasonable control including, but not limited to: civil tumult, strike, lockout, epidemics, war, embargoes, fire, hurricane, windstorm, or acts of God. In the event of cancellation caused by a condition described herein, liability shall be limited to out-of-pocket expenses incurred by the non-canceling party prior to notice of cancellation.
This Agreement is entered into this ___ day of __________, 20__ by and between FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a public body corporate of the State of Florida, hereinafter referred to as (“University”) and __________________________________________, a __________ corporation registered and authorized to do business in the State of Florida, hereinafter referred to as (“Provider”). The Invitation to Negotiate, its attachments and addenda (“ITN”), the Provider’s Reply thereto, and the Provider’s Best and Final Offer (“BAFO”) are attached hereto as Composite Exhibit “A” (“Agreement Documents”).

WHEREAS, The University is desirous of establishing an agreement for the provision of a Learning Management System its software, license, and services with Provider; and,

WHEREAS, The Provider has considerable knowledge and experience and is desirous and capable of providing a Learning Management System.

NOW THEREFORE, in consideration of the mutual agreements and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 TERMS

For the purpose of the provision of a Learning Management System, the term of this Agreement shall be for ________ (__) years beginning ________, 20___ and ending on ________, 20___. If contemplated by the ITN, this Agreement may be renewed pursuant to the costs and terms to be agreed upon (if not previously addressed) for _____ (__) additional _____ (__) month periods, or any portion thereof, contingent upon the discretion of the University and the Provider, satisfactory performance evaluation of Provider by the University and subject to availability of funds by the University.

2.0 SPECIAL CONDITIONS

2.1 LICENSE
Provider hereby grants to University a perpetual, irrevocable, non-exclusive license, (the “License”) to use the Learning Management System supplied hereunder (the “Program”) and other materials related thereto (the (“Documentation”), which collectively with the Program is referred to herein as the (“Software”), subject to the terms and conditions hereinafter set forth in this Agreement and its attachments and addenda.

2.2 LICENSED SOFTWARE

2.2.1 The Program
The Program will consist of the modules or components, will perform the functions and will comply with the Agreement Documents identified and set forth herein.
2.2.2 Documentation
The Documentation will consist of any and all operator’s and user’s manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the Program. Provider is required to deliver to University the number of copies of said Documentation as agreed to. University will have the right, as part of the License granted herein, to make as many additional copies of the Documentation as it may deem necessary.

2.2 PERFORMANCE

2.1.1 Provider shall perform all services outlined herein and furnish all labor at their risk, assuming full responsibility for completion of the services and providing the deliverables required for the amount stated in the Agreement Documents. Unless previously agreed to in writing, no compensation will be provided for additional reimbursable expenses.

2.1.2 The parties agree that time is of the essence in the performance of the services required under this Agreement. The Provider agrees that all services shall be prosecuted regularly, diligently and uninterrupted at such a rate of progress as well ensure full completion thereof within the time specified.

2.1.3 Personnel
Provider will provide personnel (“Personnel”) as listed in the Agreement Documents to perform services. Personnel shall at all times be the employees of Provider, and Provider shall be solely responsible for the supervision, daily direction and control of such Personnel. Provider shall have the right, or the University may request, to remove, reassign, or take any other employment-related action with respect to any of its Personnel furnished pursuant to the Agreement. In the event of such removal or reassignment, Provider will furnish a replacement. In addition, Provider shall be responsible for payment of all compensation, benefits and employer taxes relating to such Personnel (including workers’ compensation and disability). Provider reserves the right to hire qualified temporary employees or subcontractors, if the circumstances require, in order to accommodate special requests from University.

2.1.4 Program Installation and Acceptance
University shall make ready the Program as specified in the Agreement Documents. University and Provider shall conduct testing procedures on the Program. The successful completion of acceptance testing will be deemed University’s acceptance of the Program. In the event that the Program fails to pass any of the testing procedures, or fails to function properly or in conformity with the description, specifications and Documentation set forth, then Provider will have thirty (30) days in which to correct such defect and cause the Program to successfully pass all such tests or function as aforesaid, University may elect to cancel this Agreement and Provider shall immediately refund all sums previously paid to it by University hereunder.

