



Stephen F. Austin State University

Procurement and Property Services
Nacogdoches, Texas 75962-3030
Phone (936) 468-2206 * Fax (936) 468-4282

PO Number: **B1800203**

PO Date: **07/12/17**

Delivery Date:

Supplier:

Digital Measures LLC
PO Box 681093
Milwaukee WI 53209-0971

**CONFIRM RECEIPT OF PURCHASE ORDER AND
ACCEPTANCE OF DELIVERY DATE
BY EMAILING PURCHASE@SFASU.EDU.**

meloal@sfasu.edu

Send Billing Invoice to:

Stephen F. Austin State University
P.O. Box 6085
Nacogdoches, TX 75962-6085
ATTN: Accounts Payable

Ship to:

Procurement and Property Svcs
Procurement
2124 Wilson Dr N
SFA Box 13030
Nacogdoches TX 75962

Terms: Net 30

FOB: Not Applicable

**PURCHASE ORDER NO. MUST APPEAR ON ALL
SHIPPING DOCUMENTS AND INVOICES**

Item	Description	Quantity	Unit Cost	Total Cost
	<p>EXEMPT FROM BOARD APPROVAL - Hosted software services and applicable license and maintenance for general business operations such as student bill payment, cashiering and student email</p> <p>----</p> <p>EXEMPT POLICY 17.1 - Direct Publication</p> <p>----</p> <p>Seven year services agreement to provide access to faculty/staff in order to collect and report on information related to teachings, research and service activities, in accordance with iContracts #231819, for the period 07/12/2017 - 07/11/2024.</p> <p>----</p> <p>RE: B1800203</p> <p>----</p>			

Purchaser: Amberr Melo

(936) 4684472

ADDITIONAL CHARGE:

DISCOUNT/TRADE-IN:

TOTAL:

CONTINUED

Stephen F. Austin State University is a tax exempt entity under Subtitle E, Chapter 151, Section 151.309 of the Tax Code, for purchases of tangible personal property herein purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The University reserves the right to cancel this order if delivery is not made by agreed-upon delivery date.

ADDITIONAL TERMS & CONDITIONS LISTED ON THE UNIVERSITY WEB SITE,

<http://www.sfasu.edu/purchasing/721.asp>

This purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).

STEPHEN F. AUSTIN STATE UNIVERSITY

Purchasing Officer

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Item	Description	Quantity	Unit Cost	Total Cost
	This PO covers: 07/12/20xx - 07/11/20xx			
1	000P20911C SOFTWARE - HOSTED OFF-SITE Activity Insight Fee - Year 1 ----- NOTE: No Workflow Module Fee for Year 1	1.00 YRS	23,400.0000	23,400.00
2	000P20911C SOFTWARE - HOSTED OFF-SITE Activity Insight Fee - Year 2	1.00 YRS	35,000.0000	35,000.00
3	000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	16,558.0000	16,558.00

Purchaser: Amberr Melo

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ADDITIONAL CHARGE:**DISCOUNT/TRADE-IN:****TOTAL: CONTINUED**

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4	Workflow Module Fee - Year 2 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	40,000.0000	40,000.00
5	Activity Insight Fee - Year 3 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	12,500.0000	12,500.00
6	Workflow Module Fee - Year 3 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	45,000.0000	45,000.00

Purchaser: Amberr Melo

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TOTAL: CONTINUED

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Item	Description	Quantity	Unit Cost	Total Cost
7	Activity Insight Fee - Year 4 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	15,000.0000	15,000.00
8	Workflow Module Fee - Year 4 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	50,000.0000	50,000.00
9	Activity Insight Fee - Year 5 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	17,500.0000	17,500.00

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Item	Description	Quantity	Unit Cost	Total Cost
10	Workflow Module Fee - Year 5 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	55,000.0000	55,000.00
11	Activity Insight Fee - Year 6 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	20,000.0000	20,000.00
12	Workflow Module Fee - Year 6 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 YRS	60,028.2400	60,028.24

Purchaser: Amberr Melo

(936) 4684472

ADDITIONAL CHARGE:

DISCOUNT/TRADE-IN:

TOTAL:

CONTINUED

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Item	Description	Quantity	Unit Cost	Total Cost
13	Activity Insight Fee - Year 7 000P20911C SOFTWARE - HOSTED OFF-SITE Workflow Module Fee - Year 7	1.00 YRS	22,165.1800	22,165.18

Purchaser: Amberr Melo

(936) 4684472

ADDITIONAL CHARGE:

.00

DISCOUNT/TRADE-IN:

.00

TOTAL:**412,151.42**

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STEPHEN F. AUSTIN STATE UNIVERSITY

 Purchasing Officer

Digital Measures

Collection and Reporting Services Agreement

This Collection and Reporting Services Agreement (this "Agreement") is made and entered into as of July 12, 2017 (the "Effective Date") by and between Digital Measures, LLC, a Wisconsin limited liability company ("DM") and Stephen F. Austin State University ("Client"), a Texas state agency and public institution of higher education.

Upon execution of this Agreement, the Renewal executed by Digital Measures and Client on April 1, 2013 will terminate and DM will apply the pro rata amount owed by or to Client to the first invoice that results from this Agreement. This section supersedes any and all provisions whatsoever regarding termination contained in the original Collection and Reporting Services Agreement or Renewal of the same entered into between Digital Measures and Client.

In consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

1. The System Provided by DM

- 1.1 Overview. During the Term (as defined in Section 2.1) of this Agreement, DM agrees to provide Client with access to its Internet-based system (the "System"), for the purpose of using Activity Insight to collect and report on information related to Client's faculty and staff's teaching, research and service activities. DM will provide Client with use of the System for authorized faculty and staff members (the "Users"), who will each have one enabled user account in the System, employed by Client during the Term of this Agreement.
- 1.2 License Grant. During the Term of this Agreement, and subject to the terms and conditions of this Agreement, DM grants to Client a limited, non-exclusive, non-transferable, non-assignable license to access and use the functionality of the System solely for its own internal business purposes for a maximum of five-hundred (500) full-time equivalent (FTE) Users in each of its College of Education, College of Liberal Arts and Applied Arts, Nelson Rusche College of Business, College of Fine Arts and College of Sciences and Mathematics; and for a maximum of one-hundred (100) full-time equivalent (FTE) Users in its Arthur Temple College of Forestry and Agriculture. DM recognizes that Client has provided a reasonable approximation of the number of Users that Client will have during the Term of the Agreement and that the actual number of Users may vary, however Client will not exceed the User limitation by more than twenty (20) percent at any point during the Term. Client shall have no right to grant licenses or sublicenses regarding access and use of the System and shall have no right to access or use the System for any purposes outside the scope of this Agreement.

- 1.3 **Restrictions of Use.** Client shall make no attempt to: (a) de-compile, reverse engineer, disassemble, rent, lease, loan, sublicense and create derivative works from any part of the System; (b) resell or transfer the System or use of or access to the System; (c) copy, modify, reproduce, republish, distribute, transmit or use for commercial or public purposes the System except as otherwise provided in this Agreement, for any purpose; (d) download or save a copy of any of the screens appearing in the System except as otherwise provided in this Agreement, for any purpose other than for training of Users; (e) disclose descriptions of information contained in the System, or descriptions of the design of the System; (f) use or otherwise export or re-export the System in violation of the export control laws and regulations of the United States of America; (g) use the System for more than the authorized number of Users, except as provided herein; (h) designate any known competitor (or employee or agent thereof) of DM as a User; or (i) otherwise allow access to the System to a competitor of DM. In the event that Client breaches the terms of this Section, the Client acknowledges that, in addition to all other remedies available to DM hereunder, DM will have the right to terminate Client's access to the System. Client acknowledges that breach of any terms of this Section would be detrimental to DM's business and that DM would suffer significant financial damages as a result.
- 1.4 **Functionality to be Provided.** The System will provide for the electronic collection of data from the System's Users and the dissemination of this data through reporting functionality in the System. This Agreement is a service agreement and is not intended to and will not constitute a lease for any real or personal property. Client acknowledges and agrees that (a) it has been granted only a license to use the System and equipment provided by DM in accordance with this Agreement, (b) Client has not been granted any real property interest in any equipment, and (c) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances. Client will designate one individual (the "Administrator") who will specify the teaching, research, and service activity information that Client needs to be collected from the Users and the Administrator will also specify the reports that Client requires. Client can re-designate a different individual to be the Administrator at any time.
- 1.5 **Service Level Agreements.** Client can submit requests through the System to (1) add reports on data collected via the System and (2) modify the data that is collected through the System from Users ("Requests") and DM will complete such Requests within ten (10) business days of receipt of a complete request ("Complete Request"). For purposes hereof, a request will be deemed a Complete Request when DM, in its sole discretion, deems it has sufficient information necessary to setup a report from the request. DM will make modifications Client deems necessary to the data that is collected through the System from Users within ten (10) business days of receipt of a Complete Request through the System.

2. Term and Termination

- 2.1 **Term.** This Agreement shall commence as of the Effective Date and continue through July 11, 2024 (the "Term"), unless this Agreement is earlier terminated as provided herein. If Client desires to continue utilizing DM's System after this date, a separate agreement will need to be devised and executed.
- 2.2 **Termination.** This Agreement may be terminated in accordance with the following provisions and as otherwise expressly provided in this Agreement:
- (a) DM may terminate this Agreement immediately at any time upon written notice to the Client if Client fails to pay any amount due as required by this Agreement, and such failure continues for a period of thirty (30) days after written notice is given to Client requesting it to cure such failure;

(b) Either party may terminate this Agreement immediately at any time upon written notice to the other party if such other party fails to perform any of its material duties or obligations hereunder, and such failure continues for a period of thirty (30) days after written notice is given to such other party requesting it to cure such failure;

(c) Either party may terminate this Agreement immediately at any time upon written notice to the other party if the other party: (1) commences or has commenced against it a proceeding under any bankruptcy, insolvency, debtor's relief law or similar law; (2) has a receiver appointed for it or for any of its property; (3) becomes insolvent or unable to pay its debts as they mature or ceases to pay its debts as they mature in the ordinary course of business; or (4) makes a general assignment for the benefit of its creditors.

(d) If in any fiscal year subsequent to the fiscal year in which the Effective Date occurs (the "Future Fiscal Year") Client fails to receive sufficient allotments or appropriations from its Board of Regents or from applicable federal, state and local governmental sources to permit Client to satisfy its payment obligations under this Agreement for such Future Fiscal Year, as reasonably determined by Client in good faith (a, "Non-Appropriation of Funds"), then Client may terminate this Agreement effective as of the first day such allotment or appropriation becomes effective, upon written notice to DM evidencing such Non-Allotment or Non-Appropriation of Funds. For purposes of clarification, the following shall not constitute a Non-Allotment or Non-Appropriation of Funds: a Non-Allotment or Non-Appropriation of Funds resulting from Client's failure to use its best efforts to seek funds from and/or submit budget requests to available state governmental sources, to the extent allowed by law, to permit Client to satisfy its payment obligations under this Agreement.

(e) Either party may terminate this Agreement immediately upon written notice to the other party in accordance with Sections 8.16 and 8.20 herein.

All notices regarding termination must be delivered in writing via postal mail in accordance with Section 8.1.

- 2.3 Effect of Termination. The parties acknowledge and agree that this Agreement may not be terminated prior to the expiration of the Term, unless as otherwise expressly provided herein. In the event this Agreement is terminated prior to the expiration of the Term by DM under Sections 2.2(a), 2.2(b), or 2.2(c), above, all unpaid installments of the Fee and the Increased Fees (as such capitalized terms are defined in Section 3.1), whether due currently or in the future, shall become immediately due and payable by Client. In the event this Agreement is terminated prior to the expiration of the Term by Client under Sections 2.2(b) or 2.2(c) of this Agreement, Client shall owe DM a pro-rata amount of the Fee (as defined below). All terms and conditions of this Agreement that would, by their nature, survive the expiration or termination of this Agreement, shall so survive, including, without limitation, Client's obligation to pay the Fee and Increased Fees.

3. Fees and Payment

- 3.1 **Fees.** Client acknowledges the substantial cost that DM has incurred to make the System available to Client. As consideration for Client's access and use of the System during the Term, Client shall pay to DM license fees, subject to acceleration under Section 2.3, by paying DM in the following amounts: (a) twenty three thousand four hundred dollars and no cents (\$23,400.00) shall be paid during the first year of the Term, (b) thirty five thousand dollars and no cents (\$35,000.00) shall be paid during the second year of the Term, (c) forty thousand dollars and no cents (\$40,000.00) shall be paid during the third year of the Term, (d) forty five thousand dollars and no cents (\$45,000.00) shall be paid during the fourth year of the Term, (e) fifty thousand dollars and no cents (\$50,000.00) shall be paid during the fifth year of the Term, (f) fifty five thousand dollars and no cents (\$55,000.00) shall be paid during the sixth year of the Term and (g) sixty thousand twenty eight dollars and twenty four cents (\$60,028.24) shall be paid during the seventh year of the Term. Client recognizes and acknowledges that the total of these fees is three hundred eight thousand four hundred twenty eight dollars and twenty four cents (\$308,428.24) (the "Activity Insight Fee") and that the entire Activity Insight Fee is owed in full to DM upon execution of this Agreement even though it shall be paid in installments.

As consideration for Client's access of the Workflow Module and use of the System during the Term, Client shall pay to DM license fees, subject to acceleration under Section 2.3, by paying DM in the following amounts: (a) zero dollars and zero cents (\$0.00) shall be paid during the first year of the Term, (b) sixteen thousand five hundred fifty eight dollars and no cents (\$16,558.00) shall be paid during the second year of the Term, (c) twelve thousand five hundred dollars and no cents (\$12,500.00) shall be paid during the third year of the Term, (d) fifteen thousand dollars and no cents (\$15,000.00) shall be paid during the fourth year of the Term, (e) seventeen thousand five hundred dollars (\$17,500.00) shall be paid during the fifth year of the Term, (f) twenty thousand dollars and no cents (\$20,000.00) shall be paid during the sixth year of the Term, and (g) twenty two thousand one hundred five dollars and eighteen cents (\$22,165.18) shall be paid during the seventh year of the Term. Client recognizes and acknowledges that the total of these fees is one hundred three thousand seven hundred twenty-three dollars and eighteen cents (\$103,723.18) (the "Workflow Module Fee") and that the entire Workflow Module Fee is owed in full to DM upon execution of this Rider even though it shall be paid in installments.

Client recognizes and acknowledges that the total of these fees is four hundred twelve thousand one hundred fifty one dollars and forty two cents (\$412,151.42) (the "Fee") and that the entire Fee is owed in full to DM upon execution of this Rider even though it shall be paid in installments.

DM will send Client an invoice for the first years' fees upon the execution of this Agreement and on each anniversary of the Effective Date through the end of the term. Client shall pay each invoice within thirty (30) days of the invoice receipt date. Overdue payments shall bear interest at a rate set forth in the Texas Prompt Payment Act, from the date due until paid.

- 3.2 **Increased Fees.** In the event that the scope of the services materially changes from that currently contemplated by the parties, DM shall have the right to increase the Fee ("Increased Fees") in order to compensate for such change in scope of services. The increased Fees shall be pro-rated and added to the remaining installments of the Fee due hereunder. For purposes of this Agreement, the term "materially changes" means any material change in the Client's intended use of the System, including, without limitation, any material increase in the volume of information collected or reports requested to be created from that contemplated as of the Effective Date of this Agreement. Prior to increasing the Fee hereunder, DM shall notify Client of its intention to do so, and within thirty (30) days after receipt of such notice, Client may elect, by giving written notice thereof to DM, to return to a scope of services consistent with that currently contemplated by the parties in order to avoid such Increased Fees. If Client does not so elect to return to such scope of services within such period, Client shall be deemed to have accepted such Increased Fees

3.3 **Payment.** Client agrees that all transactions will be conducted in United States dollars. If Client pays by wire transfer, Client shall pay its bank's wire transfer fee as well as any intermediary bank's wire transfer fee. DM shall pay any incoming wire transfer fee assessed by its bank.

3.4 **Taxes.** Client is responsible for any applicable duties, customs fees, or taxes (other than DM's income tax) associated with the sale hereunder, including any related penalties or interest ("Taxes"), and Client will pay DM the Fee without any reduction for Taxes. Client must notify DM of any obligation it must fulfill to collect or pay any such Taxes so that the Taxes will be added to the Fee invoiced to Client. If Client fails to notify DM of DM's need to collect or pay Taxes, Client shall be invoiced for all such amounts that were to have been collected, plus any penalties and interest that are assessed by any taxing authority.

4. **Obligations of Client**

4.1 **Overview.** Client will cooperate with DM and provide faculty and staff information necessary to implement the System. This data will be provided in a timely fashion at Client's cost. The required data includes, but is not limited to, names and e-mail addresses. Client hereby grants DM permission to use its trademark, logo, graphic and/or service mark in the System for the sole purpose of providing the services defined in this Agreement to Client.

4.2 **Disclosure of Relationship.** Client authorizes DM to disclose Client as a client of DM for marketing purposes. DM will not represent itself as an agent of Client in any way. DM agrees not to use Client's trademark, logo, graphic and/or service mark for any marketing purpose without first obtaining written authorization from Client's University Marketing Communications department prior to each instance of use.

4.3 **Fair Usage.** Client will not knowingly use the System in any manner that could damage, disable, overburden, or impair the System or interfere with any other party's use and enjoyment of them. Client will not attempt to gain unauthorized access to any reports, data, service, account, computer systems or networks associated with the System. Client and Users shall not use the System to violate any legal law, rule or regulation. Client and Users must comply with all Client policies and procedures regarding data access, privacy and security, to the extent that such policies and procedures are provided to Client and Users, and shall not transmit false or misleading information. DM shall not be responsible for any liabilities, costs, expenses (including reasonable attorneys' fees), claims, demands, or causes of action whatsoever arising on account of any breach of this Agreement by Client or Users.

4.4 **Equipment and Internet Access.** Client shall, at its own expense, provide all hardware, software and Internet service access to allow it to access the System and meet Client's performance requirements. Client shall, at its own expense, perform any work at the Client's site required to use and access the System. Any problems arising due to the quality, incompatibility or non-performance of Client's hardware, software or other third party products supplied by the Client shall be the responsibility of the Client.

4.5 **Security; Data.** Client shall be responsible for maintaining the security and integrity of its own network and Internet connections and for scanning files coming from or sent to the System for viruses or other harmful code. Client shall be responsible for the accuracy and adequacy of the data that it furnishes or transmits to DM in connection herewith. All Client data which Client furnishes or transmits to DM under this Agreement shall be in a format and in accordance with any other reasonable requirements specified by DM. DM shall be responsible for maintaining the security and integrity of its own network and Internet connections and for scanning files coming from or sent to the System for viruses or other harmful code. DM shall be responsible for the accuracy and adequacy of the data it furnishes or transmits to Client in connection herewith.

4.6 Client Responsible For Data. Client and its Users are solely and exclusively responsible for all data, content and information collected, processed, reported, shared or otherwise distributed by or through the System. DM has no obligation to monitor or filter such data, content and information, and Client expressly releases DM, and its members, directors, officers, shareholders, employees, representatives, agents, successors and assigns, from any responsibility to monitor or filter any such data, content or information.

5. Proprietary Rights in Client Data and the System

5.1 Ownership of Data. All data provided by Client as specified above and all Client data collected by DM through the System is property of Client and cannot be disclosed or disseminated in any way by DM without either (i) the express written consent of Client or (ii) the express consent of a User to disclose or disseminate the data Client makes available in the System to the User. For purposes of clarification, Client acknowledges and agrees that the consent requirement under subsection (i) shall not also require the consent of any User, and the consent requirement under subsection (ii) shall not also require the consent of Client. Further, DM shall maintain a secure processing environment and safeguard these data as it would any proprietary confidential information belonging to DM with administrative, technical and physical measures that conform to generally recognized industry standards and best practices. This includes taking reasonable steps to ensure the electronic security, physical security and intellectual security of the data that DM collects and stores for Client. DM can freely disclose to anyone DM desires, without permission from Client, the methods used to collect data through its System. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems and applications as provided by DM or open source support.

5.2 Ownership of the System. The System and all software, enhancements, customizations, modifications, additions or new releases of or to the System (collectively, the "Proprietary Materials") contain confidential information of, are trade secrets of, and are proprietary to DM and all rights, title and interest in and to the Proprietary Materials is and shall remain solely and exclusively in DM. All applicable rights to patents, copyrights, trademarks and trade secrets in the Proprietary Materials are and shall remain in DM. Client shall not assert any right, title or interest in the Proprietary Materials, except for the limited right of use granted to Client hereunder.

5.3 **FERPA.** DM and Client are subject to FERPA (Family Educational Rights and Privacy Act, 20 USC 1232(g)) and agree to abide by all applicable legal regulations in FERPA. As a result of this Agreement, DM is considered by FERPA to be a school official of Client. As a school official of Client, DM must protect the privacy of student data provided by Client and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other school officials of Client with a legitimate educational interest (i.e., the school official must seek the information within the context of his/her professionally assigned responsibilities with Client and the information must be used within the context of official business of Client). DM agrees to hold student information, including any personally identifiable student information or education records as those terms are defined under federal law, ("Confidential Data") in strict confidence and warrants to Client that it will use reasonable industry practices to establish and maintain adequate procedures to ensure the confidentiality and privacy of such Confidential Data from unauthorized use or disclosure in violation of FERPA and not to use or disclose Confidential Data except as permitted or required by this Agreement, as required by law, or as otherwise authorized by Client in writing. DM further agrees not to use Confidential Data for any purpose other than the purpose for which the disclosure to DM was made. DM shall continue to maintain the confidentiality and privacy of the Confidential Data retained in its system after cancellation, expiration or other conclusion of this Agreement. Upon termination, cancellation, expiration or other conclusion of this Agreement, DM shall return all Confidential Data to Client or, if return is not feasible, destroy any and all Confidential Data. If DM destroys the information, it shall provide Client with a certificate confirming the date of destruction of the data. DM shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Data received from, or on behalf of Client or its students. These measures will be extended by contract to all subcontractors used by DM. DM shall, within one day of discovery, report to Client any use or disclosure of confidential information not authorized by this agreement or in writing by Client. Following this report, DM will conduct a timely and thorough investigation in an attempt to identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, and (iii) who made the unauthorized use or received the unauthorized disclosure. At the conclusion of this investigation, DM will furnish a confidential written report to Client indicating the results of the investigation, what DM has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and what corrective action DM has taken or shall take to prevent future similar unauthorized use or disclosure.

6. **Warranty Disclaimer; Limitation on Liability**

6.1 **Warranty Disclaimer.** DM warrants to Client that it has the authority to license the access and use of the System and that Client's use of the System in accordance with the terms of this Agreement will not infringe the intellectual property rights of any third party. DM DOES NOT WARRANT THAT THE SYSTEM WILL MEET CLIENT'S REQUIREMENTS, THAT THE SYSTEM WILL OPERATE ERROR FREE, WITHOUT INTERRUPTION, OR IN COMBINATION WITH OTHER SYSTEMS OR SOFTWARE, THAT SYSTEM DEFECTS ARE CORRECTABLE, ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, DM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, RESPECTING THE SYSTEM, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

6.2 **Telecommunications Issues.** Client understands and agrees that the operation and availability of the systems used for accessing and interacting with the System, including telecommunication services, computer networks and the Internet, whether or not supplied by or to Client or DM, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the System. DM is not in any way responsible for any such interference with or prevention of Client's access and/or use of the System.

6.3 Limitation on Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR OTHERWISE RELATED TO THIS AGREEMENT OR CLIENT'S USE OF OR ACCESS TO THE SYSTEM (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, FOR PERSONAL INJURY, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

6.4 Limitation on Amount of Liability. EACH PARTY'S CUMULATIVE LIABILITY, IF ANY, TO THE OTHER OR ANY THIRD PARTY HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID BY CLIENT TO DM UNDER THIS AGREEMENT IN THE LAST TWELVE (12) MONTHS. THE PARTIES ACKNOWLEDGE THAT DM HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED THEIR ESSENTIAL PURPOSE.

7. Indemnification

7.1 DM Indemnity. DM indemnifies and holds Client, its directors, officers, agent, and employees harmless from and against any lawsuit, claim, damage, liability, or expense (including reasonable attorneys' fees and costs) whatsoever incurred by Client as a result of any third party claim against Client that its use of the System infringes any patent, copyright, trademark, or other intellectual property right of such third party. The foregoing indemnity obligations shall be contingent upon the Client: (1) giving prompt written notice to DM of any claim, demand or action for which indemnity is sought; (2) fully cooperating in the defense or the settlement of any such matter, to the extent such cooperation is reasonably required by DM; and (3) notifying DM of any settlement or proposal of settlement. Client shall have the exclusive right to choose counsel and direct defense of any claim, demand, or action for which indemnity is sought. If the System is finally adjudged to so infringe, or in DM's opinion is likely to become the subject of such a claim, DM shall, at its option and expense, either procure for Client the right to continue using the System or modify or replace the System to make it non-infringing. THE FOREGOING STATES DM'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS RELATED TO THE SYSTEM.

7.2 Client Indemnity. To the extent permitted by the laws and the Constitution of the State of Texas, Client shall indemnify and hold DM, its directors, officers, agents and employees harmless from any liabilities, costs, expenses (including reasonable attorneys' fees), claims, demands, or causes of action whatsoever arising on account of: (1) any breach by the Client of this Agreement; (2) the use of the System by the Client that fails to comply with the intended use and/or any violation of any law, rule or regulation by the Client; and (3) the use of the System for the collection, processing, reporting, sharing or other distribution of data, content or information related to Client's faculty and staff's teaching, research and service activities, including, without limitation, the failure of any Users, students or other third parties to comply with Client policies and procedures regarding data access, privacy and security, including those prohibiting or restricting access to Client systems and data, and the transmission by any Users, students or other third parties of false or misleading information.

8. **General Provisions**

8.1 Notices. Whenever any notice to a party is required hereunder, such notice shall be in writing, addressed to the party's address set forth below. If either address is not specified for Client, DM will send notices to Client's purchasing department.

If to Client regarding invoices:

STEPHEN F. AUSTIN STATE UNIVERSITY
Office of Institutional Research
Box 6194
Nacogdoches, TX 75962
Attention: Karyn Hall

If to Client regarding matters other than invoices:

STEPHEN F. AUSTIN STATE UNIVERSITY

Attention: _____

Copy to:

Damon Derrick
Office of the General Counsel
Box 13065, SFA Station
Nacogdoches, TX 75965

If to DM:

Digital Measures
Accounts Department
301 N. Broadway – Floor Four
Milwaukee, WI 53202

8.2 Independent Contractor. DM and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between DM and Client. Neither DM nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

8.3 Binding Nature of Agreement; Assignment. Except as otherwise provided herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that Client may not assign or transfer its rights or obligations under or interest in this Agreement without first obtaining the prior written consent of DM. DM may, in its sole discretion, assign its obligations under this Agreement in connection with any merger, sale of all or substantially all of the assets of DM. DM shall provide Client with written notice of any assignment at least thirty (30) days prior to such assignment taking effect.

8.4 No Lease. This Agreement is a service agreement and is not intended to and will not constitute a lease for any real or personal property. Client acknowledges and agrees that (i) it has been granted only a license to use the System and equipment provided by DM in accordance with this Agreement, (ii) Client has not been granted any real property interest in any equipment, and (iii) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

- 8.5 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.
- 8.6 Alteration. No alteration, modification, or change of this Agreement shall be valid unless made in writing and executed by the parties hereto.
- 8.7 Electronic Signatures. The parties agree that this Agreement may be executed by any party by electronic or facsimile signature.
- 8.8 Severability. Each provision of this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.
- 8.9 Force Majeure. In no event shall DM be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the System.
- 8.10 Representations and Warranties by DM. If DM is a corporation or a limited liability company, DM 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 DM has been duly authorized to act for and bind DM.
- 8.11 Tax Certification. If DM is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then DM certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that DM is exempt from the payment of those taxes, or that DM is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 8.12 Eligibility to Receive Payment. In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, DM certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that Client may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.
- 8.13 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, DM agrees that any payments owing to DM under the Agreement may be applied directly toward any debt or delinquency that DM owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 8.14 Products and Materials Produced in Texas. If DM will provide services under the Agreement, DM covenants and agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under the Agreement, DM will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 8.15 Access to Public Information. DM is required to make any information created or exchanged with Client pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to Client.

- 8.16 **Access by Individuals with Disabilities.** DM represents and warrants that the electronic and information resources, as defined by Texas law, and all associated information, documentation and support that it provides to Client under the Agreement (“Electronic and information Resources (EIR) Accessibility Warranty”; collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code. Client may review, test, evaluate and monitor DM’s EIRs for compliance with the EIR Accessibility Warranty. DM agrees to cooperate fully and provide Client timely access to EIRs and other items and information needed to conduct such review, evaluation, testing and monitoring. Neither the review, testing (including acceptance testing), evaluation, or monitoring of any EIR, nor the absence of such review, testing, evaluation, or monitoring will result in a waiver of the Client’s right to contest the DM’s assertion of compliance with the EIR Accessibility Warranty. To the extent DM becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then DM represents and warrants that it will, at no cost to Client, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event DM fails or is unable to do so, then Client may terminate the Agreement and DM will refund to Client all amounts Client has paid under the Agreement during the time DM was out of compliance with the EIR Accessibility Warranty within thirty (30) days after the termination date.
- 8.17 **Dispute Resolution; Governing Law.** Any disputes under or arising from this agreement shall be brought in a court of competent jurisdiction in Nacogdoches or Angelina County, Texas and governed by Texas law. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and DM to attempt to resolve any claim for breach of contract made by DM that cannot be resolved in the ordinary course of business. The Vice President for Finance & Administration of Client shall examine DM’s claim and any counterclaim and negotiate with DM in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by DM, (ii) neither the issuance of this Agreement by Client nor any other conduct, action or inaction of any representative of Client relating to this contract constitutes or is intended to constitute a waiver of Client’s or the state’s sovereign immunity to suit; and (iii) Client has not waived its right to seek redress in the courts.
- 8.18 **State Auditor’s Office.** DM understands that acceptance of funds under the 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 Sections 51.9335(c), *Texas Education Code*. DM agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. DM will include this provision in all contracts with permitted subcontractors.
- 8.19 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CLIENT (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON CLIENT’S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CLIENT EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 8.20 **U.S. Department of Homeland Security’s E-Verify System.** By entering into the Agreement, DM certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of: (i) all

persons employment to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by DM to perform work pursuant to the Agreement, within the United States of America. DM shall provide, upon request of Client, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by DM, and DM's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of the Client and at no fault to the Client, with no prior notification. DM shall also be responsible for the costs of any re-solicitation that the Client must undertake to replace the terminated Agreement.

- 8.21 Israel Non-Boycott Verification. Pursuant to Section 2270.002, Texas Government Code, DM hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001(1), Texas Government Code.
- 8.22 Entire Agreement. This Agreement is the entire agreement among the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous, oral and written, negotiations, commitments, writings, representations, understandings or agreements of the parties concerning the subject matter hereof.

[Remainder Intentionally Blank – Signature Page to Follow]

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Collection and Reporting Service Agreement as of the Effective Date.

DIGITAL MEASURES, LLC



Mr. Matthew J. Bartel
Chief Executive Officer
Digital Measures, LLC

2017-07-14

Date

STEPHEN F. AUSTIN STATE UNIVERSITY

(Two authorized signatures are required, one of which must be from your finance, legal affairs, division vice president, or procurement or purchasing department. DM acknowledges that only Client's President is authorized to bind Client to this and any other Agreement.)



Dr. Baker Pattillo
President
Stephen F. Austin State University

Date

7-14-17



Dr. Steven Bullard
Vice President of Academic Affairs
Stephen F. Austin State University

Date

7-14-17

Digital Measures

RENEWAL of Collection and Reporting Services Agreement

This Renewal of Collection and Reporting Services Agreement (this "Renewal") is made and entered into as of April 1, 2010 (the "Effective Date") by and between Digital Measures, LLC, a Wisconsin limited liability company ("DM") and Stephen F. Austin State University ("Client"). This Renewal is a supplement to, and incorporates by reference all of the terms, conditions and obligations of that certain Collection and Reporting Services Agreement ("Agreement") executed on April 1, 2007 by and between Digital Measures and Stephen F. Austin State University. The purpose of this Renewal is to extend the Term of the Agreement to continue to provide this Client and its Users with access and use of the System under the terms and conditions of the Agreement. To the extent provisions of this Renewal are inconsistent with the terms and conditions of the Agreement with respect to the Client, the terms of this Renewal shall control. Unless otherwise defined herein, all capitalized terms shall have the definition given thereto in the Agreement; provided that, for purposes of this Renewal only, all references in the Agreement to "Client" and "Term" shall refer to the Client and Term as defined herein.

- 1.1 License Grant. During the Term, and subject to the terms and conditions of the Agreement, DM grants to Client a limited, non-exclusive, non-transferable, non-assignable site license to access and use the functionality of DM's System solely for its own internal business purposes for a maximum of five-hundred (500) full-time equivalent (FTE) Users in each of its College of Education, College of Liberal Arts and Applied Arts and College of Sciences and Mathematics; and for a maximum of one-hundred (100) full-time equivalent (FTE) Users in each of its Nelson Rusche College of Business, College of Fine Arts and Arthur Temple College of Forestry and Agriculture. Client shall have no right to grant licenses or sublicenses regarding access and use of the System and shall have no right to access or use the System for any purpose outside the scope of the Agreement.
- 1.2 Term. With respect to this Client, the Agreement, as supplemented by this Renewal, shall commence as of the Effective Date and, unless otherwise terminated earlier pursuant to the Agreement, shall continue through March 31, 2013 ("New Term"). If Client desires to continue utilizing DM's System after this date, a separate agreement will need to be devised and executed.
- 1.3 Fees. As consideration for Client's access and use of the System during the New Term, Client shall pay to DM license fees in the amount of sixteen thousand eight hundred dollars and no cents (US\$16,800.00) per year. DM will send Client an invoice for the first year's fee upon the execution of this Renewal and an invoice once per year for each subsequent year's fees on the yearly anniversary of the execution of this Renewal through the end of the New Term, and Client will pay each invoice within thirty (30) days of the invoice date.
- 1.4 Agreement. Client hereby acknowledges and agrees that (i) it has or has received a copy of the Agreement, (ii) this Renewal incorporates by reference all of the terms, conditions and obligations of the Agreement and (iii) Client is bound by the terms, conditions and obligations the Agreement to the same extent as Client thereunder.

[Remainder Intentionally Blank – Signature Page to Follow]

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Collection and Reporting Service Agreement as of the Effective Date.

DIGITAL MEASURES, LLC



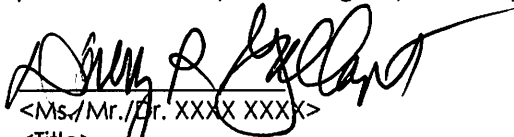
Mr. Matthew J. Bartel
Chief Executive Officer
Digital Measures, LLC

APPROVED
By Matthew J. Bartel at 1:52 pm, Jan 12, 2010

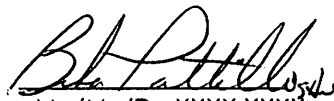
Date

STEPHEN F. AUSTIN STATE UNIVERSITY

(Two authorized signatures are required, one of which must be from your finance, legal affairs, procurement or purchasing department)


<Ms./Mr./Dr. XXXX XXXX>
<Title>

2/1/10
Date


<Ms./Mr./Dr. XXXX XXXX>
<Title>

2-1-10
Date

Digital Measures

RENEWAL of Collection and Reporting Services Agreement

This Renewal of Collection and Reporting Services Agreement (this "Renewal") is made and entered into as of April 1, 2013 (the "Effective Date") by and between Digital Measures, LLC, a Wisconsin limited liability company ("DM") and Stephen F. Austin State University ("Client"). This Renewal is a supplement to, and incorporates by reference all of the terms, conditions and obligations of that certain Collection and Reporting Services Agreement ("Agreement") executed on April 1, 2007 by and between Digital Measures and Stephen F. Austin State University. The purpose of this Renewal is to extend the Term of the Agreement to continue to provide this Client and its Users with access and use of the System under the terms and conditions of the Agreement. To the extent provisions of this Renewal are inconsistent with the terms and conditions of the Agreement with respect to the Client, the terms of this Renewal shall control. Unless otherwise defined herein, all capitalized terms shall have the definition given thereto in the Agreement; provided that, for purposes of this Renewal only, all references in the Agreement to "Client" and "Term" shall refer to the Client and Term as defined herein.

