

Contract No. 709500000399

STATE OF NEW MEXICO
HIGHER EDUCATION DEPARTMENT
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. 709500000399-02

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. 'Summary of the Products, Services and Pricing' identified as Exhibit A Section II, of original Agreement # 709500000399, and Attachment A of Amendment No. 709500000399-01 are hereby deleted.

2. Section I.a.I of Amendment No. 709500000399-01 is hereby amended to break number 3 Eastern New Mexico University, into Eastern New Mexico University-Portales, Eastern New Mexico University-Ruidoso, Eastern New Mexico University-Roswell and to add No. 11 Institute of American Indian Arts (IAIA), and accordingly all references to the total number of instances of software/institutions in Amendment No. 709500000399-01 are hereby replaced with thirteen (13) and any examples using those numbers shall be adjusted accordingly.

3. ARTICLE 3 - Compensation, Paragraph B – Payment, is hereby amended as follows:

B. Payment. Under this Agreement, the Agency shall pay to the Contractor in full payment for services rendered additional compensation of **\$1,364,232.00**, such compensation not to exceed **\$1,364,232.00**, including gross receipts tax.

Under Agreement #709500000399 and all Amendments to said Contract, the total amount of compensation payable to the Contractor, including gross receipts tax and expenses, shall not exceed **\$9,155,092.00**.

Payment shall be tendered to Contractor within thirty (30) days of the date of receipt of the invoice. All Payment Invoices MUST BE received by the Procuring Agency no later than

fifteen days after termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

4. ARTICLE 5 - TERM is hereby amended as follows:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6 of Contract No. 709500000399. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

5. Exhibit A, Scope of Work, SECTION III. DELIVERABLES is amended to add the following for Year Four.

Deliverable Number 19, Training Materials License Updates

<u>DELIVERABLE 19</u>	<u>DU DATE</u>	<u>COMPENSATION</u>
<u>TASK ITEM</u>	<u>SUB TASKS</u>	<u>DESCRIPTION</u>
TRAINING MATERIALS LICENSE UPDATES	DUE AT THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	JUNE, 2011: \$924.92 JULY, 2011 THROUGH MAY 2012: \$ 552.28 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$7,000 INCLUDING GRT.
Training Material License Updates	Sub 1 Sub 2 Sub 3	Contractor will provide training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM. Contractor will provide training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM. For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit D of the original Agreement No. 709500000399

Deliverable Number 20, Annual Integration Customization and Maintenance

<u>DELIVERABLE 20</u>	<u>DU DATE</u>	<u>COMPENSATION</u>
INTEGRATION CUSTOMIZATION AND MAINTENANCE	DUE AT THE END OF EACH MONTH BEGINNING JUNE 2011 AND ENDING MAY, 2012.	JUNE 2011: 13,194.16 JULY, 2011, THROUGH MAY 2012: \$7,891.44 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$100,000.00 INCLUDING GRT
TASK ITEM	SUB TASKS	DESCRIPTION
Annual Integration Customization and Maintenance	Sub 1	Contractor will provide annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 4 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested.
	Sub 2	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit E of the original Agreement No. 709500000399

Deliverable Number 21, Managed Hosting ASP Service

<u>DELIVERABLE 21</u>	<u>DU DATE</u>	<u>COMPENSATION</u>
MANAGED HOSTING ASP SERVICE	DUE AT THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	JUNE, 2011: \$102,440.01 JULY, 2011 THROUGH MAY 2012: \$61,269.09 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$776,400.00 * INCLUDING GRT
TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Contractor will ensure data integrity.

	Sub 2	Contractor will ensure system stability and support the Procuring Agency to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Contractor will migrate course content for participating institutions
	Sub 4	Contractor will Provide 24/7 technical support by telephone for infrastructure and operations to Statewide Service center.
	Sub 5	Contractor will Provide online support resources to participating institutions
	Sub 6	Contractor will assist the Procuring Agency to Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.
	Sub 7	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit E of the original Agreement No. 709500000399

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 709500000399. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

Deliverable Number 22, Support And Maintenance

DELIVERABLE 22	DU DATE	COMPENSATION
SUPPORT AND MAINTENENCE	DUE ON THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	JUNE, 2011: \$63,442.06 JULY, 2011 THROUGH MAY 2012: \$37,944.54 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$480,832 INCLUDING GRT.
TASK ITEM	SUB TASKS	DESCRIPTION
Support	Sub 1	Contractor will provide 24/7 telephone support and web-based support through the Behind the Blackboard support portal
Maintenance	Sub 2	Contractor shall provide access to updates, hotfixes, patches, upgrades and future releases; and Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.
	Sub 3	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit B of the original Agreement No. 709500000399

All other articles of the original contract remain the same. Except as provided above, the

terms and conditions of the Agreement # 709500000399 and all Amendments thereto are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: Robert E. Water, CFO Date: 9 Jun 11
Dr. José Z. Garcia
Cabinet Secretary
New Mexico Higher Education

By: Ted Borris Date: June 8, 2011
Ted Borris
Senior Counsel and Director
Blackboard Inc.

By: Dan Koleski Date: 6-9-11
Dan Koleski
Chief Information Officer
New Mexico Higher Education Department

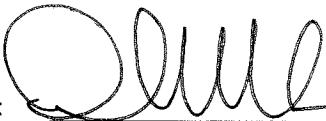
By: Samantha Fenrow Date: 6/9/2011
Samantha Fenrow
General Counsel
New Mexico Higher Education Department
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-012743-002

By: Douglas Date: 6-9-11
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico



By: _____
Darryl Ackley, Secretary
Department of Information Technology

Date: 6/9/11

This Agreement has been approved by the DFA Contracts Review Bureau:

By: N/A

Date: _____

DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: Sandra K. Sandy, Jr.
Purchasing Agent for the State of New Mexico

Date: 6/9/11

Contract No. _____

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. 109500000 399 - 01

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Agency," and Blackboard Inc., hereinafter referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

Section 1, Scope of Work, is hereby amended to read as follows:

1. Scope of Work.

The Contractor shall provide the following services (list only those services that are being amended or added by this amendment):

a. "ARTICLE 2 - SCOPE OF WORK" shall be modified as follows:

i. "Section C. License" shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:

1. Luna Community College
2. Clovis Community College
3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso)
4. Western New Mexico University
5. Northern New Mexico University
6. New Mexico Highlands University
7. New Mexico Junior College
8. New Mexico Tech
9. New Mexico Military Institute, and
10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C 1.-9., supra, and shall be further limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

For institutions moving directly to Blackboard Learn 9.1:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.

In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.

Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education ("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
- i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.

ii. 2 seats per Institution of Higher Education ("IHE") in a "CE/ Vista Transition" webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

A. Blackboard shall provide the following Program Management Services to Procuring Agency.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency's instance, or a Severity 1 issue which affects all nine (9) institutions' instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

A. The Phrase "October 22, 2008" shall be deleted and replaced by the phrase "Any time during the term of the Agreement"

b. "ARTICLE 12 -CONTRACTOR PERSONNEL" shall be modified as follows:

- i. "Russ Carlson – President of North American Higher Ed" shall be deleted and replaced with "Brett Frazier -Senior Vice President of North American Higher Education Sales"
- ii. "Jessie Woolley-Wilson-President of K12" shall be deleted and replaced by "Eric Stine – Senior Vice President of K20 Strategic Accounts"
- iii. "David Marr – President and COO" shall be deleted and replaced by "Katie Blot – Vice President of Blackboard Consulting"

c. "EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK" shall be modified as set forth in the Attachment A which is attached hereto.

d. "ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS" shall be modified as follows:

- i. The phrase "25% Time Commitment" shall be deleted and replaced by the phrase "100% Time Commitment through June 30, 2011..

e. **Additional Pricing.** During the term of this Agreement, Contractor agrees to the pricing set forth on Exhibit B, which is attached hereto.

f. "ATTACHMENT 2 TO EXHIBIT E" shall be modified as follows:

- i. "**Availability/Service Credit**". The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

2. **Compensation.**

See Attachments A and B

4. **Term.**

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION, OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall terminate until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: Debra E. Flory
Agency