2.2 SCOPE OF USE

2.2.1 Site License
University may use the Program only at the site identified in the Agreement Documents. Notwithstanding, University may, at any time, without prior notice to or consent of Provider, transfer the Program to any other location of University, its affiliates or subsidiaries or other entities owned or controlled by University (collectively, “University Sites”). University shall thereafter promptly give Provider notice of such new location.
2.2.2 Multiple Use Option
University will have the option to extend and include simultaneous use of the Program at additional University Sites within the University, which it may exercise in its sole discretion at any time, and from time to time by tendering to Provider payment pursuant to the Agreement Documents for each additional University Site at which the Program will be so used, together with a notice identifying such additional location.

2.2.3 Scope Changes
The University may, upon mutual agreement with the Provider, require, by written order, changes altering, adding to, or deducting from the Agreement specifications, provided that such changes are within the general scope of the Agreement. Such equitable adjustments require the written consent of the Provider, which shall not be unreasonably withheld.

2.3 PRICE
Information regarding price to the University for said services is detailed in the Agreement Documents. The prices specified herein will remain firm for the term of this Agreement. Consideration of price changes at each renewal period, or as identified in Section 2.2, Scope of Use, will be given provided such changes are reasonable and acceptable to the University.

2.4 MOST FAVORED CUSTOMER
Provider agrees to treat University as its most favored customer. Provider represents that all of the prices, warranties, benefits and other terms being provided hereunder are equivalent to or better than the terms being offered by Provider to its current customers. If Provider enters into an agreement with any other customer as a result of reciprocity as identified in this agreement and providing such customer with more favorable terms, then this Agreement will be deemed appropriately amended to provide such terms to University. Provider shall promptly provide University with any refund or credits thereby created.

3.0 GENERAL CONDITIONS

3.1 ACCOUNTING
Provider and University shall keep accurate records as to performance of all services required pursuant to this Agreement, and of all transactions relating to this Agreement.

3.2 PAYMENT
Pursuant to FGCU-PR6.021, FGCU Regulations, University shall mail to Provider payment within forty (40) days after receipt of an acceptable invoice and receipt, inspection, and approval of the goods and/or services provided in accordance with the terms and conditions of this Agreement. University may make partial payments to the Provider upon partial delivery of services, upon request by the Provider and approval by the University, providing fees or other compensation for services or expenses, hourly or daily rates or units of deliverables are clearly identified in the Agreement Documents. Units of deliverables shall include, but not be limited to, reports, findings, and drafts, where applicable, that must be received and accepted in writing by the University prior to payment. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for proper pre-audit and post-audit reviews. Failure by the University to make such payment within forty (40) days may result in the University paying interest at a rate of one percent (1%) per month calculated on a daily basis on the unpaid balance. Interest payments shall be mailed within fifteen (15) days after they become due. In the case of an error on the part of Provider or University, the forty (40) day period shall begin to run upon receipt by University of a corrected invoice or other remedy of the error.

3.2.1 The University’s obligation to pay under this agreement is contingent upon an annual appropriation by the State Legislature.
3.3 **TAXES**
Provider acknowledges that University does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The University will not pay for any personal property taxes levied on the Provider or for any taxes levied on employees’ wages.

3.3 **INDEMNIFICATION**
Provider will indemnify, defend, and hold harmless the Florida Gulf Coast University Board of Trustees, and their officers, employees and representatives, from and against any and all liability, damages, losses, expenses, claims, demands, suits, actions, judgments, bodily injuries or sicknesses to any person, or damage, destruction, or loss of use of any property arising out of, or related to, the services provided by the Provider to the extent caused by the negligent acts or omissions or willful misconduct of the Provider, its employees, or agents.

Furthermore, Provider will indemnify, defend, and hold harmless the Florida Gulf Coast University Board of Trustees, and their officers, employees and agents against any action brought against same with respect to any claim, demand, cause of action, debt or liability, to the extent that it is based upon a claim that the LMS used hereunder infringes or violates any patents, copyrights, trade secrets, licenses, or other property rights of any third party. University shall promptly provide Provider with written notice of any such claim which University believes falls within the scope of this paragraph.

