

April 4, 2018

Wes Wolfe
Buyer
Texas A&M University
Procurement Services
979-845-2014 office
swolfe3@tamu.edu

Subject: Best and Final Offer – RFP MAIN 18-0003 – Integrated Assessment Platform

Dear Mr. Wolfe:

AEFIS, LLC is privileged to be invited to submit its Best and Final Offer (BAFO), as the top finalist, for consideration in the award determination.

Congratulations to you and your team in completing the technology partner selection process, which must have been a tedious and difficult journey. It's been a pleasure working with you and your team during this process. I am confident you made the right choice selecting AEFIS as your partner. We are extremely excited to be working with you and Texas A&M (TAMU) Team.

In our proposal, we described the key features of our proposed solution and approach specifically designed to meet the goals and objectives of TAMU. We thank you for the opportunity to facilitate our presentations. We appreciated the opportunity for your Committee to meet our team, where we demonstrated the AEFIS solution, articulate the breadth of our technical expertise, business knowledge, and most importantly provide TAMU with a clear vision of how we will deliver an Integrated Assessment Platform. More importantly, the presentations provided us the opportunity to have interactive discussion with the TAMU team, receive and respond to questions, and learn more about your institution's needs and goals. With this knowledge, my team and I am more confident than ever that this will be a great and mutually successful partnership.

Per your request, we are submitting the following for further review and evaluation by TAMU:


1. **BAFO Transmittal Letter** (*this letter*)
2. **Revised Cost Section with BAFO Pricing and Payment Options**
3. **Standard AEFIS Services Agreement**

We are excited to partner with TAMU for this critical initiative which is a long-term investment towards the success of both organizations. Thus, we provided TAMU with three payment options that offer further discounts to TAMU for up-front payment and extending the commitment period. The Revised Cost Section reflects these three different commitment options for your consideration. We will be happy to work with Texas A&M University to make sure the cost does not prevent us from working together.

If you have any questions or further instructions, feel free to contact me at (877) 674-3122 ext. 2001 or via email at msualp@aefis.com.

My team and I look forward to a very successful partnership between AEFIS and Texas A&M.

Best regards,



Mustafa Sualp
Founder & CEO
AEFIS, LLC

Texas A&M BAFO & Payment Options

AEFIS is a Software-as-a-Service (SaaS) solution offered on an annual subscription basis and ALL our solutions are included in your subscription. The pricing is based on student enrollment. Subscription price may increase up to 5% annually based on the preceding term.

We are excited to partner with TAMU for this critical initiative which is a long-term investment towards the success of both organizations. Thus, we provided TAMU with **three payment options** below that offer further discounts to TAMU for up-front payment and extended commitment period. We will be happy to work with Texas A&M University to make sure the cost does not prevent us from working together.

Based on Student FTE#: 67,000

PAYMENT OPTION #1: Standard Annual Subscription Pricing for 5-Years			
<u>Subscription Term</u>	<u>Due</u>	<u>AEFIS SaaS Subscription & Hosting</u>	<u>Other (Installation, Integration, Setup & Training)</u>
7/1/2018 - 6/30/2019	7/1/2018	\$106,000.00	\$25,000.00
7/1/2019 - 6/30/2020	7/1/2019	\$108,000.00	
7/1/2020 - 6/30/2021	7/1/2020	\$110,000.00	
7/1/2021 - 6/30/2022	7/1/2021	\$112,000.00	
7/1/2022 - 6/30/2023	7/1/2022	\$114,000.00	
TOTAL for 2018-2023*		\$575,000.00	
<i>*With estimated annual price increases of up to 5% and standard annual commitment.</i>			
		\$115,000.00	Per Year Cost Estimate
		\$1.72	Per Student per year Cost Estimate