Date: 6-30-10

By: T. W. S.
Contractor

Date: June 19, 2010

By: Tom Koleski
Agency CIO

Date: 6-30-10

By: Vernie L. M.
Agency Legal Counsel
(Certifying legal sufficiency)

Date: June 30, 2010

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-012 743-002

By: J. H. J.
Taxation and Revenue Department

Date: 7/7/10

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: M. M.
Marlin Mackey, Secretary
Department of Information Technology

Date: 7-13-10

This Agreement has been approved by the DFA Contracts Review Bureau:

By: NIA Date: _____
DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: Loribean L. Date: 7/29/2010
Purchasing Agent for the State of New Mexico

ATTACHMENT A**CHANGES TO EXHIBIT A OF THE AGREEMENT**

1. The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	N/A	N/A	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	\$853,900	\$853,900	N/A
Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	N/A	N/A	\$853,900
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000
Blackboard Professional	\$620,000	\$100,000	\$100,000*

Services (Deliverables 1, 3, 4, 8, 9*, 10 and 12)			
Decision Assistance (Deliverable 15)	N/A	N/A	\$0
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/ Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0
Program Management(Deliverable 18)	\$0	\$0	\$0
TOTAL FEES	\$5,753,060	\$968,900	\$968,900
Designated Server Site: Hosted By Blackboard			
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.			

*Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in year three, the amount associated with Year three, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first two years.

Attachment B
Additional Pricing

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may only be purchased on only one occasion, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Migration Planning Services*	\$30,190
Content and Community Refresher*	\$20,000

*Subject to additional requirements to be included in an agreement upon actual purchase.

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may be purchased on multiple occasions.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Blackboard Course Consultation – Two day training workshop focused on course consultation and change management	No charge for first session**, each additional session \$6,000
Onsite Training Workshops-Academic Collaboration Essentials and Academic Collaboration Administration (each session has a maximum of 15 participants)	No charge for first session**, each additional session \$8,000

**Only one no charge session for Purchasing Agency and all nine (9) other institutions as a whole, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

Contract No. 08-950-00417

STATE OF NEW MEXICO
[NAME of AGENCY]
IT PROFESSIONAL SERVICES CONTRACT

Comment [D1]: Please enter agency name

AMENDMENT No. _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. Exhibit A [2], Scope of Work, Section III Deliverables is hereby amended as reflected by Attachment 1 to this Amendment.

Comment [D2]: ??

- i. 2. Additionally, Paragraph ??? of Exhibit A Scope of Work is hereby amended as follows:

Comment [D3]: Please include reference to paragraph being amended

a. The chart within Exhibit Section A Section II of Contract # 08-950-00417, as well as the chart identified as Attachment A of Amendment No. 709500000399-01 shall be hereby deleted.

b. Section I.a.i of Amendment No. 709500000399-01 shall be is hereby amended to break number 3 Eastern New Mexico University, into Eastern New Mexico University-Portales, Eastern New Mexico University-Ruidoso, Eastern New Mexico University-Roswell and to add No. 11 Institute of American Indian Arts (IAIA), and accordingly all references to the total number of instances of software/institutions in Amendment No. 709500000399-01 shall be are hereby replaced with thirteen (13) and any examples using those numbers shall be adjusted accordingly.

c. Add a new Deliverable 19 to Section III of Exhibit A of Contract # 08-950-00417, which shall state as follows:

Blackboard shall provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including

- 24/7 telephone support and web-based support through the Behind the Blackboard

Comment [D4]: Any reason for not including this with other deliverables below? Suggest - Please consider including this in the SOW changes below.

support portal;

- Access to updates, hotfixes, patches, upgrades and future releases; and
- Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.
- The fees for this Deliverable shall be \$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832. [These fees in Year 4 cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

Comment [D5]: This seems a bit confusing. Let's work on this together

2. ARTICLE 3 Compensation shall be amended as follows:

Under this Agreement, the Agency shall pay to the Contractor in full payment for services rendered additional compensation of **\$1,364,232.00**, such compensation not to exceed **\$1,364,232.00**, including gross receipts tax. [The total amount of money payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed **\$1,364,232.00**.]

Under Contract #08-950-99417 and all Amendments to said Contract, the total amount of money payable to the Contractor, including gross receipts tax and expenses, shall not exceed **\$9,155,092.00**.

Payment shall be made on a monthly basis upon the receipt and acceptance of a detailed, certified payment invoice as follows. The first payment shall be \$180,000, and shall be invoiced on June 30, 2011. The remainder of the compensation of \$1,184,232 shall be invoiced on the 30th of each month, commencing July 30, 2011, in eleven consecutive equal installments of \$107,657.45. Payment shall be tendered to Contractor within thirty (30) days of the date of receipt of the invoice. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen days after termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

Comment [D6]: Seems redundant, is there a specific reason to repeat this?

Comment [D7]: Suggest: Please consider replacing 'money' with 'Compensation' for consistency

3. "ARTICLE 5 –TERM" as described in the Contract # 08-950-00417 shall be modified to state the following is hereby amended as follows:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6 of Contract No. 09-950-00417. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

Comment [D8]: Is this in addition to the compensations in deliverables below? The amounts in deliverables do not seem to add up to \$180k.

Suggest: Would it be helpful to follow typical norm and detail this in the compensation column of deliverables? Please see samples. Let's discuss this and figure out a way to state this appropriately.

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and

effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____

Comment [D9]: Please include name and title

By: _____ Date: _____

Comment [D10]: Please include name and title

By: _____ Date: _____

Comment [D11]: Please include name and title

By: _____ Date: _____

Comment [D12]: Please include name and title

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Darryl Ackley, Secretary
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____

DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

ATTACHMENT 1 shall be amended to add a fourth year of services as follows:

SECTION III. DELIVERABLES"

Comment [D13]: This is a bit confusing.
This is Attachment 1.
Also as this is already stated in 1 above, suggest deleting it from here for clarity.

- G. **Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D of the original contract for detailed specifications associated with this Deliverable)**

DELIVERABLE SEVEN		DUE DATE	COMPENSATION
TRAINING MATERIALS			\$7,000
LICENSE UPDATES			
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License Updates	Sub 1	Contractor shall provide Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Contractor shall provide Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

- L. **Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E of the original contract for detailed specifications associated with this Deliverable.)**

Comment [D14]: Let's verify deliverable numbers with original contract and A1. The new deliverables are 7,12,13 - Is there any reason to not have these in consecutive order?

DELIVERABLE TWELVE		DUE DATE	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE			\$100,000.00
TASK ITEM	SUB TASKS	DESCRIPTION	

Annual Integration Customization and Maintenance	Sub 1	Contractor shall provide Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription shall be due at due dates set forth above.
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Comment [D15]: Should this be year 4

3. Paragraph M shall be deleted and replaced by the following:

M. Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

Comment [D16]: Suggest: Please consider replacing 'Paragraph with 'Deliverable' for consistency

DELIVERABLE THIRTEEN	DUE DATE	COMPENSATION
MANAGED HOSTING ASP SERVICE AND TECHNICAL SUPPORT		\$776,400.00 *
TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Contractor shall Ensure data integrity.
	Sub 2	Contractor will Ensure system stability and support the Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Contractor will Migrate course content for participating institutions
	Sub 4	Contractor will Provide telephone-24/X7 technical support via telephone, for infrastructure and operations to Statewide Service center.
	Sub 5	Contractor will Provide online support resources to participating institutions
	Sub 6	Contractor will assist the Procuring agency to Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

Contract No. 709500000399

STATE OF NEW MEXICO
HIGHER EDUCATION DEPARTMENT
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. 709500000399-02

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. 'Summary of the Products, Services and Pricing' identified as Exhibit A Section II, of original Agreement # 709500000399, and Attachment A of Amendment No. 709500000399-01 are hereby deleted.
2. Section I.a.I of Amendment No. 709500000399-01 is hereby amended to break number 3 Eastern New Mexico University, into Eastern New Mexico University-Portales, Eastern New Mexico University-Ruidoso, Eastern New Mexico University-Roswell and to add No. 11 Institute of American Indian Arts (IAIA), and accordingly all references to the total number of instances of software/institutions in Amendment No. 709500000399-01 are hereby replaced with thirteen (13) and any examples using those numbers shall be adjusted accordingly.
3. ARTICLE 3 - Compensation, Paragraph B – Payment, is hereby amended as follows:

B. Payment. Under this Agreement, the Agency shall pay to the Contractor in full payment for services rendered additional compensation of **\$1,364,232.00**, such compensation not to exceed **\$1,364,232.00**, including gross receipts tax.

Under Agreement #709500000399and all Amendments to said Contract, the total amount of compensation payable to the Contractor, including gross receipts tax and expenses, shall not exceed **\$9,155,092.00**.

Payment shall be tendered to Contractor within thirty (30) days of the date of receipt of the invoice. All Payment Invoices MUST BE received by the Procuring Agency no later than

fifteen days after termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

4. ARTICLE 5 - TERM is hereby amended as follows:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6 of Contract No. 709500000399. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

5. Exhibit A, Scope of Work, SECTION III. DELIVERABLES is amended to add the following for Year Four.

Deliverable Number 19, Training Materials License Updates

<u>DELIVERABLE 19</u>	<u>DUe DATE</u>	<u>COMPENSATION</u>
TRAINING MATERIALS LICENSE UPDATES	DUE AT THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	JUNE, 2011: \$924.92 JULY, 2011 THROUGH MAY 2012: \$ 552.28 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$7,000 INCLUDING GRT.
TASK ITEM		
Training Material License Updates	Sub 1	Contractor will provide training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Contractor will provide training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 3	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit D of the original Agreement No. 709500000399

Deliverable Number 20, Annual Integration Customization and Maintenance

DELIVERABLE 20		DUe DATE	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE		DUE AT THE END OF EACH MONTH BEGINNING JUNE 2011 AND ENDING MAY, 2012.	
TASK ITEM	SUB TASKS	DESCRIPTION	
Annual Integration Customization and Maintenance	Sub 1	Contractor will provide annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 4 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested.	
	Sub 2	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit E of the original Agreement No. 709500000399	

Deliverable Number 21, Managed Hosting ASP Service

DELIVERABLE 21		DUe DATE	COMPENSATION
MANAGED HOSTING ASP SERVICE		DUE AT THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	
TASK ITEM	SUB TASKS	DESCRIPTION	
Provide data hosting	Sub 1	Contractor will ensure data integrity.	

	Sub 2	Contractor will ensure system stability and support the Procuring Agency to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Contractor will migrate course content for participating institutions
	Sub 4	Contractor will Provide 24/7 technical support by telephone for infrastructure and operations to Statewide Service center.
	Sub 5	Contractor will Provide online support resources to participating institutions
	Sub 6	Contractor will assist the Procuring Agency to Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.
	Sub 7	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit E of the original Agreement No. 709500000399

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 709500000399. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

Deliverable Number 22, Support And Maintenance

DELIVERABLE 22	DUe DATE	COMPENSATION
SUPPORT AND MAINTENENCE	DUE ON THE END OF EACH MONTH BEGINNING JUNE, 2011 AND ENDING MAY, 2012.	JUNE, 2011: \$63,442.06 JULY, 2011 THROUGH MAY 2012: \$37,944.54 PER MONTH TOTAL AMOUNT PAYABLE NOT TO EXCEED \$480,832 INCLUDING GRT.

TASK ITEM	SUB TASKS	DESCRIPTION
Support	Sub 1	Contractor will provide 24/7 telephone support and web-based support through the Behind the Blackboard support portal
	Sub 2	Contractor shall provide access to updates, hotfixes, patches, upgrades and future releases; and Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.
Maintenance	Sub 3	For Year 4, Contractor will provide all services and activities for this deliverable in accordance with specifications defined in Exhibit B of the original Agreement No. 709500000399

All other articles of the original contract remain the same. Except as provided above, the

terms and conditions of the Agreement # 709500000399 and all Amendments thereto are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____
Dr. Josè Z. Garcia
Cabinet Secretary
New Mexico Higher Education

By: _____ Date: _____
Ted Borris
Senior Counsel and Director
Blackboard Inc.

By: _____ Date: _____
Dan Koleski
Chief Information Officer
New Mexico Higher Education Department

By: _____ Date: _____
Samantha Fenrow
General Counsel
New Mexico Higher Education Department
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Darryl Ackley, Secretary
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: N/A Date: _____
DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

*revised
revised*

retract approval

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Contract No. 08-950-00417

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. 2

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. ARTICLE 2, Scope of Work, is hereby amended to read as follows:

outlined in Attachment 1
See Attachments for Amendments to Scope of Work.

2. ARTICLE 3 Compensation shall be amended as follows:

Under this Agreement, the Agency shall pay to the Contractor in full payment for services rendered additional compensation of **\$1,364,232.00**, such compensation not to exceed **\$1,364,232.00**, including gross receipts tax. The total amount of money payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed **\$1,364,232.00**.

Under Contract #08-950-99417 and all Amendments to said Contract, the total amount of money payable to the Contractor, including gross receipts tax and expenses, shall not exceed **\$9,155,092.00**.

Payment shall be made on a monthly basis upon the receipt and acceptance of a detailed, certified payment invoice as follows. The first payment shall be \$180,000, and shall be invoiced on June 30, 2011. The remainder of the compensation of \$1,184,232 shall be invoiced on the 30th of each month, commencing July 30, 2011, in eleven consecutive equal installments of \$107,657.45. Payment shall be tendered to Contractor within thirty (30) days of the date of receipt of the invoice. All Payment Invoices MUST BE received

by the Procuring Agency no later than fifteen days after termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

3. "ARTICLE 5 -TERM" as described in the Contract # 08-950-00417 shall be modified to state the following:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to the contingency clause contained in this Article or pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

The parties further agree that in the event that Procuring Agency does not obtain, by February 4, 2012, legislative authority for the full amount of \$1,364,232, representing the fees for the fourth year of Deliverables, and as further described in Attachment A, both the Compensation pursuant to this Agreement (such \$1,364,232) and the amount of Deliverables described in Attachments A and B, shall be reduced proportionally, with the assumption that there are 382 days remaining in the term ending on May 30, 2012 as of the date of execution of this Amendment. By way of example, if Procuring Agency obtains funding for only \$1,264,232, then the Compensation for each of the Deliverables described in Exhibits A and B shall be reduced by \$100,000, allocated proportionally over all the Deliverables in Attachments A, B, and C, and the Term shall also be reduced proportionally by the following formula:

$$\$100,000 \text{ divided by } \$1,364,232 \times 382 = \text{approximately 28 days.}$$

In this Example, the Term would end on May 2, 2012 rather than May 30, 2012.

Notwithstanding the foregoing, Procuring Agency guarantees a minimum compensation for the Performance Period ending on May 30, 2012 of \$950,000 and agrees that such \$1,364,232 shall be reduced by no more than \$414,232.

Also, the parties agree that if the aforementioned legislative authority has not been achieved by February 1, 2012, they will make good faith attempts to agree to alternatives to reducing the Deliverables, with the goal of avoiding a shutdown of Deliverables, until February 16, 2012. After February 16, 2012, Contractor shall not be required to continue to engage in such good faith efforts or provide any Deliverables hereunder unless such aforementioned legislative authority is achieved by February 16, 2012.

Notwithstanding the foregoing, Procuring Agency further warrants and represents that it shall, prior to any such reduction, exercise good faith efforts to utilize BAR authority or otherwise utilize discretionary funds to fulfill its commitment under

this Agreement, including a good faith effort to ask the remaining stakeholder institutions to share in making up the difference. Contractor also warrants and represents that it shall exercise good efforts to assist the Procuring Agency in securing the necessary BAR authority during the 2012 Legislative Session.

Notwithstanding any provisions in this Article to the Contrary, this Article shall be subject to Article 6, Paragraph B.

4. To the extent indicated on Attachment A to this Amendment No. _____, "ATTACHMENT A" to Amendment No. 709500000399-01 shall be replaced with "ATTACHMENT A" to this Amendment No. _____.

5. To the extent indicated on "ATTACHMENT B" to this Amendment No. _____, "EXHIBIT A, SECTION III. DELIVERABLES" as described in the Contract # 08-950-00417, shall be replaced by "ATTACHMENT B" to this Amendment No. _____.

6. To the extent indicated on "ATTACHMENT C" to this Amendment No. _____, Section 1. "Scope of Work" as set forth in Amendment No. 709500000399-01 shall be replaced with "ATTACHMENT C" to this Amendment No. _____.

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____
Procuring Agency

By: _____ Date: _____
Contractor

By: _____ Date: _____
Procuring Agency CIO

By: _____ Date: _____
Procuring Agency Legal Counsel
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Darryl Ackley, Secretary
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

ATTACHMENT A shall be amended to add a fourth year of services as follows:

Exhibit A, ~~Section II~~ ^{of the original as #1} is hereby Amended to add ~~Year~~ ^{the following}

The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be amended as follows. An additional column will be added to the chart as described below, which shall represent the fees and Deliverables for Year 4:

Product Description Overview	Year Four (Ending May 30, 2012)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	N/A. This deliverable terminated on May 30, 2011.
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	N/A
Blackboard ASP	\$853,900,

Annual Service for 13 instances (including standard maintenance and support)	which shall be reduced by \$77,500 to an amount of \$776,400.*
(Deliverable 13)	
Blackboard Training Services (Deliverable 5)	N/A. This deliverable terminated on May 15, 2011.
Blackboard Training Materials License (Deliverable 6 & 7)	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9, 10 and 12)	\$100,000
Decision Assistance (Deliverable 15)	N/A. This deliverable shall terminate on June 30, 2011.
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A. This deliverable shall terminate on June 30, 2011.
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/ Vista Transition Webinar Series (Deliverable 17)	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or available, after June 30, 2011.
Program Management (Delive rable 18)	N/A. This deliverable shall

	terminate on June 30, 2011.
Maintenance and Support (Deliverable 19)	\$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832.**
TOTAL FEES	\$1,364,232
Designated Server Site: Hosted By Blackboard	
Procuring Agency's and twelve (12) other institutions' aggregated FTE: up to 200,000 total for all ten organizations.	

The following statements shall apply only to Deliverables and fees for Year 4:

*For Year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for Year 4. Also, these fees do not include the SIS Integration Services.

**The license for the Blackboard Enterprise Software Solution for the thirteen (13) institutions' 200,000 aggregated FTE as described in this Amendment No. _____, Section 1(a)(i) items 1-13 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore, cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

ATTACHMENT R shall be amended to add a fourth year of services as follows:

SECTION III. DELIVERABLES”

- G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

DELIVERABLE SEVEN		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSE UPDATES		YEAR 4	\$7,000
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

- L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWELVE		PERIOD	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE		YEAR 4	\$100,000.00
TASK ITEM	SUB TASKS	DESCRIPTION	

Annual Integration Customization and Maintenance	Sub 1	Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription due at due dates set forth above.
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3. Paragraph M shall be deleted and replaced by the following:

M. Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE THIRTEEN	PERIOD	COMPENSATION
MANAGED HOSTING ASP SERVICE		YEAR 4
TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Ensure data integrity.
	Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Migrate course content for participating institutions
	Sub 4	Provide telephone 24/7 technical support for infrastructure and operations to Statewide Service center.
	Sub 5	Provide online support resources to participating institutions
	Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

ATTACHMENT C

I. a. **ARTICLE 2 - SCOPE OF WORK** shall be modified as follows:

- i. “Section C. License” shall be deleted in its entirety and replaced with the following: “Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include thirteen (13) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:
 1. Luna Community College
 2. Clovis Community College
 3. Eastern New Mexico University-Portales
 4. Eastern New Mexico University-Ruidoso
 5. Eastern New Mexico University-Roswell
 6. Institute of American Indian Arts (IAIA)
 7. Western New Mexico University
 8. Northern New Mexico University
 9. New Mexico Highlands University
 10. New Mexico Junior College
 11. New Mexico Tech
 12. New Mexico Military Institute, and
 13. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state’s public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the thirteen (13) instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named twelve (12) institutions (references to twelve (12) institutions or instances shall hereinafter mean the above set-forth thirteen (13) organizations, less Procuring Agency) with respect to such institution’s specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the twelve (12) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education (“IHE”) in a “Life in R9” webinar which highlights the major differences between Vista and Learn 9.1; and

- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

II. The parties agree that Deliverable 18, as set forth in Section 1(a)(vi) of Amendment 709500000399-02, shall expire on June 30, 2011.

III. Item 1(f) of Amendment 70950000399-01 shall be modified as follows:

b. **"ATTACHMENT 2 TO EXHIBIT E"** as set forth in shall be modified as follows:

- i. **"Availability/Service Credit".** The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the twelve (12) institutions shall count 1/24th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/24. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

IV. Add a new Deliverable 19 to Section III of Exhibit A, which shall state as follows:

Blackboard shall provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including

- 24/7 telephone support and web-based support through the Behind the Blackboard support portal;
- Access to updates, hotfixes, patches, upgrades and future releases; and

Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America. The fees for this Deliverable shall be \$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832. These fees in Year 4 cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

Contract No. 08-950-00417

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. "**ARTICLE 5 –TERM**" as described in the Contract # 08-950-00417 shall be modified to state the following:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

The parties further agree that in the event that Procuring Agency does not obtain, by June 10, 2011, commitments from all applicable institutions for the full amount of \$1,404,232, representing the fees for the fourth year of Deliverables, and as further described in Attachment A, both the Compensation pursuant to this Agreement (such \$1,404,232) and the amount of Deliverables described in Attachments A and B, shall be reduced proportionally, with the assumption that there are 382 days remaining in the Term [May 15 2011 to May 30, 2012]. By way of example, if Procuring Agency obtains funding for only \$1,304,232, then the Compensation for each of the Deliverables described in Exhibits A and B shall be reduced by \$100,000, allocated proportionally over all the Deliverables in Attachments A & B, and the Term shall also be reduced proportionally by the following formula:

\$100,000 divided by \$1,404,232 X 382 = approximately 27 days.

In this Example, the Term would end on May 3, 2012 rather than May 30, 2012

Notwithstanding the foregoing, Procuring Agency guarantees a minimum compensation for the Performance Period of May 15, 2011- May 30, 2012 of **\$TBD** and agrees that such \$1,404,232 shall be reduced by no more than **\$TBD**.

Notwithstanding the foregoing, Procuring Agency further warrants and represents that it shall, prior to any such reduction, exercise good faith efforts to utilize BAR authority or otherwise utilize discretionary funds to fulfill its commitment under this Agreement, including a good faith effort to ask the remaining stakeholder institutions to share in making up the difference.

Notwithstanding any provisions in this Article to the Contrary, this Article shall be subject to Article 6, Paragraph B.

2. **"ATTACHMENT A"** to Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT A**" to this Amendment No. _____.
3. **"EXHIBIT A, SECTION III. DELIVERABLES"** As described in the Contract # 08-950-00417, shall be replaced in its entirety by "**ATTACHMENT B**" to this Amendment No. _____.
4. Section 1. **"Scope of Work"** as set forth in Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT C**" to this Amendment No. _____.
5. **Preservation of Value**. If Contract No. 08-950-00417 is not renewed (including no new contract to extend the licenses and other terms of the Contract) following the end of the Term as described in Section 1 of this Amendment, Blackboard would allow each participating institution of higher learning ("IHE") (defined by having a unique production instance of the LMS, and as further described in Attachment C, Section 1(a)(i)) to license the same Blackboard products described in Deliverable 11 provided under the license to Procuring Agency, subject to the fees under the following formula:
 - a. The 2011 Blackboard list price for Vista Perpetual Support
 - b. For their then-current IHE FTE size.
 - c. Plus five percent

(For example, the 2011 list price for the under 2,000 FTE band is \$39,300, and would currently apply to NMJC. Thus, under this formula, for the 2012-2013 contract year - if the aforementioned Contract with Procuring Agency is not renewed - NMJC's price (provided they remain under 2,000 FTE) would be \$41,265. If NMJC grew beyond 2,000 students, the annual price would be based on the 2011 list price for that band - which is \$55,000 - plus five percent, for a total of \$57,750.)

Fees for attendant services, including ASP Annual Service, Integration and Customization Maintenance, and Training Materials Licenses (Deliverables 13, 12 and , 7, respectively shall be based on this same formula, where such services are available and elected by the participating IHE. Any services for which there is no 2011 list price, or which are priced custom according to an institutions's specific needs, shall be based on the then-current list price then-in-effect for North America Higher Education customers, less any discounts negotiated between the parties.)

6. **Compensation.**

See Attachments A and B.

7. **Term.**

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION, OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall continue until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

8. **“ARTICLE 3-PAYMENT** as described in the Contract # 08-950-00417shall be modified as follows:

The word “7,790,860” shall be changed to “\$9,195,092”.

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____
Procuring Agency

Date: _____

By: _____
Contractor

Date: _____

By: _____
Procuring Agency CIO

Date: _____

By: _____
Procuring Agency Legal Counsel
(Certifying legal sufficiency)

Date: _____

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____
Taxation and Revenue Department

Date: _____

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____
Marlin Mackey, Secretary
Department of Information Technology

Date: _____

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____
DFA Contracts Review Bureau

Date: _____

This Agreement has been approved by the State Purchasing Agent

By: _____
Purchasing Agent for the State of New Mexico

Date: _____

ATTACHMENT A

CHANGES TO EXHIBIT A OF THE AGREEMENT

1. The Chart within "III. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)	Year Four (May 15, 2011 to May 30, 2012)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0	\$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$179,000 to \$520,832**
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	N/A	N/A	\$0	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	\$853,900	\$853,900	N/A	N/A

Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	N/A	N/A	\$853,900	\$853,900, which shall be reduced by \$77,500 to an amount of \$776,400***
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000	N/A. This deliverable shall terminate on May 15, 2011
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9*, 10 and 12)	\$620,000	\$100,000	\$100,000*	\$100,000
Decision Assistance (Deliverable 15)	N/A	N/A	\$0	N/A. This deliverable shall terminate on June 30, 2011
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0	N/A. This deliverable shall terminate on June 30, 2011
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or available, after June 30, 2011
Program	\$0	\$0	\$0	N/A. This

Management (Deliverable 18)				deliverable shall terminate on June 30, 2011
TOTAL FEES	\$5,753,060	\$968,900	\$968,900	\$1,404,232
Designated Server Site: Hosted By Blackboard				
Procuring Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.				

**Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in Year Four, the amount associated with Year Four, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first three years.

**The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

***For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

ATTACHMENT B

A. *Deliverable Number 1 – Professional Services: Detailed Implementation Plan and Project Planning and Solution Design*

DELIVERABLE ONE	DU^E DATE	COMPENSATION
Detailed Implementation Plan and Planning for migration	AUGUST 15, 2008	\$84,000.00 ON ACCEPTANCE
TASK ITEM	REPRESENTATIVE TASKS	DESCRIPTION
Planning for Migration	Sub 1	Develop a migration framework document that guides the application's move from Blackboard's ASP operations to the Procuring Agency's data center. The framework will consist of and address the following areas: Migration Preparation; Test Data Migration, Test Migration, and Production Data Migration. When or if the Procuring Agency's chooses to migrate the application, this framework will be utilized by the Procuring Agency to develop it's migration plan at the time of migration.

Solution Design and Detailed Implementation Plan	Sub 2	<p>In coordination with the Project Manager and the eLearning Technology Director the Contractor shall prepare a detailed implementation plan that documents statewide objectives, requirements, and success criteria based on input from participating Institutions, public schools, and state agencies. The Plan will reflect the solution design and will leverage implementation leading practices to effectively mitigate deployment risks and promote solution adoption by constituents.</p> <p>This Implementation Plan will become the overarching Workplan for project activities, tasks and deliverables. At a minimum, the Plan will reflect or result in the following:</p> <ul style="list-style-type: none"> • Identify project milestones, risks and constraints, including production timelines and institution-specific on-boarding dates based on input from participating Institutions. • Identify participant roles at all institutions for the collaborative planning process. • Identify the related major inter-institutional work processes that will be affected by the central implementation. • Plan migration of (legacy) content from existing systems. • Identify opportunities for institutions to work together to save on implementation costs and maximize resources. • Develop user training plans. • Develop communication management, risk mitigation strategy, and escalation strategy plans. • Identify institution level tracking and reporting requirements. • Create identity management plan for identifying roles and responsibilities of participating institutions. • Develop scope and architecture of integrations. • Develop test strategy and related plan. • Map all Blackboard Product customer organization, roles, and permissions to public schools. • Map all Blackboard Products at all eLearning organizations, roles, and permissions to public schools. • Define distributed administration workflows. • Develop an on-boarding deployment project plan with identified project milestones, risks, constraints.
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B. Deliverable Number 2 – Professional Services: ASP Service Setup (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWO		DUE DATE	COMPENSATION
ONE TIME ASP SERVICE SETUP		JULY 15, 2008	\$20,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
ASP Service Setup	Sub 1	Establish framework for multi-institutional environment	
	Sub 2	Verify ASP hardware for multi-institutional environment	
	Sub 3	Establish hosting services environment	

C.
Design

Deliverable Number 3 – Professional Services: Community System Solution

DELIVERABLE THREE		DU DATE	COMPENSATION
COMMUNITY SYSTEM SOLUTION DESIGN		SEPTEMBER 18, 2008	\$64,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Community System Solution Design	Sub 1	Two week strategy and implementation on-site engagement with participating institutions.	
	Sub 2	Initial system configuration	
	Sub 3	Community System Administration face-to-face training workshop (3 days) – up to 20 participants may attend	

D.

Deliverable Number 4 – Professional Services: Content System Solution Design

DELIVERABLE FOUR		DU DATE	COMPENSATION
CONTENT SYSTEM SOLUTION DESIGN		OCTOBER 16, 2008	\$43,000.00 ON ACCPETANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Content System Solution Design	Sub 1	One week strategy on-site engagement	
	Sub 2	Initial system configuration	
	Sub 3	Content System Administration face-to-face training workshop (1 day) – up to 20 participants may attend	

E.

Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)

DELIVERABLE FIVE		DU DATE	COMPENSATION
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING		EST. SEPT. 30, 2008	\$29,250.00 ON ACCEPTANCE
		EST. SEPT. 30, 2009	\$8,000.00 ON ACCEPTANCE
		EST. SEPT. 30, 2010	\$8,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Administrator, Instructor & Designer	Sub 1	Year One: Provide Train the Trainer (Instructor and designer role) sessions for IDEAL-NM designated personnel – up to 20 participants may attend.	

Training	Sub 2	Year One: Provide administrator training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 3	Year One: Provide IDEAL-NM access customizable training materials for online and face to face workshops.
	Sub 4	Year Two: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 5	Year Three: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 6	Year Four: This service shall not be provided

LJ/RH

F. Deliverable Number 6 – Training Materials License (please refer to Exhibit D for detailed specifications associated with this Deliverable.)

DELIVERABLE SIX		PERIOD	COMPENSATION
TASK ITEM	SUB TASKS	DESCRIPTION	
TRAINING MATERIALS LICENSES		YEAR 1	\$30,750.00 ON JUNE 30, 2008
Training Material License	Sub 1	Training Materials License for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

DELIVERABLE SEVEN		PERIOD	COMPENSATION
TASK ITEM	SUB TASKS	DESCRIPTION	
TRAINING MATERIALS LICENSE UPDATES		YEAR 2	\$7,000.00 ON JUNE 30, 2009
		YEAR 3	\$7,000.00 ON JUNE 30, 2010
		YEAR 4	\$7,000 ON JULY 1, 2011

Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.

H. Deliverable Number 8 – Professional Services: SIS Integration Services for Higher Education (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE EIGHT		DU DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR HIGHER EDUCATION (EACH UNIT CONSTITUES A DELIVERABLE)		TIMING OF ADDITIONAL INTEGRATION SERVICES BASED ON INSTITUTION-SPECIFIC TIMELINES EST. OCTOBER 22, 2008	\$15,441.00 PER HIGHER EDUCATION INSTITUTION ON ACCEPTANCE FOR EACH INSTITUTION – TOTAL NOT TO EXCEED \$231,615.00
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS (Student Information System) Integration Services for Higher Education	Sub 1	Up to 15 Banner LDI (Limited Data Integrations) with higher education institutions, branded to each Institution. Each of the 15 integrations is a separate deliverable, invoiced individually.	
	Sub 2	End to end SIS integration testing	

Each institution's integration shall be treated as a separate Deliverable under the Agreement including, for the purposes of paying the Contractor, any related retainage amounts.

I. Deliverable Number 9 – Professional Services: SIS Integration Services for K-12 (Please refer to Exhibit E for detailed specifications associated with this Deliverable)

DELIVERABLE NINE		DU DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR K-12		EST. OCTOBER 22, 2008	\$36,385 FOR A SINGLE K-12 SIS INTEGRATION on Acceptance
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS Integration Services for K-12	Sub 1	One Snapshot data integration and gradebook extract to a public education SIS for a single K-12 environment, branded to the IDEAL-NM Cyber Academy.	

J. Deliverable Number 10 – Professional Services: Testing and Production Readiness

DELIVERABLE TEN		DU DATE	COMPENSATION
TESTING AND PRODUCTION READINESS		NOVEMBER 21, 2008	\$61,000.00 on Acceptance
TASK ITEM	SUB TASKS	DESCRIPTION	
Testing and Production Readiness	Sub 1	Functionality testing	
	Sub 2	End to end SIS integration testing	
	Sub 3	Performance testing	
	Sub 4	Production Readiness Review	

K. Deliverable Number 11 – Perpetual License based on 200,000 FTE (please refer to Exhibit B for detailed specifications associated with this Deliverable.)

DELIVERABLE ELEVEN		DELIVERY DUE DATE	COMPENSATION SCHEDULE
PERPETUAL LICENSE (200,000 FTE)		JUNE 15, 2008	\$2,999,160.00 due July 1, 2008 \$1,200,000.00 due July 31, 2008 \$520,832.00 due on July 1, 2011*
TASK ITEM	SUB TASKS	DESCRIPTION	
Perpetual Licensing based on 200,000 FTE	Sub 1	Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users) Blackboard Learning System Enterprise Suite (K-12).	
	Sub 2	Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).	

	Sub 3	Provide Perpetual License to the Blackboard Community System™.
	Sub 4	Provide Perpetual License for the Blackboard Content System
	Sub 5	<p>Provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including</p> <ul style="list-style-type: none"> • 24/7 telephone support and web-based support through the Behind the Blackboard support portal; • Access to updates, hotfixes, patches, upgrades and future releases; and • Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.

*The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWELVE	PERIOD	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE	YEAR 1 YEAR 2 YEAR 3 YEAR 4	\$100,000.00 due June 15, 2008 \$100,000.00 due June 15, 2009 \$100,000.00 due June 15, 2010 \$100,000.00 due June 15, 2011
TASK ITEM	SUB TASKS	DESCRIPTION
Annual Integration Customization and Maintenance	Sub 1	Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription due at due dates set forth above.

M. **Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)**

DELIVERABLE THIRTEEN	PERIOD	COMPENSATION
MANAGED HOSTING ASP SERVICE	YEAR 1	\$853,900.00 due June 15, 2008
	YEAR 2	\$853,900.00 due June 15, 2009
	YEAR 3	\$853,900.00 due June 15, 2010
	YEAR 4	\$776,400.00 due July 1, 2011*

TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Ensure data integrity.
	Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Migrate course content for participating institutions
	Sub 4	Provide telephone 24/7 technical support for infrastructure and operations to Statewide Service center.
	Sub 5	Provide online support resources to participating institutions
	Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for year 4.

ATTACHMENT C

1. Scope of Work.

The Contractor shall provide the following services (list only those services that are being amended or added by this amendment):

a. **"ARTICLE 2 - SCOPE OF WORK"** shall be modified as follows:

- i. ~~"Section C. License"~~ shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:

1. Luna Community College
2. Clovis Community College
3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso, and which may – at the client's election, be separated into three individual instances solely for the purposes of the individual campuses as specified in this item a.i.3.)
4. Western New Mexico University
5. Northern New Mexico University
6. New Mexico Highlands University
7. New Mexico Junior College
8. New Mexico Tech
9. New Mexico Military Institute, and
10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C 1.-9., supra, and shall be further limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

For institutions moving directly to Blackboard Learn 9.1;

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.

In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.

Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
- i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.
 - ii. 2 seats per Institution of Higher Education ("IHE") in a "CE/ Vista Transition" webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

- A. Blackboard shall provide the following Program Management Services to Procuring Agency, which shall terminate on June 30, 2011.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency's instance, or a Severity 1 issue which affects all nine (9) institutions' instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

- A. The Phrase "October 22, 2008" shall be deleted and replaced by the phrase "Any time during the term of the Agreement"

b. "ARTICLE 12 –CONTRACTOR PERSONNEL shall be modified as follows:

- i. "Russ Carlson – President of North American Higher Ed" shall be deleted and replaced with "Brett Frazier – Senior Vice President of North American Higher Education Sales"
- ii. "Jessie Woolley-Wilson-President of K12" shall be deleted and replaced by "Eric Stine – Senior Vice President of K20 Strategic Accounts"
- iii. "David Marr – President and COO" shall be deleted and replaced by "Katie Blot – Vice President of Blackboard Consulting"

c. **"EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK"** shall be modified as set forth in the Attachment A to this Amendment _____.

d. **"ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS"** shall be modified as follows:

i. The phrase "25% Time Commitment" shall be deleted and replaced by the phrase "100% Time Commitment through June 30, 2011."

e. **"ATTACHMENT 2 TO EXHIBIT E"** shall be modified as follows:

i. **"Availability/Service Credit"**. The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

Contract No. 08-950-00417

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. "**ARTICLE 5 -TERM**" as described in the Contract # 08-950-00417 shall be modified to state the following:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

The parties further agree that in the event that Procuring Agency does not obtain, by February 4, 2012, legislative authority for the full amount of \$1,364,232, representing the fees for the fourth year of Deliverables, and as further described in Attachment A, both the Compensation pursuant to this Agreement (such \$1,364,232) and the amount of Deliverables described in Attachments A and B, shall be reduced proportionally, with the assumption that there are 382 days remaining in the Term [May 15 2011 to May 30, 2012]. By way of example, if Procuring Agency obtains funding for only \$1,264,232, then the Compensation for each of the Deliverables described in Exhibits A and B shall be reduced by \$100,000, allocated proportionally over all the Deliverables in Attachments A, B, and C, and the Term shall also be reduced proportionally by the following formula:

\$100,000 divided by \$1,364,232 X 382 = approximately 28 days.

In this Example, the Term would end on May 2, 2012 rather than May 30, 2012.

Notwithstanding the foregoing, Procuring Agency guarantees a minimum compensation for the Performance Period of May 15, 2011- May 30, 2012 of \$950,000 and agrees that such \$1,364,232 shall be reduced by no more than \$414,232.

Notwithstanding the foregoing, Procuring Agency further warrants and represents that it shall, prior to any such reduction, exercise good faith efforts to utilize BAR authority or otherwise utilize discretionary funds to fulfill its commitment under this Agreement, including a good faith effort to ask the remaining stakeholder institutions to share in making up the difference.

Notwithstanding any provisions in this Article to the Contrary, this Article shall be subject to Article 6, Paragraph B.

2. To the extent indicated on Attachment A to this Amendment No. _____, "ATTACHMENT A" to Amendment No. 709500000399-01 shall be ~~replaced~~
~~amended~~ with "ATTACHMENT A" to this Amendment No. _____.

3. To the extent indicated on "ATTACHMENT B" to this Amendment No. _____, "EXHIBIT A, SECTION III. DELIVERABLES" as described in the Contract # 08-950-00417, shall be replaced by "ATTACHMENT B" to this Amendment No. _____.

4. To the extent indicated on "ATTACHMENT C" to this Amendment No. _____, Section 1. "Scope of Work" as set forth in Amendment No. 709500000399-01 shall be replaced with "ATTACHMENT C" to this Amendment No. _____.

5. **Compensation.**
See Attachments A, B and C.

6. **Term.**

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION, OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall continue until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

7. "ARTICLE 3-PAYMENT" as described in the Contract # 08-950-00417 shall be

modified as follows: The word "7,790,860" shall be changed to "\$9,155,092". **What about gross receipt tax?**

8. **"ARTICLE 12 – CONTRACTOR PERSONNEL** as described in the Contract # 08-950-00417 shall be modified as follows: "Eric Stine – Senior Vice President of K20 Strategic Accounts" shall be deleted and replaced
9. **"ARTICLE 28 – NOTICES** as described in the Contract # 08-950-00417 shall be modified as follows: "Procuring Agency" and for "Contractor"

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____
Procuring Agency

By: _____ Date: _____
Contractor

By: _____ Date: _____
Procuring Agency CIO

By: _____ Date: _____
Procuring Agency Legal Counsel
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Marlin Mackey, Secretary – Needs to Change
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

ATTACHMENT A

CHANGES TO ATTACHMENT A OF AMENDMENT No. 709500000399-01

The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be amended as follows. An additional column will be added to the chart as described below, which shall represent the fees and Deliverables for Year 4:

Product Description Overview	Year Four (May 15, 2011 to May 30, 2012)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	N/A. This deliverable shall terminate on May 30, 2011 - Why should this terminate?
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	N/A
Blackboard ASP	\$853,900,

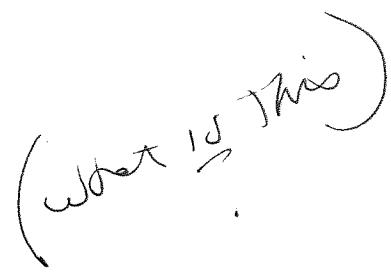
*Review
R. L. Easton
F. Smith*

Annual Service for 10 (13)**** instances (including standard maintenance and support); Removal of the CHM	\$which shall be reduced by \$77,500 to an amount of \$776,400*
(Deliverable 13)	
Blackboard Training Services (Deliverable 5)	N/A. This deliverable shall terminate on May 15, 2011
Blackboard Training Materials License (Deliverable 6 & 7)	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9**, 10 and 12)	\$100,000
Decision Assistance (Deliverable 15)	N/A. This deliverable shall terminate on June 30, 2011
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through <u>June 30, 2011</u> (Deliverable 16)	N/A. This deliverable shall terminate on <u>June 30, 2011</u> - We need to discuss this
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/Vista Transition Webinar Series (Deliverable 17)	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or available, after <u>June 30, 2011</u> - We

the \$700K remains an issue

*X Note
New &
existing
transient
environment
start plan
grants*

*? does last
of next
services
way*



	need to discuss this
Program Management (Deliverable 18)	N/A. This deliverable shall terminate on June 30, 2011 . Need to discuss this
Maintenance and Support (Deliverable 19)	\$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832***
TOTAL FEES	\$1,364,232
Designated Server Site: Hosted By Blackboard	
Procuring Agency's and twelve (12) - (13) institutions' aggregated FTE: up to 200,000 total for all ten organizations.	

The following statements shall apply only to Deliverables and fees for Year 4:

*For Year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for Year 4.

**Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in Year Four, the amount associated with Year Four, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as

the applicable service was not performed or billed during the first three years.

***The license for the Blackboard Enterprise Software Solution for the thirteen (13) institutions' 200,000 aggregated FTE as described in this Amendment No. _____, Section 1(a)(i) items 1-13 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore, cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

ATTACHMENT B

Changes to "EXHIBIT A, SECTION III. DELIVERABLES"

III. Item 1 of Amendment shall be modified as follows:

- 1. Paragraph G shall be deleted and replaced by the following**

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

Amend Table with an additional Period for Year 4 and Compensation is \$7,000*

**This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.*

2. Paragraph L shall be deleted and replaced by the following:

L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

Amend Table with an additional Period for Year 4 and Compensation is \$100,000*

**This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.*

3. Paragraph M shall be deleted and replaced by the following:

M. Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

Amend Table with an additional Period for Year 4 and Compensation is \$776,400*

**For year 4, these fees do not include a Complex Hosting Technical Manager (''CHM''), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for year 4. This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.*

ATTACHMENT C

Changes to “Scope of Work”

I Items ~~1(a) i-iii~~ shall be deleted and replaced by the following:

What about deliverable 14?

1. Scope of Work.

The Contractor shall provide the following services (list only those services that are being amended or added by this amendment):

a. **“ARTICLE 2 - SCOPE OF WORK”** shall be modified as follows:

- i. “Section C. License” shall be deleted in its entirety and replaced with the following: “Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include thirteen (13) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:
 1. Luna Community College
 2. Clovis Community College
 3. Eastern New Mexico University-Portales
 4. Eastern New Mexico University-Ruidoso
 5. Eastern New Mexico University-Roswell
 6. Institute of American Indian Arts (IAIA)
 7. Western New Mexico University
 8. Northern New Mexico University
 9. New Mexico Highlands University
 10. New Mexico Junior College
 11. New Mexico Tech
 12. New Mexico Military Institute, and
 13. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state’s public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the thirteen (13) instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named twelve (12) institutions (references to twelve (12) institutions or instances shall hereinafter mean the above set-forth thirteen (13) organizations, less Procuring Agency) with respect to such institution’s specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the twelve (12) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education (“IHE”) in a “Life in R9” webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution’s move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

II. The parties agree that Deliverable 16, 17, 18, as set forth in Section 1(a)(vi) of Amendment 70950000399-02, shall expire on June 30, 2011.

III. Item 1(f) of Amendment 70950000399-01 shall be modified as follows:

b. **ATTACHMENT 2 TO EXHIBIT E** as set forth in shall be modified as follows:

- i. **“Availability/Service Credit”**. The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9-13 institutions (should this be hosted environments vs institutions?), plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency’s Unavailability shall count 50% towards the Service Credit, and each of the twelve (12) institutions shall count 1/24th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/24. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

IV. Add a new Deliverable 19 to Section III of Exhibit A, which shall state as follows:

Blackboard shall provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including

- 24/7 telephone support and web-based support through the Behind the Blackboard support portal;
- Access to updates, hotfixes, patches, upgrades and future releases; and

Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America. The fees for this Deliverable shall be \$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832. These fees in Year 4 cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417. This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.

*Proposed and do
not intent*

*Agree to contingent
June 10,
2012*

*AM + INSTITUTIONS MINIMUM
Contract No. 08-950-00417
guaranteed*

*ITM
Netm
776,400*

*Term
Maintenance
left*

May 5

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. "**ARTICLE 5 -TERM**" as described in the Contract # 08-950-00417 shall be modified to state the following:

May 30, 2012

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on June 10, 2012, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

2. "**ATTACHMENT A**" to Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT A**" to this Amendment No. _____.
3. "**EXHIBIT A, SECTION III. DELIVERABLES**" As described in the Contract # 08-950-00417, shall be replaced in its entirety by "**ATTACHMENT B**" to this Amendment No. _____.
4. Section 1. "**Scope of Work**" as set forth in Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT C**" to this Amendment No. _____.
5. **Preservation of Value**. If Contract No. 08-950-00417 is not renewed (including no new contract to extend the licenses and other terms of the Contract) following the end of the Term as described in Section 1 of this Amendment, Blackboard would allow each

participating institution of higher learning ("IHE") (defined by having a unique production instance of the LMS, and as further described in Attachment C, Section 1(a)(i)) to license the same Blackboard products described in Deliverable 11 provided under the license to Agency, subject to the fees under the following formula:

- a. The 2011 Blackboard list price for Vista Perpetual Support
- b. For their then-current IHE FTE size.
- c. Plus five percent

(For example, the 2011 list price for the under 2,000 FTE band is \$39,300, and would currently apply to NMJC. Thus, under this formula, for the 2012-2013 contract year - if the aforementioned Contract with Agency is not renewed - NMJC's price (provided they remain under 2,000 FTE) would be \$41,265. If NMJC grew beyond 2,000 students, the annual price would be based on the 2011 list price for that band - which is \$55,000 - plus five percent, for a total of \$57,750.)

Fees for attendant services, including ASP Annual Service, Integration and Customization Maintenance, and Training Materials Licenses (Deliverables 13, 12 and , 7, respectively shall be based on this same formula, where such services are available and elected by the participating IHE. Any services for which there is no 2011 list price, or which are priced custom according to an institutions's specific needs, shall be based on the then-current list price then-in-effect for North America Higher Education customers, less any discounts negotiated between the parties.)

