

North Dakota University System
Instructional Design and Training
MHEC Addendum

Whereas, the North Dakota University System (NDUS) underwent a competitive sourcing event for Instructional Design and Training service, awarding eLearning Innovation LLC, dba Ease Learning 35 Manchester Road, Suite 11A #238 Derry, NH 03038 (Bidder) a contract pursuant to Attachment A: Ease Learning CTS-20-005 Instructional Design Bid-2020-7-30 (Contract); and

Whereas the competitive sourcing event extended to Midwestern Higher Education Compact (MHEC) Eligible Organizations access to any resulting award and contract through a participating addendum with MHEC; and

Whereas, MHEC reserved the right to enter into an addendum to any contract entered into between the NDSU and the Bidder; and

Whereas, Bidder was awarded the bid and entered into a contract with the NDUS upon completion of the competitive sourcing event, Attachment A (Contract); and

Therefore, in consideration of mutual covenants, conditions and promises contained herein, MHEC and Bidder agree as follows:

Scope: This contract addendum ("Addendum") allows for the purchase by Eligible Organizations under the Midwestern Higher Education Compact instructional design and training services awarded to Bidder pursuant to Attachment A: Ease Learning CTS-20-005 Instructional Design Bid-2020-7-30

Eligible Organization shall purchase under this Addendum by executing a valid Statement of Work (SOW) with Bidder. Each quote supplied to Eligible Organization from Bidder, and each order placed pursuant to this Addendum, shall incorporate the terms and conditions of the Contract, and include the Addendum contract number MHEC-01292021.

Midwestern Higher Education Commission (or MHEC) shall be defined as the governing body of the Midwestern Higher Education Compact, an interstate compact of twelve Midwestern states, such states being: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Eligible Organizations shall be defined as all public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies located in a member state of the Midwestern Higher Education Compact. Additionally, because MHEC is an instrumentality of state government for each of the Compact's 12 member states, participation may be offered to any of the following entities if agreeable by all parties: K-12 schools and districts, including public libraries; cities, counties, and local subdivisions; and state agencies, located in a member state of the Midwestern Higher Education Compact.

Procuring Eligible Organization shall be defined as an Eligible Organization which desires to purchase under this contract addendum and has executed a valid order.

The terms and conditions of the Contract shall apply to the Procuring Eligible Organization as well as to the NDUS unless amended or modified in this Addendum. Where the terms and conditions of the Contract and/or Addendum are in conflict with the Procuring Eligible Organization's state and/or institutional laws or regulations, the Procuring Eligible Organization and Bidder may enter into an amendment to amend the terms and conditions of the Contract and/or Addendum to conform to the Procuring Eligible Organization's state and/or institutional laws or regulations.

This Addendum will be effective upon the signature of the parties hereto. The Addendum will be coterminous with the Contract awarded by NDUS and any extension of the Contract, unless terminated pursuant to the terms of this addendum.

Order of Precedence:

- An executed Scope of Work ("SOW") between Procuring Eligible Organization and Bidder the terms and conditions of which shall only apply between applicable Procuring Eligible Organization and Bidder;
- The terms and conditions of this Addendum which shall not diminish, change, or impact the rights of the North Dakota University System (NDUS) with regard to the North Dakota University System (NDUS) contractual relationship with the Bidder under the terms of the Contract;
- The Contract between the North Dakota University System (NDUS) and Bidder;
- An executed Master Services Agreement ("MSA") between Procuring Eligible Organization and Bidder the terms and conditions of which shall only apply between applicable Procuring Eligible Organization and Bidder.

Contract Modifications or Additional Terms and Conditions to Contract:

1. Termination of Addendum: (a) MHEC may terminate the Addendum at any time if the Bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such event, MHEC shall provide the Bidder with thirty (30) day written notice of the terms in breach. If after such notice, the Bidder fails to remedy the breach within those 30 days, MHEC may immediately cancel the Addendum. In the event the Addendum is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all products and services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted. (b) Procuring Eligible Organization may, at its discretion, terminate an order under this Addendum at any time if the Bidder fails to carry out its terms or fails to fulfill the terms of the Addendum. In such event, Procuring Eligible Organization shall provide the Bidder with thirty (30) days written notice of the terms in breach. If after such notice, the Bidder fails to remedy the breach within those 30 days, Procuring Eligible Organization may immediately cancel the Addendum. The Procuring Eligible Organization shall pay the Bidder only for such performance as has been properly completed and is of use to Procuring Eligible Organization. The Procuring Eligible Organization may, at its discretion, contract for provision of the goods or services required to complete the order and hold the Bidder liable for all expenses incurred in such additional contract

over and above the total cost of performance. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

2. Bidder's duties for professional services include:
 - a) **Instructional Design Services** - Work with individual faculty members, groups, or departments to design effective online courses for the Procuring Eligible Organization's Learning Management System (Blackboard, Canvas, D2L Brightspace, Moodle, etc.) and third-party software tools that can be used in course development with the ability to convert existing face-to-face courses using key pedagogical principals and methods to create content into formats appropriate for teaching courses online. Course design activities include but are not limited to:
 - o Learning outcomes
 - o Content creation (ADA compliant)
 - o Course organization
 - o Develop assessments such as assignments, quizzes, projects, and more
 - o Develop interactive elements such as online discussions, presentations, and more
 - b) **Instructional Design Training** – Work with Procuring Eligible Organizations to provide instructional design training services which may include but is not limited to these concepts:
 - o Instructional design foundations and practices
 - o Instructional design models to develop online learning
 - o Online course creation basics
 - o Online course creation advanced methods
 - o Select, design, and evaluate digital media to support learning
 - o Best practices for implementing digital media to support learning
 - o Apply data mining techniques to design and evaluate online learning experiences
 - o Learning to teach online
 - o Gamification and effective pedagogy
 - o Best practices for motivating online students to learn
 - o Best practices for online assessment
 - o How to create learning paths
 - o How to make online courses interactive
 - o Best practices for keeping online students engaged with the course
 - o Effective methods for providing grading feedback to online students
3. Consideration of Payment: Consideration for all services performed and goods and materials supplied by the Bidder pursuant to this Addendum will be paid by Procuring Eligible Organization as follows:
 - a) Compensation of one hundred and ten dollars (\$110.00) per hour for Instructional Design Services and for Instructional Design Training.
 - b) Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Bidder in performance of this Addendum may be reimbursed with prior written approval from Procuring Eligible Organization's authorized representative. Provided that Bidder shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount then provided for in the current U. S. General Services Administration "GSA" Per Diem Rates or pursuant to Procuring Eligible Organization reimbursement policies.

- c) Payment shall be made by Procuring Eligible Organization promptly after the Bidder's presentation of invoices for services performed and acceptance of such services by Procuring Eligible Organization, but in no event less than 45 calendar days after receipt of a correct invoice or as otherwise agreed to between the Procuring Eligible Organization and Bidder. All services provided by the Bidder pursuant to this Addendum shall be performed to the satisfaction of Procuring Eligible Organization, as determined at the sole discretion of its authorized representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Bidder shall not receive payment for work found by Procuring Eligible Organization to be unsatisfactory or performed in violation of any applicable federal, state, or local law, ordinance, rule, or regulation. Invoices shall be presented by Bidder monthly, or as agreed upon with Procuring Eligible Organization.
4. Insurance: Bidder shall maintain appropriate levels of insurance as required by the Procuring Eligible Organization and certificates of insurances shall be delivered to Procuring Eligible Organization prior to commencement of the work. The insurance company shall be licensed in the applicable state in which work is being conducted. The Bidder shall give the Procuring Eligible Organization a minimum of thirty (30) days' notice prior to any modifications or cancellation of policies.
5. Indemnity, General and Patent: The Bidder shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC. With respect to anything provided to MHEC or Procuring Eligible Organization by the Bidder pursuant to this bid, the Bidder shall indemnify and defend MHEC and its respective officers, agents, and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by Procuring Eligible Organization.
6. Governing Law; Venue: (a) As between Procuring Eligible Organization and Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides. (b) As between MHEC and Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota. (c) As between Procuring Eligible Organization, MHEC and Bidder, this Addendum will be construed in accordance with, and its performance governed by the laws of the state in which Procuring Eligible Organization resides. Venue for all legal proceedings arising out of this

Addendum, or breach thereof, shall be in a state or federal court with competent jurisdiction located in a state in which Procuring Eligible Organization resides.

7. **Qualified to do Business and Compliance with Laws:** Bidder certifies that it is qualified to conduct business in each of the member states of the Midwestern Higher Education Compact, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin and shall comply with all applicable laws and governmental regulations required by such states.
8. **Federal, State and Local Sales Taxes; Federal Excise Taxes:** Purchases made by Procuring Eligible Organization may be exempt from payment of state sales and use taxes and federal excise taxes. Certification of these exemptions will be provided to the Bidder upon request.
9. **Sovereign Immunity:** All parties to this Addendum and any orders placed hereunder acknowledge and agree that nothing in the solicitation or the Contract or Addendum shall be construed as a modification, compromise or waiver by the Procuring Eligible Organization of any rights or defenses of any immunities provided by Federal law or the laws of the state where Procuring Eligible Organization resides to Procuring Eligible Organization or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract or Addendum. To the extent that this section conflicts with any other section of the Contract or Addendum, this section shall govern.
10. **Records and Audit:** Bidder agrees to maintain records directly related to the invoices and orders under this Addendum for a period of six (6) years or such term as required by applicable law from the date of receipt of final payment after termination of the Addendum. These records shall be subject to inspection, which may be initiated no more than twice annually, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Addendum shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.
11. **Legal Relationship:** Bidder and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Bidder has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Addendum is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties.
12. **Privacy Laws:** Bidder agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA), and

all other state and federal privacy laws to the extent applicable to any product or service provided to Eligible Organizations.

13. Bidder shall not use or disclose any information it receives from Procuring Eligible Organization under this contract and Addendum that Procuring Eligible Organization has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of the Contract and this Addendum or as authorized in advance by Procuring Eligible Organization. Procuring Eligible Organization shall not disclose any information it receives from Bidder that Bidder has previously identified as confidential and that Procuring Eligible Organization determines in its sole discretion is protected from mandatory public disclosure under Procuring Eligible Organizations' data practices and privacy laws. Bidder understands that Procuring Eligible Organization must disclose to the public upon request any records it receives from Bidder. Bidder further understands that any records obtained or generated by Bidder under the Contract and this Addendum, may, under certain circumstances, be open to the public upon request under the Procuring Eligible Organization's data practices and privacy laws. Bidder agrees to contact Procuring Eligible Organization promptly upon receiving a request for information under the data practices and privacy laws and comply with Procuring Eligible Organizations instructions on how to respond to the request.
14. Data Ownership: Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Bidder will use Eligible Organization's data only for the purpose of fulfilling its duties under the Contract and this Addendum or an order under the Addendum, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.
15. Assignment: This Addendum shall not be transferred or assigned without the prior written consent of MHEC.
16. MHEC not liable for Procuring Eligible Organizations: Notwithstanding anything to the contrary contained in this Addendum or an order made pursuant to this Addendum, MHEC shall not be liable to Bidder for the failure of any Procuring Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of the Contract and this Addendum or an order made pursuant to the Contract and this Addendum. An Eligible Organization shall not be liable or responsible for any other Eligible Organization that executes its own order pursuant to the Contract and this Addendum. MHEC makes no guarantee that any Eligible Organization or number of Eligible Organizations will make any purchases or utilize the Contract and/or Addendum in any manner.
17. Notwithstanding MHEC's role in entering into this Addendum and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- a) Eligible Organization is solely responsible for its own due diligence regarding the Contract and this Addendum;
 - b) MHEC is not responsible for, and makes no representation or warranty, regarding the Bidder and regarding the appropriateness of the Contract and Addendum for the Eligible Organization specifically; MHEC has not made any legally binding representations regarding Bidder and that MEC does not guarantee or warrant the products or services of Bidder; and
 - c) MHEC is not responsible for the actions or omissions of Bidder.
18. Administrative Reporting and Fees: On a calendar-quarterly basis (where quarter one is January 1 - March 31 and the quarter one report is due by April 30), Bidder will, in a timely manner, make available to MHEC utilization reports and information generated by this Addendum, reflecting net product and service sales to all Procuring Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one- and one-half percent (1.5%) of the net Product and Service sales for that quarter period (the "Fee"). The Bidder shall not include in the calculation of the Fee or any sales of product or services to the State of North Dakota.
19. Announcement and Publicly: Any announcement and publicity given to MHEC (or an Eligible Organization) resulting from this Addendum must receive the prior approval of MHEC (or Eligible Organization). Bidder will not make any representations of MHEC's (or Eligible Organization's) opinion or position as to the quality or effectiveness of the products, supplies, and/or services that are subject of this Addendum without the prior written consent of MHEC (or Eligible Organization).
20. Marketing: Bidder will assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material and full service, on-line MHEC-specific web site to receive information on products, supplies, services, and prices and to place orders.
21. Oversight Committee: An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Bidder in developing and refining the implementation of the Contract and Addendum in the Compact member states. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the Bidder on the effectiveness of its implementation progression. There will be an annual meeting between bidder and MHEC (and perhaps members of the oversight committee) to perform a contract health check, including items such as those above.
22. Vendor Representative: Bidder shall assign a senior level representative who shall be the primary MHEC contact for all matters related to this Addendum and all sales and marketing efforts made pursuant to this Addendum.

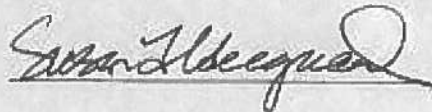
23. Notification: Whenever under the terms of this Addendum any notice is required or permitted to be given by one party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the parties at the addresses set forth below, or at such other address as the parties may direct in writing from time to time:

To MHEC	To Bidder
Nathan Sorensen	David Ruderman
105 Fifth Avenue South	35 Manchester Road, Suite 11A, 238
Suite 450	
Minneapolis, MN 55401	Derry, NH 03038
e-mail: nathans@mhec.org	dryderman@easelearning.com
Phone: 612-677-2767	844-327-3776

To Procuring Eligible Organizations: Notices shall be sent to Procuring Eligible Organization's business address. The term "business address" shall mean the "Bill" to address set forth in an invoice submitted to Procuring Eligible Organization.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Midwestern Higher Education Commission

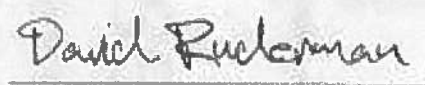


Name: Susan G. Heegaard

Title: President

Date: 2/25/21

Bidder



David Ruderman

VP Learning Partnerships

02/24/2021

Contract No: MHEC-01292021

Attachment A: Ease Learning CTS-20-005 Instructional Design Bid-2020-7-30

SPECIAL TERMS AND CONDITIONS

1. **State Contract.** The contract resulting from this solicitation will be a State Contract made available to North Dakota state agencies and institutions.
2. **Cooperative Purchasing/Intergovernmental Language.**
 - This contract is a cooperative purchasing contract established pursuant to [N.D.C.C § 54-44.4-13](#). This contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under [N.D.C.C § 39-04.2](#), and the International Peace Garden (hereafter known as "Ordering Agencies"). Participation in this open-ended contract is not mandated; therefore, the estimated volume of this contract is not known. Contractor may contact the Procurement Officer for assistance in determining whether an entity is eligible to purchase under this contract.
 - The Midwestern Higher Education Compact (Compact), through its governing body, the Midwestern Higher Education Commission (MHEC or the Commission), is joining the NDUS and OMB in competitively soliciting proposals for instructional design services and training, with the intent to extend access to the resulting contract award to entities eligible to purchase under contracts held by MHEC. Upon final award and execution of the contract with NDUS and OMB, vendor(s) shall enter into a participating addendum with MHEC to extend the contract to all MHEC eligible entities in the 12 Midwestern member states. MHEC reserves the right to add additional terms and conditions and modify the scope of the contract in the MHEC participating addendum. See Exhibit A for details. Additional information on MHEC can be found at <http://www.mhec.org/>.
3. **Term of the Contract.** The term of the contract issued as a result of this solicitation will be as follows:
 - **Contract Period.** This Contract term (Term) begins on its Effective Date and ends on August 1, 2021.
 - **No Automatic Renewal.** This Contract will not automatically renew.
 - **Extension Option.** NDUS and OMB reserves the right to extend this Contract for an additional period of time, not to exceed six months, beyond the current termination date of this contract.
 - **Renewal Option.** NDUS and OMB may renew this Contract upon satisfactory completion of the initial Contract Term. NDUS and OMB reserves the right to execute up to four (4) options to renew this Contract under the same terms and conditions for a period of twenty-four months each.
4. **Billing Address.** After delivery of commodities or services under contract, the Contractor must submit a correct invoice. Payment will be made after inspection and acceptance.
 - Invoices must be addressed to the Purchasing Entity. All invoice and payment inquiries must be directed to the Purchasing Entity.
 - Invoices must be addressed to the Ordering Entity that places an order under this contract. All invoice and payment inquiries must be directed to the Ordering Entity. Any problems related to late payment may be escalated to the Procurement Officer.
5. **Contract Amendment – Unanticipated Amendment.** After a binding contract has been entered into, no changes may be made, unless prior written approval has been obtained from the Purchasing Entity through execution of a contract amendment. The Contractor may request changes, such as substitutions of a product, by submitting a written request to the Procurement Officer. Unanticipated amendments must be within the scope of the original contract, authorized by the terms of the contract and due to legitimate, unforeseen circumstances. ([N.D.A.C. § 4- 12- 13](#))
6. **Contract Estimated Volume.** The volume of this contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. The contractor or contractors will be required to furnish actual requirements upon receipt of an order. This contract will not include items of a similar nature, which must be bought for emergency use.
7. **Contract Sales Reports.** The contractor must maintain records of sales under the contract and furnish volume of sales information to the Purchasing Entity. The contractor must furnish reports listing all purchases made by all

government entities using this contract. The report must be furnished within thirty (30) days after the request by the Procurement Officer. The report format will be determined by mutual agreement of the contractor and the procurement officer.

8. **Order Confirmation.** The Contractor must confirm the receipt of orders by communicating with the Ordering Entity within three working days of the order placement.
9. **Delivery Time Required.** The Contractor must meet the specified delivery requirements. If delivery cannot be made within the specified time, the Contractor must notify the Ordering Entity in writing of the delay and the approximate date delivery may be expected.
 - Delivery must be made within the number of days that are agreed upon with each institution after the contractor receives an order from the Ordering Entity by issuance of a contract or purchase order or use of a purchasing card.
10. **Inspection and Acceptance or Rejection.** The NDUS and OMB reserves the right to conduct inspections and investigations related to the bidder and the offered commodities or services, including but not limited to the firm, personnel, qualifications, and the commodities and services offered to make determinations regarding compliance with the bid requirements and responsibility of the bidder. All material and workmanship are subject to inspection and testing by the NDUS and OMB at the point of manufacturer, place of storage, or upon receipt. The NDUS and OMB reserves the right to reject any commodities or services and terminate the contract if the Contractor fails to comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at the Contractor's expense. Failure to satisfactorily perform may result in suspension or debarment from the Bidders List.

If commodities or services are rejected as being not compliant with the requirements of this solicitation, the NDUS and OMB will inform the contractor in writing. The Purchasing may provide the Contractor with a reasonable opportunity to cure, whenever practicable, as set forth in writing by the Purchasing Entity.
11. **Invoicing.**

All invoices and payment inquiries must be directed to the institutions or government entities who have placed orders with the Contractor.
12. **Pricing – Tax Exempt.** All prices must be in United States currency. Bid prices must include all discounts and deductions, and to be less federal and state taxes. Bidders may contact the Procurement Officer to obtain the Purchasing Entity's tax exemption number and tax exempt certificate.
13. **Price Adjustment.** Pricing during the term of the contract will be as follows:
 - **Pricing. Firm-Fixed with Adjustment upon Renewal.** Pricing shall be firm for the first year of the Contract. If a Renewal Option is being considered, the Contractor may request a price adjustment after year one of the contract period. After the firm-fixed period, the Contractor may submit a request for a price increase to the Procurement Officer. Requests for a price increase must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. The NDUS and OMB reserves the right to accept or reject, within 30 days, or cancel the contract. The Contractor shall immediately inform the NDUS and OMB of any price decreases. Price changes will become effective upon execution of a contract amendment. All orders placed are to be billed at prices in effect at the time of the order, not the date the shipment is made.
14. **Pricing. Unit of Measure.** The unit prices is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail. (N.D.A.C. § 4-12-10-02)
15. **Time is of the Essence.**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties. Federal funding expires on December 31, 2020. However, NDUS institutions and government entities may purchase via this contract using local funds outside of this time period.

RISK MANAGEMENT REQUIREMENTS

Bidders are instructed to review the following provisions. Objections to these provisions must be made in writing to the Procurement Officer by the deadline for questions.

1. **Indemnification.** Indemnification provisions are incorporated and made part of this solicitation and resultant contract.
 - The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement
2. **Insurance.** Insurance provisions are incorporated and made part of this solicitation and resultant contract. Bidders are instructed to review the Insurance Requirements. The Successful Bidder will be required to provide the required proof of insurance prior to contract award, and failure to provide evidence of insurance coverage is a material breach and grounds for award rescission. Failure of the Contractor to keep the required insurance in effect during the term of the contract is grounds for termination of the contract.
 - Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages: 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence. 2) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section. 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence. 4) Workers compensation coverage meeting all statutory requirements. The insurance coverages listed above must meet the following additional requirements: 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State. 2) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. 3) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately. 4) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy

BID RESPONSE FORM**SPECIFICATIONS**

This bid request is for instructional design services and training. NDUS has a budget of \$280,000.00 that will need to be spent prior to the end of December 2020. After December, institutions may continue to utilize the contract and use their institutional funds. The budget for other governmental entities that may use this contract is unknown.

Vendors can bid on one category or both.

NDUS institutions and other government entities will place orders against this contract by submitting a work request to one or more awarded Contractors. The work request will describe the desired instructional design project. Contractors must respond to the NDUS institution or government entity with a cost and delivery time for accomplishing the work, in accordance with the hourly rates set forth in the contract. If the NDUS institution or government entity accept the Contractor's quote, a Participation Addendum will be executed between the parties.

Winning bids will be based on blended hourly rate.

Delivery Address: Institutions will provide delivery address

Delivery Date Time Required: Institutions and government entities using this Contract will negotiate a delivery date prior to placing the order.

Billing Address:
Same as Delivery Address
As specified in the Order

ITEM NO.		HOURLY RATE
1	Instructional Design Services - Work with individual faculty members, groups, or departments to design effective online courses for Blackboard Learn SaaS using Blackboard Learn components. • Vendor must have a demonstrated ability to convert existing face-to-face courses using key pedagogical principals and methods to create content into formats appropriate for teaching courses online. Course design activities include but are not limited to: ○ Learning outcomes ○ Content creation • Must be ADA compliant ○ Course organization ○ Develop assessments such as assignments, quizzes, projects, and more ○ Develop interactive elements such as online discussions, presentations, and more • In addition to Blackboard Learn components, the NDUS has access to a number of third-party tools which some or all campuses may be licensed for and can be used in course development. (Following is a partial list of available tools.) ○ Blackboard Collaborate Ultra and other Web conferencing tools ○ Blackboard Ally ○ Microsoft Office 365, Teams and Stream ○ YuJa ○ Respondus Lockdown Browser ○ Proctor U ○ Hoonuit by Atomic Learning ○ Starfish ○ SmarThinking	Blackboard Hourly Rate \$ \$110 Other Hourly Rate \$ 110

	- o Videoconferencing/Pexip Desktop Video - o Plus other 3rd party integrations for course content, labs, simulators, proctoring, and publisher tools	
2	Instructional Design Training – Work with campuses to provide instructional design training services which may include but is not limited to these concepts: - o Instructional design foundations and practices - o Instructional design models to develop online learning - o Online course creation basics - o Online course creation advanced methods - o Select, design, and evaluate digital media to support learning - o Best practices for implementing digital media to support learning - o Apply data mining techniques to design and evaluate online learning experiences - o Learning to teach online - o Gamification and effective pedagogy - o Best practices for motivating online students to learn - o Best practices for online assessment - o How to create learning paths - o How to make online courses interactive - o Best practices for keeping online students engaged with the course - o Effective methods for providing grading feedback to online students	Blackboard Hourly Rate \$ 110 Other Hourly Rate \$ 110

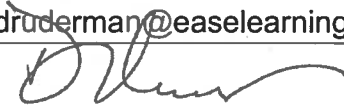
Bidder Prompt Payment Discount, if applicable: (Discounts not considered in evaluating prices.)	2% net 10
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BIDDER SIGNATURE

By submitting a Bid Response, the Bidder agrees to sell, furnish and deliver to the NDUS and other government entities placing orders under this contract all commodities and services contained in this Invitation for Bid for which a contract is awarded by the NDUS and OMB. The Bidder shall fully perform the contract in accordance with all the specifications, requirements, terms and conditions, and shall comply with all applicable provisions of the North Dakota Century Code, including chapters 54-44.4, 46-02, and 44-08, and North Dakota Administrative Code Chapter 4-12, made part of the Invitation for Bid and resultant contract by reference.

Written acceptance of the Bid Response by the NDUS and OMB constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Entity, and the Bidder named below. Written acceptance may be made by execution of a contract, purchase order, or order using a state purchasing card.

NOTICE: All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

Bidder/Contractor Name:	eLearning Innovation LLC, dba Ease Learning
Contractor Federal Employer Identification Number (FEIN)	300830220
Bidder Street Address/ P.O. Box:	35 Manchester Rd, Ste 11A #238
City, State ZIP:	Derry NH 03038
Contact Name:	David Ruderman
Contact Title:	VP Learning Partnerships
Telephone:	844-327-3776
Email:	druderman@easelearning.com
Authorized Representative Signature:	
Date	8/10/2020

BID ACCEPTANCE AND CONTRACT AWARD

The parties to this contract (Contract) are the North Dakota University System, acting through its Core Technology Services (NDUS), and the Office of Management and Budget (OMB) and the above named Bidder (CONTRACTOR). This Contract is not effective until fully executed by all parties. In no start date is specified in the Term of Contract, the most recent date of signatures of the parties shall be deemed the Effective Date.

NOTICE. All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

Acting through its Purchasing Entity:	North Dakota University System, Core Technology Services (NDUS CTS)
BY: (Signature)	
Printed Name	Darin King
Title	Vice Chancellor of IT/CIO
Date:	8/19/2020
NDUS Legal Review	

Acting through its Purchasing Entity:	Office of Management and Budget, State Procurement Office (OMB SPO)
BY: (Signature)	<i>Chad Keech</i>
Printed Name	Chad Keech
Title	;Procurement Officer II
Date:	8/19/2020

CONTRACT TERMS AND CONDITIONS

1. **Scope of Work.** CONTRACTOR, in exchange for the compensation paid by NDUS institution or government entities placing orders under this Contract, shall provide the commodities and services described in this solicitation and participation addendum. See Exhibit B

2. **Compensation.**

a. **Contractual Amount**

The ordering NDUS institution or government entity shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed the amount indicated on the bid response form (Contractual Amount). The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

b. **Payment**

1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.

2) The ordering NDUS institution or government entity shall make payment under this Contract within forty five (45) calendar days after receipt of a correct invoice.

