



3590 Sacramento Drive #130  
San Luis Obispo, CA 93401  
1-800-748-0975  
Fax 805-277-9625

## Application Hosting Agreement

THIS APPLICATION HOSTING AGREEMENT ("Agreement") is made and entered into on this 14th day of September, 2016 (the "Effective Date") by and between The Texas A&M University System, a Texas educational system ("Client") and Comevo, Inc., a California corporation ("Comevo").

WHEREAS, Comevo provides an online orientation application (the "Application") and online Application hosting services (the "Hosting Services") to make the Application accessible by users through the Internet.

WHEREAS, Client desires to obtain access to the Application via the Hosting Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties as set forth in this Agreement, the parties hereby agree as follows:

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### 1. Provision of Application Hosting Services

Subject to the terms and conditions of this Agreement, Comevo hereby agrees to provide to Client the non-exclusive use of the Application and the Hosting Services described in Exhibit "A", Scope of Work:

**1.1 Availability:** Comevo shall provide access to the Application via the Internet and the Hosting Services, with such access being provided approximately 24 hours per day, with allowable significant downtime only for normal maintenance and upgrades, and other causes that are beyond the reasonable control of a well-managed business. Whenever possible, Comevo will communicate expected downtimes to Client in advance.

**1.2 Unexpected Downtime Credit:** Despite the efforts of Comevo, functionality of the Client site may decrease from time to time, and may become partially or completely unavailable. In such event, Comevo will work to restore the Client site to its normal operating functionality as rapidly as possible. If functionality of the Client site is impaired to any degree that makes the Application materially unavailable, the duration of such unavailability shall be considered "downtime." Subject to Section 1.1 above, upon request of Client and validation by Comevo, Client will accrue one day of credit for each hour of downtime. Credit shall be applied to the next statement.

**1.3 Contingency/Backup:** Comevo will perform and retain onsite and offsite backups of the Application and all associated data files daily and following any significant changes that are made to the Application.

**1.4 Security/Privacy:** Access to the Application is limited to users with valid username/password. Data entered and displayed on the Application may be secured, at the Client's discretion, using standard SSL encryption. Comevo will not share or disclose information related to Client's use of the Application, and will comply with all applicable state and federal laws related to the protection and privacy of student records, including those set forth in the Federal Educational Rights Act (FERPA).

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### 2. Fees and Payment

**2.1 Application and Hosting Services Fee:** In exchange for providing the Application and the Hosting Services, Client shall pay the fees set forth in Exhibit "B". Client shall, to the extent consistent with the Texas Prompt Payment Act (Tex. Gov't Code Sec. 2251.021) pay all charges owed under this Agreement within 60 days of the

date of invoice ("Due Date"). Client shall pay interest on overdue payments at the rate of 1.5% per month or the maximum-rate allowable by law, whichever is lower. If Client does not pay an invoice within 15 days of Due Date, Comevo reserves the right to disconnect Hosting Services. As a reasonable estimate of Comevo's actual damages, Client agrees to pay a fifty dollar (\$50.00) service fee on any checks returned by Client's bank.

**2.2 Additional Charges:** The Application and Hosting Services fee shall be solely for provision of the Application and for the Hosting Services described in Exhibit A. All other services will incur additional charges, and must be agreed upon in advance and in writing (email acknowledgement is acceptable) prior to commencement of additional work.

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### 3. Representations and Warranties

3.1 Client represents and warrants to Comevo that: (a) Client owns or has the right to use all Client content contained in the Application; and (b) the use, reproduction, distribution, and transmission of the Client content does not (i) infringe or misappropriate any copyright, patent, trademark, trade secret, or any other proprietary rights of a third party; (ii) violate any criminal laws; (iii) constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity, or violate any other federal, state or local law or regulation.

3.2 Client acknowledges the terms of the Digital Millennium Copyright Act of 1998 and the obligations on the part of Comevo in the event it receives a notice from any third party that the Application or Client content infringes upon the rights of any third party. Client consents to Comevo following the procedures outlined in the Act in the event of a claimed infringement. Client understands and agrees that Comevo's compliance with the Act may result in the Application being taken off line. Client agrees to indemnify and hold Comevo harmless from and against any and all damages that may result from the Comevo's good faith compliance with the terms of the Act.