In the event that the LMS or any portion thereof is held to constitute an infringement and its use is enjoined, Provider shall have the obligation to, at its expense, (i) modify the infringing LMS without impairing in any material respect the functionality or performance, so that it is non-infringing, (ii) procure for University the right to continue to use the infringing software, or (iii) replace said software with equally suitable, non-infringing software. If none of the foregoing alternatives are available to Provider, University shall receive a repayment of all monies paid to Provider, and Provider shall accept return of the LMS at its expense, once University has arranged for the continuation of the functions performed thereby. Provider agrees to indemnify University for any liability or expense due to claims for personal injury or property damage (i) arising out of the furnishing or performance of the LMS or the services provided hereunder or (ii) arising out of the fault or negligence of Provider.

To the extent allowable by law, University will indemnify Provider for the negligent acts of its officers and employees while acting in the scope of their employment by University. Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the University or the State of Florida or their agents and agencies to be sued; or (3) a waiver of sovereign immunity of the University or of the State of Florida beyond the waiver provided in section 768.28 Florida Statutes.

Without intending to create any limitation relating to the survival of any other provisions of this Contract, both parties agree that the terms of this paragraph shall survive the expiration or earlier termination of this Contract. Each party shall promptly notify the other in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section may apply. Such notification shall include all notices and legal process it receives in the most expeditious means available to the affected party. Each party agrees that the other may employ attorneys of its own choice to appear and defend the action and that no party shall do anything to compromise the defense of the action or any settlement thereof and shall provide all reasonable assistance which the other may require. The foregoing indemnity shall not apply to settlement of claims made without the consent of both parties.

3.4 **PROVIDER’S WARRANTY**
Provider hereby warrants and represents to University as follows:

3.4.1 **Ownership**
Provider is the owner of the Software or otherwise has the right to grant to University the License without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Licensor.
3.4.2 Business Requirements
Provider is fully aware of University’s business requirements and intended uses for the Software, including any set forth in the Agreement Documents, and the Software shall satisfy such requirements in all material respects, as fit for such intended uses and will operate accordingly.

3.4.3 Warranty Period
For the term of the Agreement and as specified herein, (“the Warranty Period”), the Program shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specification and Documentation set forth herein and on any hardware and system software and other software set forth, and interface with other programs as required, and the Documentation shall completely and accurately reflect the operation of the Program.

3.5 LIMITATION OF LIABILITY
For all claims against the Provider under this Agreement, and regardless of the basis on which the claim is made, the Provider’s liability under this Agreement for direct damages shall be limited to the dollar amount of this Agreement. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this Agreement.

Unless otherwise specifically enumerated in this Agreement, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the Agreement requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The University may, in addition to other remedies available to them at law or equity and upon notice to the Provider, retain such monies from amounts due Provider as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

3.5 ORDER OF PRECEDENCE
1. This Agreement including any Addenda and Amendments hereto;
2. Successful Respondent’s Proposal, and any Addenda thereto;
3. University’s RFP, and any addenda thereto;

3.7 INSURANCE
To ensure the indemnification obligation contained herein, Provider shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement the insurance coverages set forth below, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.

A. Provider shall maintain workers’ compensation insurance for all employees, including coverage under the applicable law of the jurisdiction where the work will be performed. Provider shall also require that all of its subcontractors maintain similar worker’s compensation coverage. For the purpose of this section, self-insurance approved by the appropriate state agency or regulatory body is deemed to satisfy these requirements.

B. Provider shall maintain general liability insurance. Limits shall be a minimum of: (i) $1,000,000 per occurrence for bodily injury or property damage; (ii) $1,000,000 per occurrence for products or completed operations; and (iii) $2,000,000 annual aggregate for products or completed operations’ claims. Coverage shall include those perils generally associated with a commercial general liability policy and specifically include contractual liability coverage. Coverage shall contain no exclusions for cross liability between insureds. Provider shall also require that all of its subcontractors maintain similar general liability insurance.

C. Provider shall maintain automobile liability insurance. Limits shall be a minimum of: (i) $1,000,000 per accident combined single limit or (ii) $1,000,000 per occurrence for bodily injury and $500,000 per occurrence for property damage. Coverage shall include liability assumed under this Agreement.
D. Provider shall maintain umbrella liability insurance. Limits shall be a minimum of: (i) $2,000,000 per occurrence; (ii) $2,000,000 general aggregate; and, (iii) $10,000 self insured retention.