PAYMENT OPTION #2: "3-Year Up-front Payment" with 5-Year Commitment			
<u>Term</u>	<u>Due</u>	<u>AEFIS SaaS Subscription & Hosting</u>	<u>Other (Installation, Integration, Setup & Training)</u>
7/1/2018 - 6/30/2019	7/1/2018	\$302,100.00	Waived
7/1/2019 - 6/30/2020	--	Paid Up Front	
7/1/2020 - 6/30/2021	--	Paid Up Front	
7/1/2021 - 6/30/2022	7/1/2021	\$106,000.00	
7/1/2022 - 6/30/2023	7/1/2022	\$106,000.00	
TOTAL for 2018-2023*		\$514,100.00	
<i>*With 5% discount for 3-Year Up-front payment and commitment for additional 2-years. We offer 50% money back guarantee for years 2 and 3.</i>			
		\$102,820.00	Per Year Cost with "3-Year Up-Front" + 5-Year Commitment
		\$1.53	Per Student per year Cost with "3-Year Up-Front" + 5-Year Commitment

PAYMENT OPTION #3: "5-Year Up-front Payment"			
<u>Term</u>	<u>Due</u>	<u>AEFIS SaaS Subscription & Hosting</u>	<u>Other (Installation, Integration, Setup & Training)</u>
7/1/2018 - 6/30/2019	7/1/2018	\$477,000.00	Waived
7/1/2019 - 6/30/2020	-	Paid Up Front	
7/1/2020 - 6/30/2021	-	Paid Up Front	
7/1/2021 - 6/30/2022	-	Paid Up Front	
7/1/2022 - 6/30/2023	-	Paid Up Front	
TOTAL for 2018-2023*		\$477,000.00	
<i>*With 10% discount for 5-Year Up-front payment. We offer 50% money back guarantee for years 3, 4 and 5.</i>			
		\$95,400.00	Per Year Cost with "5-Year Up-Front"
		\$1.42	Per Student per year Cost with "5-Year Up-Front"

Notes

The BAFO and all three options above covers the following:

- Subscription to AEFIS integrated assessment management platform and ALL AEFIS Solutions
- Licensing for your students (current and future alumni), faculty, and staff
- Cloud hosting of your dedicated AEFIS Instance
- Installation and basic configuration of your AEFIS Instance
- Integrations with existing campus systems for automated data import and access (SiS: Banner & LMS: Blackboard)
- Setup and configuration of key AEFIS structural elements (Campus/College/Department)
- Two-day on-site orientation and training for key users and administrators
- On-going Remote Training for Your Key Users
- On-going Support, Backup, Maintenance and Upgrades


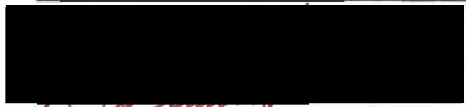
AEFIS Standard Services Agreement

Please see attached on the next page.

AEFIS SOFTWARE SERVICES AGREEMENT

This Software Services Agreement ("Agreement") is between AEFIS LLC, a Pennsylvania limited liability company ("AEFIS"), and the subscribing institution named below ("Client"), and is made as of the date of Client's signature below (the "Effective Date"). Client and AEFIS are collectively referred to herein as the "Parties."

By signing below, you certify that you have read this Agreement, you are authorized to sign this Agreement on behalf of the Client, and you are authorized to commit the Client to be bound by this Agreement. Please return a fully completed and signed copy of this Agreement to AEFIS via scanned email attachment to accounting@aefis.com, or via mail to the address below.

AEFIS, LLC Signature:  _____ Duly Authorized Signature Print Name: <u>Mustafa Sualp</u> Title: <u>CEO</u> Date Signed: <u>23 July 2018</u> Address: <u>1429 Walnut Street</u> <u>10th Floor</u> <u>Philadelphia, PA 19102</u>	Customer: Texas A&M University Signature:  _____ Duly Authorized Signature Print Name: <u>Robert C. Bounds</u> Title: <u>Director, Procurement Services</u> Date Signed: <u>7.20.2018</u> Address: <u>1182 TAMU</u> <u>College Station, TX 77843-1182</u> <u>contracts@tamu.edu</u>
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SERVICE ORDERED	START DATE (MM/DD/YYYY)	END DATE (MM/DD/YYYY)	PRICE (US\$)	Payment Due
AEFIS SaaS Subscription & Hosting	8/1/2018	7/31/2021	\$302,100.00	8/1/2018
AEFIS Implementation & Training	8/1/2018	TBD	\$0	NA

ADDITIONAL COMMENTS:

"3-Year Up-front Payment" with 5-Year Commitment. See "AEFIS Texas A&M BAFO Response" for details.