3.3 Client shall not copy or use any of Comevo's Confidential Information except as reasonably required to perform its duties hereunder, and shall only disclose such information to those employees, subcontractors, and agents that have a "need to know" such information to perform their duties. For purposes of this Agreement, "Confidential Information" shall mean any competitively sensitive or secret business, marketing, or technical information of either party that is designated as confidential by a party. Confidential Information shall not include, however, information that is: (1) generally known to the public or readily ascertainable from public sources (other than as a result of a breach of confidentiality); (2) independently developed without reference to or reliance on any Confidential Information of Comevo, as demonstrated by written records (which shall be provided upon request); or (3) obtained by Client from an independent third party who has created or acquired such information without reference to or reliance on Confidential Information of Comevo, as demonstrated by written records (which shall be provided upon request). If Client is legally required to disclose Comevo's Confidential Information, Client shall, to the extent allowed by law, promptly give Comevo written notice of the requirement so as to provide Client a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If Client complies with the terms of this Section 3.3, disclosure by Client of that portion of Comevo's Confidential Information which Client is legally required to disclose will not constitute a breach of this Agreement. Client is not required to pursue any claim, defense, cause of action, or legal process or proceeding on Comevo's behalf.

3.4 Comevo 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 Comevo becomes aware that the EIRs, or any portion thereof, do not comply, then Comevo shall, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

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### 4. Content and Data

**4.1 Removal of Unacceptable Content:** Comevo has the right to monitor the Application's use by Client, and in its sole discretion to remove any content, with reasonable prior notice to Client.

**4.2 Proprietary Content:** Except for the non-exclusive licenses granted herein, Client has no right, title or interest in or to the Application or any related content or source code.

**4.3 Protected Information**

(a) "Protected Information" means employment records, medical records, education records, personal financial records (or other individually identifiable information), research data, classified government information, and other data that has been designated as private, protected, or confidential by law or by Client. "Protected Information" does not include public records that by law must be made available to the general public. If Comevo is uncertain as to whether any data constitutes Protected Information, Comevo shall treat the data in question as Protected Information until a determination is made by Client.

(b) For purposes of the Family Educational Rights and Privacy Act ("FERPA"), Client designates Comevo as a school official with a legitimate educational interest in any education records in Protected Information to the extent Comevo requires access to those records to fulfill its obligations under this Agreement.

(c) Comevo shall hold Protected Information in strict confidence. Comevo may not use or disclose Protected Information received from or on behalf of Client except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Client. Comevo may not use Protected Information for any purpose other than the purpose for which the disclosure was made. Comevo may allow only Comevo's employees who have a legitimate business need in performing this Agreement to have access to Protected Information.

(d) Upon termination of this Agreement, and upon request from Client, Comevo shall return all Protected Information to Client within 30 days or, if return is not feasible, destroy all Protected Information. Within seven days after destruction, Comevo shall confirm to Client in writing the destruction of Protected Information.

(e) If Client reasonably determines in good faith that Comevo has materially breached any of its confidentiality obligations under this Agreement or has violated FERPA, Client, in its sole discretion, may require Comevo to submit to a plan of monitoring and reporting; provide Comevo with a 15-day period to cure the breach; or terminate this Agreement immediately. Before exercising any of these options, Client shall provide written notice to Comevo describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that Comevo improperly disclosed personally identifiable information obtained from Client's education records, Client may not allow Comevo access to education records for at least five years.

(f) Comevo 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 Protected Information received from, or on behalf of Client. Comevo shall extend these measures by contract to all subcontractors used by Comevo.

(g) Comevo shall, within one day of discovery, report to Client any use or disclosure of Protected Information not authorized by this Agreement or in writing by Client. Comevo's report shall identify: (1) the nature of the unauthorized use or disclosure, (2) the Protected Information used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what Comevo has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (5) what corrective action Comevo has taken or will take to prevent future similar unauthorized use or disclosure. Comevo shall provide such other information, including a written report, as reasonably requested by Client.

(h) Comevo shall defend and indemnify Client from all claims, liabilities, damages, or judgments involving a third party, including Client's costs and attorneys' fees, which arise as a result of Comevo's failure to meet or breach any of its obligations under this provision.

(i) The restrictions and obligations under this provision will survive expiration or termination of this Agreement for any reason.