E. With regard to the above, Provider’s insurance shall: (i) be underwritten by a licensed insurer reasonably acceptable to the University; (ii) be primary for the University’s exposure relative to any insurance purchased or maintained by the Provider; (iii) be evidenced by a certificate of insurance containing a signature by a duly authorized representative of the insurer providing such insurance cannot be canceled, non-renewed or materially altered without thirty (30) days written notice by certified mail to the University; (iv) such policy or policies shall specifically protect University by naming Florida Gulf Coast University Board of Trustees as additional insured; (v) the official title of the certificate holder shall be Florida Gulf Coast University Board of Trustees. With regard to the general liability insurance and automobile liability insurance, Provider’s insurance shall be endorsed so the insurer will waive subrogation rights against the University.

3.8 DEFAULT
The failure of Provider to this Agreement to comply with any provisions of this Agreement shall place Provider in default. Prior to terminating this Agreement, the University shall notify the Provider in writing, stating the provision or provisions which give rise to the default. The Provider shall be entitled to a period of thirty (30) days from the receipt of the Notice of Default to cure the default. In the event said default is not timely cured, the University may immediately terminate this Agreement by written notice. The failure of University to exercise this right shall not be construed as a waiver of such right in the event of further default or non-compliance. The University shall have the right to exercise any and all legal remedies available to them by applicable laws.

3.9 TERMINATION FOR CONVENIENCE
The University reserves the right to terminate this Agreement in whole or part at any time when in the best interest of the University without penalty or cause. Upon receipt of the written notice of Termination for Convenience, the Provider shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. In the event of termination under this provision, all documents, data and reports prepared by the Provider as a result of this Agreement shall become the property of and delivered to the University. The Provider shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of termination. Such compensation shall be the Provider’s sole remedy against the University in the event of termination under this provision.

3.10 UNILATERAL CANCELLATION
This Agreement may be unilaterally canceled by University for refusal by Provider to allow public access to all documents, papers, letters or other materials which may be subject to the provisions of Chapter 119, Florida Statutes, and made or received by Provider in conjunction with this Agreement.

3.11 GOVERNING LAWS
This Agreement is subject to the relevant laws and regulations of the State of Florida, the Florida Board of Governors and the University. Any provisions herein, in conflict with the relevant laws and regulations shall be void and of no effect. Provider consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting within the State of Florida.

3.12 GOVERNMENT REGULATIONS
To the extent applicable, Provider agrees that it will comply with:

A. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving or benefiting from federal financial assistance.
B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance.

C. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.

D. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.

E. The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.

F. Executive Order 11246 of September 24, 1965 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor, which prohibit discrimination in government employment on the basis of race, creed, color or national origin.


H. Section 413.036 of the Florida Statutes, which provides for the procurement of services from a qualified nonprofit agency for the blind or for the other severely handicapped.

I. Chapter 760, Florida Statutes, which prohibits discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.

J. The Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability or perceived disability

K. All regulations, guidelines, and standards which are now or may be lawfully adopted under the above statutes, as well as any other applicable federal, state, or local rules, regulations, and ordinances.

3.13 INDEPENDENT PROVIDER
It is understood and agreed that nothing contained herein is intended or should be construed as in any way making Provider the agent or representative of University for any purposes in any manner whatsoever. Provider is, and shall remain, an independent Provider with respect to all services performed under this Agreement.

3.14 FORCE MAJEURE
No default, delay, or failure to perform on the part of Provider or University shall be considered a default, delay or failure to perform otherwise chargeable hereunder, if such default, delay or failure to perform is due to causes beyond either party’s reasonable control including, but not limited to: strikes, lockouts, or in actions of governmental authorities, epidemics, war, embargoes, fire, earthquake, acts of God, or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

3.15 SEVERABILITY
In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
3.16 ASSIGNMENT
Neither party shall assign (by operation of law, change of control or otherwise) any part of this Agreement without the prior written consent of the other party. Provider may, however, assign its right to payments (but none of its obligations) for financing purposes.