1. Scope of Services

A. Assessment Service. During the Term, AEFIS shall provide access to the AEFIS Assessment Service (the "Assessment Service") as described at <http://www.aefis.com>. Client shall receive any updates and enhancements to the Assessment Service during the Term of this Agreement. Assessment Service access may be provided via remote hosting by AEFIS, local hosting by Client, or a combination, which delivery method shall be mutually agreed by AEFIS and Client.

B. Implementation and Training Services. If indicated on the first page of this Agreement, AEFIS shall provide the implementation and/or training services described on Exhibit A ("Implementation and Training Services").

C. Additional Services. Client may also request additional services from AEFIS at the terms and fees described on Exhibit B ("Additional Services").

D. Assessment Services, Implementation and Training Services, and Additional Services are collectively referred to herein as "Services."

2. Price and Payment Terms

A. Prices. Client will pay AEFIS the fees for the Assessment Service, Implementation and Training Services, and Additional Services in accordance with the terms and conditions set forth on the first page of this Agreement and on Exhibit B. All fees are subject to an annual adjustment on each anniversary of the Effective Date by an amount not to exceed five percent (5%).

B. Reimbursable Expenses. In addition to the fees set forth on the first page of this Agreement and on Exhibit B, Client shall reimburse AEFIS for reasonable out-of-pocket costs and expenses incurred by AEFIS in connection with the rendition of the Services and approved in advance by Client, including, without limitation, travel costs, travel time (half-rate), accommodation, etc., at actual cost upon presentation by AEFIS of invoices therefor and supporting documentation. Client agrees to pay for travel costs up to the amount allowed by the State of Texas.

C. Payment. AEFIS shall submit invoices for fees and reimbursable costs and expenses. Unless expressly specified otherwise, all amounts are due in full within thirty (30) days after Client's receipt of AEFIS's invoice and shall be paid in US Dollars. If Client believes there are any errors in an invoice, Client must notify AEFIS of any errors in writing as required under the Texas Prompt Payment Act (Texas Government Code Chapter 2251).

D. Taxes. All fees set forth in this Agreement do not include taxes, and, with the exception of Texas sales, use, and excise taxes pursuant to *Texas Tax Code*, Section 151.309, Client is responsible for any other taxes (except those based on AEFIS' income) or import duties imposed on the Services.

3. Term and Termination

A. Term. This Agreement shall commence as of the Effective Date and continue until the End Date set forth on the first page of this Agreement (the "Initial Term"). Following the Initial Term and unless otherwise terminated as provided in this Agreement, the Term of this Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") until such time as a Party gives the other Party written notice of non-renewal no fewer than thirty (30) days prior to the last day of the then-current term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term". The Term shall not exceed a total of five (5) years.

B. Termination for Breach. Either Party may terminate this Agreement upon written notice for material breach, provided, however, that except in the event of a breach of Section 5, the terminating party shall give the other Party written notice of the breach and a period of not less than thirty (30) days to cure the breach. Should the breaching Party fail to cure such breach within the thirty day cure period, the non-breaching Party may terminate this Agreement at any time thereafter upon written notice to the breaching Party. Termination for breach will not alter or affect the terminating Party's right to exercise any other remedies for breach.

C. Effect of Termination or Expiration. Upon termination or expiration of this Agreement for any reason: (1) the license granted under this Agreement shall terminate; and (2) Client shall pay all outstanding fees incurred under this Agreement through the date of termination or expiration. All provisions of this Agreement which by their nature should survive or which relate to ownership, confidentiality, limitations on liability and indemnification, including, without limitation, Sections 2 and 4 through 18, shall survive termination or expiration of this Agreement and remain in full force and effect. Termination of this Agreement shall not relieve either Party from any of such Party's obligations incurred prior to such termination.