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## **5. Limitations of Warranties and Liability**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMEVO DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES. EXCEPT FOR CLAIMS THAT THE APPLICATION INFRINGES THE INTELLECTUAL PROPERTY OF A THIRD PARTY, COMEVO WILL NOT BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SIMILAR DAMAGES, OR, EXCEPT AS SET FORTH IN THIS AGREEMENT, FOR CLAIMS OF DAMAGES MADE BY ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY

OF SUCH DAMAGES. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL COMEVO'S LIABILITY EXCEED THE TOTAL ACTUALLY PAID BY CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, AS DEFINED IN THIS AGREEMENT.

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## 6. Indemnification

Client agrees, to the extent authorized under Texas law, to indemnify and hold harmless Comevo and its agents, affiliates, successors, and assigns from and against any and all liabilities, losses, damages, costs, and expenses, including reasonable attorney fees and experts' fees, associated with any claim or action (whether or not any action or administrative proceeding is actually filed) against Comevo and its agents, affiliates, successors, and assigns related to or arising out of Client's actions or content. Comevo shall promptly notify Client of any such claim, shall provide reasonable assistance in connection with the defense and/or settlement thereof, and shall permit Client to control the defense and/or settlement thereof.

Comevo warrants that neither the Application nor the Hosting Services will infringe any intellectual property, privacy, or other right of any party. If Comevo becomes aware of any such possible infringement, Comevo shall immediately so notify Client in writing. Comevo shall indemnify and defend Client, The Texas A&M University System, its regents, officers, employees, representatives, agents, and students from any claim, liability, or judgment that the Application or the Hosting Services infringe any intellectual property, privacy, or other right of any party.

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## 7. Term and Termination

**7.1 Term:** This Agreement will take effect on the Effective Date and remain in effect for a period of 1 (one) year, and will automatically continue on a year-to-year basis thereafter not to exceed a total of five years, unless sooner terminated pursuant to the terms hereof.

**7.2 Termination:** Either Party may terminate this Agreement, with or without cause, upon 30 days prior written notice to the other party. Termination of this Agreement by Client prior to the end of the term hereof shall not obligate Comevo to reimburse Client for prepaid fees.

**7.3 Effect of Termination:** Upon any termination of this Agreement both parties will immediately destroy or erase any proprietary content or data as requested. A confirmation of such removal may also be requested by signing and returning an "affidavit of destruction" detailing what and how such content and data were erased.

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## 8. Miscellaneous

**8.1** The relationship of Comevo and Client established by this Agreement is solely that of independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.

**8.2** This Agreement may be amended at any time and from time to time, but any amendment must be in writing and signed by each Party to be bound.

**8.3** Performance of this Agreement by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or nonperformance due to causes not reasonably within the control of a well-managed business. Such acts or causes shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, governmental regulations superimposed after the fact, earthquakes, or other catastrophes. In the event of any delay resulting from such causes, the time for performance and payment hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delays. In the event of any delay or nonperformance caused by such uncontrollable forces, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof, and the anticipated extent of such delay, and shall indicate whether it is anticipated that the completion dates would be affected thereby.

8.4 This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties.

8.5 If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

8.6 This Agreement, including all Exhibits, Schedules, Appendices, and Attachments, contains the entire agreement of the Parties relating to the rights granted and obligations assumed herein. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be charged.

#### 8.7 INTENTIONALLY OMITTED

8.8 In any action brought under this Agreement, the prevailing party shall, to the extent authorized under Texas law, be entitled to recover its actual costs and attorney fees and all other litigation costs, including expert witness fees, and all actual attorney fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding. The provisions of the preceding sentence shall be severable from the provisions of this Agreement and shall survive the entry of any such judgment.

8.9 In the event of a dispute between the parties, which they are not able to resolve themselves, the parties agree to submit the dispute to a mediation service reasonably accepted by each party. Each party shall pay one half of the mediation fees and costs.

8.10 By signing below, you acknowledge that you are an adult of 18 years or older and you have reviewed and accept the terms and conditions contained in this Agreement and any applicable addenda thereto. You accept the Hosting Services ordered, authorize Comevo to set-up and provide the Hosting Services, and acknowledge that Comevo will commence processing the order and incur expenses and obligations immediately.

8.11 Pursuant to Section 2252.903, Texas Government Code, any payments owing to Comevo under this Agreement may be applied directly toward certain debts or delinquencies that Comevo 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.

8.12 A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the 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."

8.13 Comevo 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, Comevo shall 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. Comevo acknowledges that Client may be required to post a copy of this fully-executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above intending to be legally bound by the terms hereof.

Dated: September 19, 2016

**Comevo, Inc.**

By: Leslie E. Coe

Name: Leslie Coe

Title: Vice President of Operations

Dated: 9-15-16

**Client**

By: Billy Hamilton

Name: Billy Hamilton

Title: EXEC. VC + CFO

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## **1. Project Overview**

The Application will allow the Client to manage content within its training/orientation module(s) and track the progress of the users who have gone through that content. The Application will also allow those users to view the content in a sequential manner and allow them to answer quiz questions as a way to verify that user retained the information.

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## **2. Application Requirements**

The Application shall be delivered according to the following general steps/requirements:

2.1 The Client shall notify Comevo of persons authorized to submit and edit Application content, and/or function as System Administrator.

2.2 Comevo shall provide necessary username and password for authorized persons to access the Application.

2.3 The Client shall notify Comevo of the desired method and parameters to be used allowing user access to the content delivery portion of the Application.

2.4 Comevo will make available the ability to upload module completion information via an API on a regular basis into Client's systems.

2.5 Client or a third party shall add any textual content to the Application with technical assistance of Comevo, if necessary. Client or a third party shall supply any proprietary graphics used by Client in the development of the Application.

2.6 Comevo shall provide Client with configuration services. Client shall provide Comevo with a prioritized list of design requirements prior to initiation of these services and all work shall be performed with the assistance of Client. Configuration services apply to the following items:

- Customizing Application template with Client logo and colors
- Importing of content prepared by Client into the Application, as long as that content is in electronic format
- Cropping and resizing of images for use in the Application
- Video optimization for use in the Application

2.7 During development of the Application, changes to the above requirements may be made following the approval of both Comevo and Client. Additional requirements regarding the specific content and development of the Application shall also be generated by Comevo in cooperation with the Client.

2.8 The Application shall be developed to run in Internet browsers with the following characteristics:

- Properly Support HTML (current and one previous version)
- Properly Support CSS (current and one previous version)
- Properly Support the Adobe Flash Player (current and one previous version)

2.9 The Application shall be considered "complete" upon Comevo's fulfillment of all template design specifications, developed by Client upon initiation of the project.

2.10 After completion of work as described in number 2.9 above, updates with new features will be made to the Client's package at Comevo's discretion at no-charge.

2.11 Comevo shall provide technical support to Client as part of the Hosting and Maintenance Fee for the duration of this Software Agreement, as outlined in number 4 below.

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### **3. Accessibility**

Comevo is committed to ensuring that its clients can provide usable and accessible content to their end users and is continually evaluating its service to make sure this is possible. Comevo strives to provide the tools necessary for its clients to create accessible content, according to Section 508 of the Rehabilitation Act issued from the United States federal government and the Web Accessibility Initiative (WAI) issued by the World Wide Web Consortium (W3C), and will provide evaluations of client content with recommendations to meet these standards.

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### **4. Technical Support**

Comevo is dedicated to helping its customers enjoy and benefit from its software solutions. Therefore, technical assistance will be provided to customers during the term of their contract. Technical Support is defined as the assistance Comevo provides its customers to resolve technical issues related to operation of a Comevo application.

Comevo will respond to all customer inquiries within one business day, and during the normal business operating hours of 8:00 AM – 5:00 PM Pacific Time, Monday through Friday, excluding holidays. All customer inquiries will be resolved in a timely manner. Comevo provides several means of access to Technical Support, including email and telephone. Technical Support contact information is provided below:

**Email:** [support@comevo.com](mailto:support@comevo.com)

**Telephone:** 1-800-748-0975



## COMEVO Fee Schedule

	Price /Unit	Count	Total
<b>Set-up Fee:</b>			
@school Online Orientation Deluxe Package	\$19,000	4	<b>\$76,000</b>
<b>Subscription Fee:</b>			
@school Online Orientation Deluxe Package	\$60,750 /year	1	<b>\$60,750</b>
Texas A&M University (\$28,350)			
Prairie View A&M University (\$10,800)			
West Texas A&M University (\$10,800)			
Texas A&M University - Kingsville (\$10,800)			
<b>Discounts:</b>			
Group 1 Participation Discount for 4-6 schools (6%)	\$3,645	1	<b>\$3,645</b>
<b>Total:</b>			<b>\$133,105</b>