3.17 VENUE
This Agreement and any disputes hereunder, shall be construed in accordance with the laws of the State of Florida and enforced in the courts of Lee County, Florida.

3.18 CAPTIONS
Captions may be inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provisions contained herein.

3.19 ENTIRE AGREEMENT
This Agreement, which includes the Agreement Documents constitute the entire Agreement between the parties, and no addition, modification or amendment hereto shall be effective unless in writing and executed by the parties to this Agreement.

3.20 PUBLIC ENTITY CRIME
A person or vendor who has been placed on the convicted vendor list by the Department of Management Services, State of Florida, may not submit a bid to provide any goods or services, submit a bid for construction or repair of a building, submit a bid for leases of real property or be awarded or perform work as a contractor, supplier, subcontractor or consultant to Florida Gulf Coast University for a period of 36 months from the date of being placed on the convicted vendor list.

3.21 LOBBYING
Contractor is prohibited from using funds provided under this Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.

3.22 DISCLAIMER
This Agreement is not binding upon the Board of Trustees, of FLORIDA GULF COAST UNIVERSITY until it has been signed by its President, or by a person with a specific delegation of authority to sign this Agreement.

3.23 PROPRIETARY INFORMATION
Provider acknowledges that University is a public body corporate of the State of Florida and as such Proprietary Information subject to this Agreement, the Agreement Documents, and any and all subsequent attachments hereto shall be processed in accordance with Chapter 119, Florida Statute.

3.24 RECIPROCITY
With the consent and agreement of the Provider, the use of this Agreement may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities issued and administrated by Florida Gulf Coast University Board of Trustees. Each governmental agency allowed by the Provider to use this Agreement shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received and accepted. No agency receives any liability by virtue of this Agreement.
3.23 NOTICES

All notices and all other matters pertaining to this Agreement requiring delivery to a party shall be in writing, shall be hand delivered, or sent by Certified U.S. Mail return receipt required, and shall be deemed to have been duly given when received by the addressees at the following addresses.

If to University:  
Ms. Maryan Egan  
Director of Procurement Services  
Florida Gulf Coast University  
10501 FGCU Blvd South  
Fort Myers, Florida 33965-6565

With a copy to:  
___________________________________  
___________________________________  
___________________________________  
___________________________________

If to Provider:  
___________________________________  
___________________________________  
___________________________________  
___________________________________

With a copy to:  
___________________________________  
___________________________________  
___________________________________  
___________________________________

3.24 RECEIPT

This Agreement must be signed by all parties and dated before service begins, or a letter of justification must accompany this Agreement. Provider hereby certifies that it and its Directors and/or Principal Officers are not employed and/or affiliated with FLORIDA GULF COAST UNIVERSITY or its Board of Trustees.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated above.

___________________________________  FLORIDA GULF COAST UNIVERSITY  
___________________________________ BOARD OF TRUSTEES

By__________________________________  By______________________________

[Signature]      [Signature]

_________________________________  ________________________________

[Printed name and Title of Signer]   [Printed name and Title of Signer]
Florida Gulf Coast University
Office of Procurement Services
10501 FGCU Boulevard South
Fort Myers, Florida 33965-6565
Fax: 239.590.1140

SOLICITATION NUMBER: ITN 12R-008
SOLICITATION TITLE: LEARNING MANAGEMENT SYSTEM
RFP DUE DATE AND TIME: MARCH 21, 2012 3:00p.m. local time

PLEASE BE ADVISED THAT THE FOLLOWING CHANGES ARE APPLICABLE TO THE ABOVE REFERENCED SOLICITATION:

THIS ADDENDUM NOW BECOMES A PART OF THE ORIGINAL SOLICITATION. THE ADDENDUM ACKNOWLEDGMENT FORM SHALL BE SIGNED BY AN AUTHORIZED COMPANY REPRESENTATIVE, DATED AND RETURNED AS INSTRUCTED WITH THE SOLICITATION REPLY. FAILURE TO DO SO MAY SUBJECT THE REPLY TO DISQUALIFICATION.

_________                ___________
PROPOSER NAME            PRINTED NAME

_________                ___________
ADDRESS                  PHONE  

_________                ___________
CITY AND STATE           DATE

AUTHORIZED SIGNATURE: