

Order Form

Six Deg LLC - Yellowdig

Yellowdig
123 S. Broad St. Suite 1240
Philadelphia, PA 19109

Client

Texas A&M University
College of Education and Human Development
Harrington Education Center Office Tower, 4222 TAMU
540 Ross Street, College Station, TX 77843

This Order Form describes, among other things, the services to be provided to Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas on behalf of its College of Education and Human Development (the "Client or TAMU") by Yellowdig. No changes or modifications or waivers to this Order Form or the scope of the Services defined herein will be effective unless in writing and signed by both parties. This Order Form is effective as of the date last signed below (the "Effective Date").

A. **Platform Solutions.** Yellowdig will provide Client with access to the **Pilot & Starter Package** services solution, which Client may access through the Yellowdig platform, together with the associated support services described on Exhibit A (collectively, the "Services"). More detailed Service descriptions can be requested directly from Yellowdig. Upon implementation, the Platform will be available in accordance with the service level agreement attached as Exhibit B. Subject to an amendment to this Order Form signed by both parties, Client may upgrade its Services package.

B. **Technical Support.** Yellowdig will maintain a Customer Support team, to assist in the use and operation of the Platform and to handle service requests / inquiries when facing an issue. Yellowdig's Support team will be available during regular business hours, which are **M-F 9am-6pm EST** (excluding holidays). Yellowdig Support may be accessed via email at support@yellowdig.com. Further support details are described in Exhibit A.

C. **Client Assistance.** Client will provide Yellowdig with such information and assistance as reasonably required for Yellowdig to provide the Services.

D. **Term.** This Order Form is effective as of the Effective Date and will remain in effect through 12/31/2019 (the "**Initial Term**"). The Client will gain access to the Pilot as of 8/15/2018 (the "Pilot Start Date"). The Client will move from Pilot into Starter Package upon 01/01/2019. This Order Form shall automatically renew for successive 1-year periods thereafter (each a "**Renewal Term**") unless written notice of non-renewal is given by either party to the other party at least 60 days prior to the expiration of the then-current term. The initial term plus any renewal terms shall not exceed five (5) years without written agreement.

E. **Fees.** Client shall pay Yellowdig the following fees:

Package	Client	Fees	Active User Allowance	Overages
Pilot Program	Texas A&M, Ed & Human Dev	\$0	N/A	N/A
Starter Package	Texas A&M, Ed & Human Dev	\$15,000	1,000	\$10 per user in excess of 1,100 Active Users

An 'Active User' is a unique user with at least one activity (login, pin, view) during the contracted term.

Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. Overages may be invoiced

monthly in arrears. In lieu of paying standard overages, Client may, at any time and subject to an amendment to this Order Form, purchase a block of Active Users; provided that unused Users shall be forfeited at the end of the then-current period. If Client exceeds a pre-paid block of Active Users, Yellowdig shall charge Client standard overages, unless Client elects in writing to purchase an additional block of Active Users.

ACCEPTED AND AGREED:

Client

Texas A&M University
College of Education &
Human Development

Six Deg. LLC
Yellowdig

By:

ROBERT C. BOUNDS

DIRECTOR, PROCUREMENT SERVICES

24 Sep 2018

By:

DocuSigned by:

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Shaunak Roy

President & CEO

9/24/2018 5:12:33 PM EDT

Billing Contact Name:

Billing Contact Email Address:

Billing Contact Phone Number:

EXHIBIT A

Pilot Package Features

- Product License: Access for unlimited courses, with unlimited Active Users
- Client Success: Unlimited Client Success Onboarding Calls

Starter Package Features

- Product License: Access for unlimited courses, with up to 1,000 Active Users
- Client Success: Access to Client Success support via clientsuccess@yellowdig.com
- Technical Support: Access to Support via support@yellowdig.com
- Data: Access to ALL client data via Yellowdig API
- Customization: Access to customization, based on executed Statement of Work @ \$100/development hour

Support Services

- Onboarding - On-boarding webinars, recorded demos, and pdf guides
- Client Success - Client Success email, and product support email during standard Yellowdig business hours
- Technical Support - Email support, Zendesk live chat within Yellowdig Platform (All managed in-house)

EXHIBIT B SERVICE LEVEL AGREEMENT

1. Definitions

- 1.1. "Failure Event" means a period of Unavailability in excess of 5 minutes.
- 1.2. "Maintenance Window" means a period scheduled by Yellowdig during minimal traffic times, not to exceed 2 hours per week, wherein Yellowdig can perform Platform maintenance tasks.
- 1.3. "Unavailability" means the Platform is unavailable outside the Maintenance Window.
- 1.4. "Uptime" means the general availability of the Platform. Uptime will be measured by a calendar month period and calculated as follows: (total minutes in any calendar month – total minutes of Unavailability) divided by (the total minutes in same calendar month).

2. Uptime Commitment. Yellowdig will deliver the following Uptime for the Platform: 99%

- 2.1. Exceptions. Yellowdig is not responsible for a failure to meet any service level to the extent that failure is attributable to any of the following, in which case the services downtime or Failure Event does not count against the Uptime Commitment:
 - 2.1.1 Client's failure to perform any of its responsibilities set forth in the Agreements to the extent such failure adversely affects Yellowdig's ability to make the Platform available, provided that Yellowdig uses commercially reasonable efforts to perform despite Client's failure.
 - 2.1.2. Factors outside Yellowdig's reasonable control; provided that Yellowdig would have been able to perform but for such factor, Yellowdig has not materially contributed in the cause of such factor, and Yellowdig could not have reasonably foreseen and prevented the effect of such factor with a commercially reasonable effort.

3. Communication. In the case of a Failure Event, Yellowdig shall use commercially reasonable efforts to (i) notify Client's designated contact, (ii) identify the source, and (iii) resolve.

4. Termination Option. If Yellowdig fails to meet the Uptime Commitment during 2 consecutive calendar months or during 3 calendar months within any 12-month period, Client may terminate this Order Form upon 30 days' written notice, in which case Yellowdig will refund a pro-rata portion of any prepaid fees. The provisions of this Exhibit A states Client's sole and exclusive remedy for any service level deficiencies of any kind.

5. Data Security and Privacy. Yellowdig will store & maintain all user data securely via as outlined within The Family Educational Rights and Privacy Act (FERPA). Additional information on Yellowdig Privacy and Security can be found here: <https://help.yellowdig.com/hc/en-us/articles/217404417-Privacy-and-security>. Yellowdig API documentation can be provided directly to the Client, upon request.

6. State Contracting Requirements:

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the Yellowdig or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Yellowdig agrees that any payments owing to Yellowdig under this Agreement may be applied directly toward certain debts or delinquencies that Yellowdig owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: "Under Section 2155.004, Texas Government Code, the Yellowdig certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

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

Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

Venue. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against TAMU shall be in Brazos County, Texas.

Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU and Yellowdig to attempt to resolve any claim for breach of contract made by Yellowdig that cannot be resolved in the ordinary course of business. Yellowdig shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine Yellowdig's claim and any counterclaim and negotiate with Yellowdig in an effort to resolve the claim.

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

- a. **REQUIREMENT AND STANDARDS.** Yellowdig certifies that each information and communication technology ("ICT") product or service furnished under this Agreement satisfies the requirements (including exceptions) specified in the regulations [36 CFR Part 1194] implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA Success Criteria and Conformance Requirements (2008) and the functional performance criteria.
- b. **DOCUMENTATION.** Yellowdig shall maintain and retain, and make available to TAMU for review upon request, records of any testing or simulations conducted and all other documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria.
- c. **REMEDIATION.** If TAMU notifies Yellowdig that any furnished ICT product or service is not in compliance with such requirements and standards, Yellowdig shall, at no cost to TAMU, remediate or replace the non-compliant ICT products or services within the period specified by TAMU. If Yellowdig fails to complete the remediation or replacement within the specified time, TAMU may terminate this Agreement without liability or have the necessary remediation performed on TAMU's behalf, and Yellowdig shall promptly reimburse TAMU for any expenses incurred by TAMU on such remediation.

Franchise Tax Certification. If Yellowdig is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Yellowdig certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Yellowdig is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. Yellowdig agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, Yellowdig will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to Yellowdig and TAMU may terminate this Agreement without further duty or obligation hereunder. Yellowdig acknowledges that appropriation of funds is beyond the control of TAMU.

Prompt Payment Act. Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor's Office. Yellowdig understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Yellowdig agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Yellowdig will include this provision in all contracts with permitted subcontractors.

Non-Waiver. Yellowdig expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Yellowdig Certification regarding Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, Yellowdig certifies Yellowdig (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Yellowdig acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Yellowdig Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Yellowdig certifies Yellowdig (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Yellowdig acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, Yellowdig and each person signing on behalf of Yellowdig certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. TAMU and Yellowdig can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU: Address: Texas A&M University
College of Education and Human Development
Harrington Education Center Office Tower, 4222 TAMU
540 Ross Street, College Station, TX 77843
Attention: Bryan Fruge
Phone: (979) 458-1078
E-mail: bryanfruge@tamu.edu

Yellowdig: Address: Six Deg LLC - Yellowdig
123 S. Broad St. Suite 1240
Philadelphia, PA 19109
Attention: Tyler Rohrbaugh
Phone: (717) 873-6231
E-mail: tyler@yellowdig.com

FERPA. Pursuant to Title 1, Chapter 202, §202.77 of the Texas Administrative Code, Yellowdig hereby acknowledges responsibility to comply with all applicable TAMU policies, rules, standards, practices and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by TAMU.

For purposes of this section concerning Vendor Access, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in Section 51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by TAMU to be essential to the continued performance of the mission of TAMU, the unavailability of which would result in consequences to TAMU.

In the event Yellowdig should obtain or be granted access to Confidential and/or Mission Critical Information of TAMU ("TAMU Information"), Yellowdig will keep and protect TAMU Information confidential to no less than the same degree of care as required by TAMU policies, rules and procedures. At the expiration or early termination of this Agreement, Yellowdig agrees to return all TAMU Information or agrees to provide adequate certification that the TAMU Information has been destroyed. Yellowdig its employees, agents, contractors and subcontractors shall use the TAMU Information solely in connection with performance by Yellowdig of the services provided to TAMU pursuant to this Agreement, and for no other purpose. Should Yellowdig, its employees, agents, contractors or subcontractors acquire other TAMU information during the course of this Agreement it shall not be used for Yellowdig own purposes or divulged to third parties. Yellowdig shall comply with all terms and conditions of any TAMU non-disclosure agreement applicable to this Agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this agreement and the eligibility for Yellowdig to receive any student information from the University for a period of not less than five (5) years.

The information resources point of contact for TAMU is Bryan Fruge. See contact info in prior Notices section. Yellowdig shall provide Bryan Fruge with a list of all Yellowdig employees assigned to this Agreement. Such list shall be updated and provided to Bryan Fruge within 24 hours of any staff changes. Yellowdig is responsible for reporting all security incidents directly to TAMU. TAMU's standard business hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday. Any access to TAMU Information outside of these hours must have prior written approval of TAMU.

Additionally, Yellowdig agrees to the following FERPA requirements:

Yellowdig and its employees will adhere to all Texas and Federal law that regulates the confidentiality and protection of the confidential information and shall ensure proper notification of any breach thereof required under relevant law including, but not limited to, the requirements pertaining to the security, confidentiality, and privacy of the confidential information set forth in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). Yellowdig agrees to indemnify and hold harmless TAMU for any damages, costs or expenses finally awarded against TAMU in any legal action as a direct result of Yellowdig failure to comply with its obligations to TAMU under this Agreement with respect to the nondisclosure of confidential information protected under the Family Educational Rights and Privacy Act.