- 1.1 **License Grant.** During the Term (as defined in Section 1.2), and subject to the terms and conditions of the Agreement, DM grants to Client a limited, non-exclusive, non-transferable, non-assignable site license to access and use the functionality of DM's System solely for its own internal business purposes for a maximum of five-hundred (500) full-time equivalent (FTE) Users in each of its College of Education, College of Liberal Arts and Applied Arts and College of Sciences and Mathematics; and for a maximum of one-hundred (100) full-time equivalent (FTE) Users in each of its Nelson Rusche College of Business, College of Fine Arts and Arthur Temple College of Forestry and Agriculture. DM recognizes that Client has provided a reasonable approximation of the number of Users that Client will have during the Term of the Agreement and that the actual number of Users may vary, however Client will not exceed the User limitation by more than twenty (20) percent at any point during the Term. Client shall have no right to grant licenses or sublicenses regarding access and use of the System and shall have no right to access or use the System for any purpose outside the scope of the Agreement.
- 1.2 **Term.** With respect to this Client, the Agreement, as supplemented by this Renewal, shall commence as of the Effective Date and shall continue through March 31, 2018 ("New Term"), unless this Renewal is earlier terminated as provided herein or within the Agreement. If Client desires to continue utilizing DM's System after this date, a separate agreement will need to be devised and executed.
- 1.3 **Fees.** As consideration for Client's access and use of the System during the New Term, Client shall pay to DM license fees in the amount of twenty-three thousand four hundred dollars and no cents (US\$23,400.00) per year. DM shall send Client an invoice for the first year's fee upon the execution of this Renewal and an invoice once per year for each subsequent year's fees on the yearly anniversary of the execution of this Renewal through the end of the New Term, and Client will pay each invoice within thirty (30) days of receipt, and in accordance with the prompt payment laws of the state of Texas.
- 1.4 **Payment.** Client agrees that all transactions will be conducted in United States dollars. If Client pays by wire transfer, Client shall pay its bank's wire transfer fee as well as any intermediary bank's wire transfer fee. DM shall pay any incoming wire transfer fee assessed by its bank.

- 1.5 **Taxes.** Client is responsible for any applicable duties, customs fees, or taxes (other than DM's income tax) associated with the sale hereunder, including any related penalties or interest ("Taxes"), and Client will pay DM the Fee without any reduction for Taxes. Client must notify DM of any obligation it must fulfill to collect or pay any such Taxes so that the Taxes will be added to the Fee invoiced to Client. If Client fails to notify DM of DM's need to collect or pay Taxes, Client shall be invoiced for all such amounts that were to have been collected, plus any penalties and interest that are assessed by any taxing authority.
- 1.6 **Effect of Termination.** The parties acknowledge and agree that this Renewal may not be terminated prior to the expiration of the New Term, unless as otherwise expressly provided herein or within the Agreement. In the event this Renewal or the Agreement is terminated prior to the expiration of the New Term by DM under Sections 2.2(a), 2.2(b) or 2.2(c) of the Agreement all unpaid installments of the Fee and the Increased Fees (as such capitalized terms are defined in the Agreement's Section 3.1), whether due currently or in the future, shall become immediately due and payable by Client. In the event this Agreement is terminated prior to the expiration of the Term by Client under Sections 2.2(b), 2.2(c), or as provided in 1.9 of this Renewal, Client shall only owe DM a pro-rata amount of the Fee. All terms and conditions of this Renewal that would, by their nature, survive the expiration or termination of this Renewal, shall so survive, including, without limitation, Client's obligation to pay the Fee and Increased Fees.
- 1.7 **Notices.** Whenever any notice to a party is required hereunder or within the Agreement, such notice shall be in writing, addressed to the party's address set forth below. If either address is not specified for Client, DM will send notices to Client's purchasing department.

If to Client regarding invoices:

STEPHEN F. AUSTIN STATE UNIVERSITY

Attention: _____

If to Client regarding matters other than invoices:

STEPHEN F. AUSTIN STATE UNIVERSITY

Attention: _____

If to DM:

Digital Measures
 Accounts Department
 301 N. Broadway – Floor Four
 Milwaukee, WI 53202

- 1.8 **Agreement.** Client hereby acknowledges and agrees that (i) it has or has received a copy of the Agreement, (ii) this Renewal incorporates by reference all of the terms,

conditions and obligations of the Agreement and (iii) Client is bound by the terms, conditions and obligations of the Agreement to the same extent as Client thereunder.

- 1.9 **Loss of Funding.** Performance by Client under the Agreement and this Renewal may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of Client (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Client will issue written notice to DM and Client may terminate the Agreement and Renewal without further duty or obligation hereunder. DM acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Client.
- 1.10 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CLIENT (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON CLIENT'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CLIENT EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

[Remainder Intentionally Blank – Signature Page to Follow]

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Collection and Reporting Service Agreement as of the Effective Date.

DIGITAL MEASURES, LLC



Mr. Matthew J. Bartel
Chief Executive Officer
Digital Measures, LLC

APPROVED
By Matthew J. Bartel at 4:02 pm, Feb 05, 2013

Date


STEPHEN F. AUSTIN STATE UNIVERSITY

(Two authorized signatures are required, one of which must be from your finance, legal affairs, procurement or purchasing department)



Mr. Danny Gallant
VP for Finance & Admin

2/1/2013
Date



Dr. Baker Pattillo
President

2-1-13
Date