4. Proprietary Rights

A. Proprietary Rights. The Assessment Service includes access to software. The software associated with this Agreement and any improvements, modifications, enhancements, and changes to the software including, without limitation, any customizations, updates and add-on modules, and compilations and derivatives of any of the foregoing, whether made by AEFIS, Client or any other party, and all copies thereof, whether created or developed prior to, during or after the Term, and all patents, copyrights, trademarks, trade secrets and all other proprietary rights related to or embodied in any of the foregoing (collectively, the "AEFIS Intellectual Property") are proprietary to and belong exclusively to AEFIS or AEFIS's licensors, and title to them shall remain at all times with AEFIS or AEFIS's licensors, whichever is applicable. All work product, materials, documentation, frameworks, formulae, analytics, source code, methodologies, ideas, concepts, know-how, techniques, inventions, techniques developed or provided by or on behalf of AEFIS, whether alone or jointly with Client or any other party, in connection with the performance of Services and all patents, copyrights, trademarks, trade secrets and other intellectual property related to or embodied in the foregoing, are and shall remain exclusively AEFIS property ("AEFIS Work Product"). AEFIS Intellectual Property and AEFIS Work Product shall be referred to herein

collectively as “AEFIS Proprietary Rights.” To the extent Client or any of its employees, contractors or agents retains any right, title or interest in or to AEFIS Proprietary Rights, Client hereby irrevocably assigns all such right, title and interest to AEFIS without the need of further documentation and shall ensure its employees, contractors and agents shall do the same.

B. Client Furnished Materials. Any tangible materials furnished by Client for use by AEFIS shall remain Client property. Client grants to AEFIS the right to use such materials in connection with performance of Services under this Agreement. All such materials shall be returned to Client upon demand by Client. To the extent permitted by the Constitution and laws of the State of Texas, Client shall defend at its expense, and indemnify AEFIS against any costs and any award or settlement of damages resulting from a claim that any materials provided by Client to AEFIS infringe or misappropriate the intellectual property rights of any third party.

C. License to Assessment Service. Upon and subject to the terms and conditions set forth in this Agreement, provided that no undisputed payments due under this Agreement are in arrears, AEFIS hereby grants to Client a limited non-exclusive, non-transferable license to use the Assessment Service for internal use during the Term of this Agreement. Client covenants and agrees that licenses herein granted to Client do not permit Client to sublicense, transfer, assign, distribute or provide access to the Assessment Service or any AEFIS Proprietary Rights in any way to any third party or to create derivative works based on thereon (including translation, modification, alteration, expansion or adaptation, regardless of form). Client may not infringe any intellectual property rights of AEFIS. All rights not specifically granted to Client in this Agreement are reserved by AEFIS. AEFIS shall defend at its expense, and indemnify Client against any costs and any award or settlement of damages resulting from a claim that the Services or any materials provided by AEFIS to Client infringe or misappropriate the intellectual property rights of any third party.

D. Residual Rights. Notwithstanding anything to the contrary herein, AEFIS and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of performing any Services hereunder, so long as AEFIS or its personnel acquire and apply such information without disclosure of any Confidential Information of Client. Nothing in this Agreement shall preclude AEFIS from developing, using or marketing professional development, consulting services or materials that are similar or related to the Services or any AEFIS Proprietary Rights developed under or pursuant to this Agreement