3) Payment of an invoice by the ordering NDUS institution or government entity will not prejudice the ordering NDUS institution or government entities right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by the ordering NDUS institution or government entity, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At the ordering NDUS institution or government entities sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

4) For any amounts that are or will become due and payable to the ordering NDUS institution or government entity by CONTRACTOR, NDUS reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

3. **Prepayment.** ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY will not make any advance payments before performance by CONTRACTOR under this Contract.

4. **Payment of Taxes by State.** NDUS is not responsible for and will not pay local, state, or federal taxes. ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY will furnish certificates of exemption upon request by the CONTRACTOR.

5. **Purchasing Card.** NDUS may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY

6. **Termination.**

a. **Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties executed in writing.

b. **Early Termination in the Public Interest**

NDUS is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its State Board of Higher Education, Governor, Legislative Assembly, and Courts. If this Contract ceases to further the public policy of the State of North Dakota, ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

c. Termination for Lack of Funding or Authority

ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause

ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- 3) If CONTRACTOR fails to follow secretary of State guidelines and is not registered within 60 days of contract award, contract will be terminated.

7. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God, or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
8. **Works for Hire.** CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to NDUS. CONTRACTOR shall execute all necessary documents to enable ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY to protect ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY intellectual property rights under this section.
9. **Work Product.** All work product, equipment or materials created for ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY or purchased by ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY under this Contract belong to ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY and must be immediately delivered to ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY at ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY request upon termination of this Contract.
10. **Ordering.** A participating addendum (See Exhibit B) will be executed by each participating entity. The participating addendum is the contract between the CONTRACTOR and the Participating Entity. The Participating Addendum is subject to the terms and conditions of the State Contract, and it may also contain terms and conditions specific to that Participating Entity (e.g. site access instructions, parking permits requirements, pick up procedures, billing address, etc.). The Participating Entity is solely responsible to the Contractor for payment of any services rendered.
11. **Notice.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. Notice provided under this

provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

12. **Confidentiality.** CONTRACTOR shall not use or disclose any information it receives from NDUS ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY under this Contract that ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY. NDUS shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.
13. **Compliance with Public Records Laws.** CONTRACTOR understands that, in accordance with this Contract's Confidentiality clause, ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY promptly upon receiving a request for information under the public records law and to comply with ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY instructions on how to respond to the request.
14. **Independent Entity.** CONTRACTOR is an independent entity under this Contract and is not a ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.
15. **Assignment and Subcontracts.** CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY is prohibited from conducting business, ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY shall have the right to terminate without cause. CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of NDUS.
16. **Spoliation – Preservation of Evidence.** CONTRACTOR shall promptly notify NDUS of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to NDUS the opportunity to review and inspect such evidence, including the scene of an accident.
17. **Merger and Modification. Conflict in Documents.** This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:
 - a. The terms of this Contract as may be amended;
 - b. NDUS and OMB Solicitation Amendments related to this Invitation for Bid;
 - c. NDUS and OMB Invitation for Bid;
 - d. CONTRACTOR's bid submitted in response to this Invitation for Bid.
 - e. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.
 - f. Terms and conditions contained within any documents furnished by the Contractor, including packing slips,

shall not supersede the terms and conditions of this contract.

18. **Severability.** If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Contract did not contain that term.
19. **Applicable Law and Venue.** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.
20. **Alternative Dispute Resolution – Jury Trial.** By entering into this Contract, ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY does not waive any right to a jury trial.
21. **Attorney Fees.** In the event a lawsuit is instituted by ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY to obtain performance due under this Contract, and ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY reasonable attorney fees and costs in connection with the lawsuit.
22. **Nondiscrimination and Compliance with Laws.** CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the Term of this Contract all licenses and permits required by law. CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY to terminate in accordance with the Termination for Cause section of this Contract.
23. **State Audit.** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. ORDERING NDUS INSTITUTION OR GOVERNMENT ENTITY State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.
24. **Effectiveness of Contract.** This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.