5. Confidentiality, Non-Solicitation

A. Non-Disclosure. Each Party hereto agrees to hold in strict confidence the Confidential Information (defined below) which a Party provides (“Disclosing Party”) to the other (“Recipient”) or to which Recipient gains access in the course of performing its responsibilities hereunder. Recipient shall use such Confidential Information only within the scope of Recipient’s rights and responsibilities under this Agreement. Recipient shall disclose Disclosing Party’s Confidential Information to its employees, agents or contractors

on a need-to-know basis only and then only provided that, prior to any such disclosure, such employee, agent or contractor shall have agreed in writing to be bound to confidentiality provisions at least as restrictive as those contained herein. To the extent permitted by the Constitution and laws of the State of Texas, Recipient shall be liable for any breach of such confidentiality provisions by the employee, agent or contractor as if Recipient committed such breach itself. Recipient acknowledges and understands the competitive value and confidential nature of the Disclosing Party's Confidential Information and shall prevent the unauthorized, negligent or inadvertent use, copying or disclosure of Disclosing Party's Confidential Information in a manner not less than that employed to protect its own Confidential Information and always with at least a reasonable degree of care. Recipient further agrees that Disclosing Party shall be able to enforce all proprietary rights against Recipient relating to Confidential Information provided under this Agreement. Recipient agrees that it shall immediately notify Disclosing Party upon discovery of any unauthorized disclosure or use of the Confidential Information provided to it by Disclosing Party and will cooperate with Disclosing Party in every reasonable way to assist Disclosing Party to regain possession of and terminate any unauthorized use of the Confidential Information that was subject to the unauthorized disclosure and/or use. Upon the request of Disclosing Party, but in any event upon termination or expiration of this Agreement, Recipient shall surrender to Disclosing Party all of the Disclosing Party's Confidential Information. Without limiting the foregoing, Client agrees to observe complete confidentiality with respect to AEFIS Proprietary Rights and will not copy, reproduce, publicize or otherwise disseminate any of the foregoing to third parties. Any material breach of confidentiality by a Party shall permit the non-breaching Party to terminate this Agreement at its discretion. AEFIS acknowledges that Client 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 Client's written request, AEFIS 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 Client in a non-proprietary format acceptable to Client. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Client has a right of access. AEFIS acknowledges that Client 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*.

B. Confidential Information Defined.

1. "Confidential Information" means all confidential business, financial and technical information of a party, including, without limitation, information relating to software, (including both source and object code) hardware, technical and systems profiles, documents, records, programs, systems, data, disks, tapes, designs, approaches, improvements, techniques, methodologies, methods, processes, formulae, memoranda, notes, records, drawings, manuals, reports, flow diagrams, procedures, ledgers, files, communications, technical requirements, names, addresses and other identifiers and information of customers and prospects, financial information, billing information, business relationship information, statistical data and methods, and other know-how or information relating to the Disclosing Party, including any information that are modifications of, and/or are

derived from, the foregoing which are not generally known or available to the public. AEFIS's Confidential Information shall include, without limitation, the Assessment Service and AEFIS Proprietary Rights. Confidential Information shall not include information that is: (i) already, or otherwise becomes, generally known by third parties, as a result of no act or omission of the receiving party; (ii) subsequent to disclosure hereunder is lawfully received from a third party having the right to disseminate the information without restriction or disclosure; (iii) generally furnished to others by the disclosing party without restriction on disclosure; or (iv) already known by the receiving party prior to receiving it from the disclosing party and is not received from a third party in breach of that third party's obligations of confidentiality.

2. Certain Confidential Information disclosed by Client to AEFIS may include student education records. AEFIS and its employees, agents, contractors, and subcontractors 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). Such records remain at all times the property of Client or Client's students, as the case may be, and may not be redisclosed by AEFIS to any third parties without the express written consent of Client. Client hereby designates AEFIS as a Client "official" with a legitimate educational interest in the Client's education records as defined in FERPA. Such designation is solely for the purposes of FERPA compliance and for no other purpose, and to the extent Client has policies, rules, and procedures binding on Client officials generally, such policies, rules, and procedures will apply to AEFIS only insofar as such compliance is relevant to compliance by AEFIS and Client with FERPA. AEFIS shall implement reasonable administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure Client education records. AEFIS shall: (a) abide by FERPA's limitations on re-disclosure of personally identifying information in education records; (b) not use or disclose education records created or received from, by, or on behalf of Client or its students for any purpose other than the purpose for which such disclosure is made; and, (c) not use or disclose such education records except as permitted under this Agreement, as required by law, or as authorized by Client in writing. AEFIS agrees to indemnify and hold harmless Client for any damages, costs or expenses finally awarded against Client in any legal action as a direct result of AEFIS' failure to comply with its obligations to Client under this Agreement with respect to the nondisclosure of confidential information protected under FERPA.

If Recipient is legally required to disclose Confidential Information, Recipient shall, to the extent allowed by law, promptly give Disclosing Party written notice of the requirement so as to provide Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If Recipient complies with the terms of this paragraph, disclosure by Recipient of that portion of the Confidential Information which Recipient is legally required to disclose will not constitute a breach of this Agreement. Recipient is not required to pursue any claim, defense, cause of action, or legal process or proceeding on Disclosing Party's behalf.

C. Solicitation of Personnel. During the Term and for 24 months following termination or expiration of this Agreement neither Party shall solicit for hire or engagement (as an

employee, consultant, reseller, business associate, implementation partner, officer or director, or otherwise), or hire or engage, any person who is or was an employee of the other Party during the preceding 24 months. The foregoing shall not apply where any such employee is responding to a publicly and generally advertised position by either Party that is not related to the services and responsibilities performed by such employee under this Agreement and provided that such employee has not been directly recruited or solicited by the other Party.

- D. Vendor Access. AEFIS hereby acknowledges responsibility to comply with all applicable Client 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 Client.

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 Client to be essential to the continued performance of the mission of Client, the unavailability of which would result in consequences to Client.

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

Both parties shall each provide contact information for specific individuals. The designated contact for Client shall be Dr. Alicia Dorsey, Office of Institutional Effectiveness & Evaluation, 1157 TAMU, College Station, TX 77843-1157, Telephone: (979) 862-2918, Email: amdorsey@tamu.edu. The designated contact for AEFIS shall be Mustafa Sualp, Founder & CEO, AEFIS, LLC, 1429 Walnut Street, 10th Floor, Philadelphia, PA 19102, Telephone: (877) 674-3122, Email: msualp@ae fis.com. Should the designated contact for either party need to be changed, the new contact information shall be updated and provided to the respective parties within 24 hours of any staff changes. Should AEFIS have a need to access Client Information, that request shall be directed to Client's designated contact.

Further, AEFIS is responsible for reporting all security breaches directly to Client. Client's designated contact for breaches shall be Help Desk Central (helpdesk@tam u.edu; (979) 845-8300). Help Desk Central can be contacted 24/7. Security breach investigation reports shall be provided to the designated contact for Client and Client's Chief Information Security Officer (ciso@tam u.edu).

6. Obligations of Client

A. Client Participation. AEFIS's pricing and successful delivery of Services is based upon Client's agreement that it shall (i) provide AEFIS supplied personnel with timely access to appropriate facilities, communication facilities (including VPN based remote access), equipment, space, power, documentation, networks, files, additional software (if needed), and skilled and knowledgeable Client personnel to assist in the performance of any joint efforts, and (ii) treat as AEFIS Confidential Information and use the concepts contained in any proposal or statement of work only to evaluate AEFIS's suitability to perform the Services and limit disclosure thereof to only those of its personnel that are involved in the evaluation thereof. Client understands and agrees that the results, accuracy and contents of any work product developed in connection with the Services, are dependent upon the content and accuracy of information provided by Client.

B. Personnel. Client shall appoint representatives to provide assistance in connection with AEFIS's performance of the Services. Those representatives and any other personnel of Client assigned to assist AEFIS in connection with the performance of the Services, shall be familiar with Client's requirements, technical architecture and shall have the expertise and capabilities necessary to permit AEFIS to undertake and complete the Services.

C. Use of Software. Client shall ensure that AEFIS and its personnel are licensed or otherwise permitted to use any software made available by Client for AEFIS's use in connection with the Services.

D. Indemnification. To the extent permitted by the Constitution and laws of the State of Texas, Client shall indemnify, defend and hold AEFIS and its personnel harmless in relation to any claim that use of programs, documentation or equipment made available by Client for AEFIS's use in connection with the Services violates or infringes upon the rights of third parties, except to the extent such claim is due to the Services.

E. Confirmation and Acknowledgement. Client confirms that Client shall promptly fulfill its obligations under this Section 6 at no charge to AEFIS and acknowledges that timely fulfillment of such obligations are essential to the performance of the Services and that, to the extent permitted by the Constitution and laws of the State of Texas, AEFIS shall not be liable for any deficiency in performing the Services if such deficiency results from Client's failure to fulfill its obligations in a timely manner.

F. Approvals Client shall process paperwork submitted by AEFIS promptly. If Client anticipates any delays, it will notify AEFIS accordingly.

7. Warranty and Disclaimer

AEFIS warrants the Services will be performed in a professional manner, in conformity with generally prevailing industry standards, and will conform in all material respects to the descriptions of the Services in AEFIS's documentation and marketing materials. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. AEFIS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

8. Limitation of Liability, Indemnification

To the extent permitted by the Constitution and laws of the State of Texas, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCURRED OR SUFFERED BY THE OTHER ARISING AS A RESULT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE OTHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. To the extent permitted by the Constitution and laws of the State of Texas, AEFIS'S TOTAL LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES, REGARDLESS OF CAUSE OR THEORY OF RECOVERY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CLIENT TO AEFIS DURING THE SIX (6) MONTH PERIOD PRIOR TO THE DATE THE CLAIM ARISES.

9. Specific Enforcement

In the event of a breach or threatened breach of the covenants set forth in Section 4 (Proprietary Rights) or 5 (Confidentiality) of this Agreement, the non-breaching Party, in addition to any other rights and remedies available to it, may seek injunctive or equitable relief.

10. Non-assignment

Neither Party will assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement will inure to the benefit of, and be binding upon the Parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

11. Governing Laws and Disputes

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. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Client shall be in Brazos County, Texas. 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 Client and AEFIS to attempt to resolve any claim for breach of contract made by AEFIS that cannot be resolved in the ordinary course of business. AEFIS shall submit written notice

of a claim of breach of contract under this Chapter to the University Contracts Officer of Client, who shall examine AEFIS' claim and any counterclaim and negotiate with AEFIS in an effort to resolve the claim.

12. Notice

All notices and other communications under this Agreement shall be in writing and shall be addressed to such party at the physical address or email address or facsimile number set forth in this Agreement.

13. Interest

All past due payments will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

14. Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

15. Force Majeure

Neither Party will be held responsible for any delay or failure in performance of any part of this Agreement, excluding payment obligations, to the extent that such delay is caused by events or circumstances beyond the delayed Party's reasonable control.

16. Subcontractors

AEFIS shall be entitled to subcontract part of or this entire Agreement to its contractors.

17. No Waiver

The waiver by any Party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the Party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the Parties hereto.

18. Entire Agreement

This Agreement together with any exhibits and attachments referred to herein constitute the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. In the event of inconsistency between the terms of the Agreement and those of the any exhibits or attachments, the terms and conditions of this Agreement shall govern and control.

19. State Contracting Requirements

- A. Delinquent Child Support Obligations. Under Section 231.006, *Texas Family Code*, the vendor 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.
- B. Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, AEFIS agrees that any payments owing to AEFIS under this Agreement may be applied directly toward certain debts or delinquencies that AEFIS 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.
- C. Prohibited Bids and Agreements. Under Section 2155.004, *Texas Government Code*, the vendor 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.
- D. Conflict of Interest. By executing and/or accepting this Agreement, AEFIS and each person signing on behalf of AEFIS 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 Client 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.
- E. Access by Individuals with Disabilities. AEFIS represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Client 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 AEFIS becomes aware that the EIRs, or any portion thereof, do not comply then AEFIS represents and warrants that it will, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.
- F. Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, AEFIS certifies AEFIS (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. AEFIS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- G. Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, AEFIS certifies AEFIS is not engaged in business with Iran, Sudan, or a foreign terrorist organization. AEFIS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

I. Loss of Funding. Performance by Client 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, Client will issue written notice to AEFIS and Client may terminate this Agreement without further duty or obligation hereunder. AEFIS acknowledges that appropriation of funds is beyond the control of Client.

J. State Auditor's Office. AEFIS 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*. AEFIS agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. AEFIS will include this provision in all contracts with permitted subcontractors.

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

L. Independent Contractor. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statement, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.

M. Representations & Warranties. If AEFIS is a business entity, AEFIS warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of AEFIS has been duly authorized to act for and bind AEFIS.

EXHIBIT A: IMPLEMENTATION AND TRAINING SERVICES

This Exhibit A: Implementation and Training Services is an Exhibit to, part of and incorporated into the Software Services Agreement executed by the parties. All terms and conditions of this Exhibit are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in Exhibit A.

1.0 Implementation Details

I. Technical Implementation

- Installation and basic configuration of your dedicated AEFIS Instance
- Integration with existing campus systems for automated data import
- Cloud Hosting of your dedicated AEFIS Instance
- Approximate Timeframe: 4 – 6 Weeks (Subject to change based on requirements)

II. Academic Implementation

- Setup and configuration of key AEFIS structural elements (Campus/College/Department)
- Set Up Default Syllabus Template
- Set Up and Schedule Course Evaluations & Surveys
- Design Academic Programs and map learning outcomes (competencies)
- Set Up Direct Assessments
- Up to two specialty reports with no additional cost (project plan will be provided for each specialty report)
- Approximate Timeframe: 6 – 8 Weeks (Subject to change based on requirements)

2.0 Support Services

- Unlimited web-based, email and toll-free telephone technical, application and informational support to Client's designated points of contact during AEFIS normal business hours, namely 8:30AM through 5:00PM Eastern Time weekdays (excluding AEFIS normal business holidays).
- Additional hours of web-based and email support shall be provided, subject to AEFIS Team availability.

3.0 Maintenance Services

- 24/7 system backup and up-time monitoring of your AEFIS instance.
- Updates/Releases are provided at no additional charge as they become commercially available after having been tested by the AEFIS Team prior to installation for Client.
- Updates/Releases means updates to existing base capabilities of the Software, including, without limitation, additional functionality to such base capabilities, program logic and documentation changes, new reports, corrections and improvements which maintain the operational quality of the Software but do not include new Software functionality.

4.0 Training

- Training and Orientation of Client Implementation Team includes 2 day on-site training of entire AEFIS System. Expenses such as travel costs, travel time (half-rate), accommodations, etc. are not covered in the fees/costs listed above.
- See Exhibit B for Additional Services & Training

EXHIBIT B: ADDITIONAL SERVICES

This Exhibit B: Additional Services is an Exhibit to, part of and incorporated into the Software Services Agreement executed by the parties. All terms and conditions of this Exhibit are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in Exhibit B.

1.0 Additional Services. AEFIS may also provide, at Client's request, any of the additional services set forth below at the fees noted ("Additional Services"). Certain Additional Services will be subject to additional terms and conditions which will be provided to Client upon request.

Type of Service	Cost
Remote Training Services Class style Group training*	\$1500/2 Hour Session
On-Site Training Services Class style Group training*	\$2500/Half Day
Software Development Services for Custom AEFIS Development*	TBD/Project Basis
On-Site Technical Services for Deployment, Consulting and Support*	\$1500/Day
Additional Data Connector License** For integration with systems Other than primary SiS and LMS	TBD/Project Basis

*Expenses such as travel costs, travel time (half-rate), accommodation, etc. are not covered in the fees/costs listed above.

**One Student Information System (e.g. Sungard Banner, PeopleSoft, Jenzabar, etc.) and one Learning Management System (Blackboard, Canvas, Brightspace, etc.) connection is included in the License Fee and Set-up Fee under the Agreement. Additional academic management systems may require additional costs to develop data connectors and may cause minor delays in the implementation of the Service.