6. **Compensation.**
See Attachments A and B.

7. **Term.**

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION, OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall terminate until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

8. **"ARTICLE 3-PAYMENT** as described in the Contract # 08-950-00417shall be modified as follows:

The word "7,790,860" shall be changed to "\$9,274,092".

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____
Agency

By: _____ Date: _____
Contractor

By: _____ Date: _____
Agency CIO

By: _____ Date: _____
Agency Legal Counsel
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Marlin Mackey, Secretary
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____

DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

ATTACHMENT A

CHANGES TO EXHIBIT A OF THE AGREEMENT

1. The Chart within "III. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)	Year Four (May 15, 2011 to June 10, 2012)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0	\$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$179,000 to \$520,832**
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	N/A	N/A	\$0	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	\$853,900	\$853,900	N/A	N/A

Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	N/A	N/A	\$853,900	\$853,900, which shall be reduced by \$77,500 to an amount of \$776,400***
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000	N/A. This deliverable shall terminate on May 15, 2011
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9*, 10 and 12)	\$620,000	\$100,000	\$100,000*	\$100,000
Decision Assistance (Deliverable 15)	N/A	N/A	\$0	N/A. This deliverable shall terminate on June 30, 2011
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0	N/A. This deliverable shall terminate on June 30, 2011
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or available, after June 30, 2011
Program	\$0	\$0	\$0	N/A. This

Management (Deliverable 18)				deliverable shall terminate on June 30, 2011
TOTAL FEES	\$5,753,060	\$968,900	\$968,900	\$1,483,232
Designated Server Site: Hosted By Blackboard				
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.				

**Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in Year Four, the amount associated with Year Four, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first three years.

**The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

***For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall be the responsibility of Agency.

*At the election
to on agency*

ATTACHMENT B

A. *Deliverable Number 1 – Professional Services: Detailed Implementation Plan and Project Planning and Solution Design*

DELIVERABLE ONE	DUE DATE	COMPENSATION
Detailed Implementation Plan and Planning for migration	AUGUST 15, 2008	\$84,000.00 ON ACCEPTANCE
TASK ITEM	REPRESENTATIVE TASKS	DESCRIPTION
Planning for Migration	Sub 1	Develop a migration framework document that guides the application's move from Blackboard's ASP operations to the Procuring Agency's data center. The framework will consist of and address the following areas: Migration Preparation; Test Data Migration, Test Migration, and Production Data Migration. When or if the procurement agency's chooses to migrate the application, this framework will be utilized by the procurement agency to develop it's migration plan at the time of migration.

Solution Design and Detailed Implementation Plan	Sub 2	<p>In coordination with the Project Manager and the eLearning Technology Director the Contractor shall prepare a detailed implementation plan that documents statewide objectives, requirements, and success criteria based on input from participating Institutions, public schools, and state agencies. The Plan will reflect the solution design and will leverage implementation leading practices to effectively mitigate deployment risks and promote solution adoption by constituents.</p> <p>This Implementation Plan will become the overarching Workplan for project activities, tasks and deliverables. At a minimum, the Plan will reflect or result in the following:</p> <ul style="list-style-type: none"> • Identify project milestones, risks and constraints, including production timelines and institution-specific on-boarding dates based on input from participating Institutions. • Identify participant roles at all institutions for the collaborative planning process. • Identify the related major inter-institutional work processes that will be affected by the central implementation. • Plan migration of (legacy) content from existing systems. • Identify opportunities for institutions to work together to save on implementation costs and maximize resources. • Develop user training plans. • Develop communication management, risk mitigation strategy, and escalation strategy plans. • Identify institution level tracking and reporting requirements. • Create identity management plan for identifying roles and responsibilities of participating institutions. • Develop scope and architecture of integrations. • Develop test strategy and related plan. • Map all Blackboard Product customer organization, roles, and permissions to public schools. • Map all Blackboard Products at all eLearning organizations, roles, and permissions to public schools. • Define distributed administration workflows. • Develop an on-boarding deployment project plan with identified project milestones, risks, constraints.
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B. Deliverable Number 2 – Professional Services: ASP Service Setup (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWO		DU DATE	COMPENSATION
ONE TIME ASP SERVICE SETUP		JULY 15, 2008	\$20,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
ASP Service Setup	Sub 1	Establish framework for multi-institutional environment	
	Sub 2	Verify ASP hardware for multi-institutional environment	
	Sub 3	Establish hosting services environment	

C. Deliverable Number 3 – Professional Services: Community System Solution Design

DELIVERABLE THREE		DUe DATE	COMPENSATION
COMMUNITY SYSTEM SOLUTION DESIGN		SEPTEMBER 18, 2008	\$64,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Community System Solution Design	Sub 1	Two week strategy and implementation on-site engagement with participating institutions.	
	Sub 2	Initial system configuration	
	Sub 3	Community System Administration face-to-face training workshop (3 days) – up to 20 participants may attend	

D. Deliverable Number 4 – Professional Services: Content System Solution Design

DELIVERABLE FOUR		DUe DATE	COMPENSATION
CONTENT SYSTEM SOLUTION DESIGN		OCTOBER 16, 2008	\$43,000.00 ON ACCPETANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Content System Solution Design	Sub 1	One week strategy on-site engagement	
	Sub 2	Initial system configuration	
	Sub 3	Content System Administration face-to-face training workshop (1 day) – up to 20 participants may attend	

E. Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)

DELIVERABLE FIVE		DUe DATE	COMPENSATION
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING		EST. SEPT. 30, 2008	\$29,250.00 ON ACCEPTANCE
		EST. SEPT. 30, 2009	\$8,000.00 ON ACCEPTANCE
		EST. SEPT. 30, 2010	\$8,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Administrator, Instructor & Designer	Sub 1	Year One: Provide Train the Trainer (Instructor and designer role) sessions for IDEAL-NM designated personnel - up to 20 participants may attend.	

Training	Sub 2	Year One: Provide administrator training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 3	Year One: Provide IDEAL-NM access customizable training materials for online and face to face workshops.
	Sub 4	Year Two: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 5	Year Three: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 6	Year Four: This service shall not be provided

F. Deliverable Number 6 – Training Materials License (please refer to Exhibit D for detailed specifications associated with this Deliverable.)

DELIVERABLE SIX		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSES		YEAR 1	\$30,750.00 ON JUNE 30, 2008
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License	Sub 1	Training Materials License for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

DELIVERABLE SEVEN		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSE UPDATES		YEAR 2	\$7,000.00 ON JUNE 30, 2009
		YEAR 3	\$7,000.00 ON JUNE 30, 2010
		YEAR 4	\$7,000 ON JULY 30, 2011
TASK ITEM	SUB TASKS	DESCRIPTION	

Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.

H. Deliverable Number 8 – Professional Services: SIS Integration Services for Higher Education (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE EIGHT		DU DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR HIGHER EDUCATION (EACH UNIT CONSTITUES A DELIVERABLE)		TIMING OF ADDITIONAL INTEGRATION SERVICES BASED ON INSTITUTION-SPECIFIC TIMELINES EST. OCTOBER 22, 2008	\$15,441.00 PER HIGHER EDUCATION INSTITUTION ON ACCEPTANCE FOR EACH INSTITUTION – TOTAL NOT TO EXCEED \$231,615.00
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS (Student Information System) Integration Services for Higher Education	Sub 1	Up to 15 Banner LDI (Limited Data Integrations) with higher education institutions, branded to each Institution. Each of the 15 integrations is a separate deliverable, invoiced individually.	
	Sub 2	End to end SIS integration testing	

Each institution's integration shall be treated as a separate Deliverable under the Agreement including, for the purposes of paying the Contractor, any related retainage amounts.

I. Deliverable Number 9 – Professional Services: SIS Integration Services for K-12 (Please refer to Exhibit E for detailed specifications associated with this Deliverable)

DELIVERABLE NINE		DU DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR K-12		EST. OCTOBER 22, 2008	\$36,385 FOR A SINGLE K-12 SIS INTEGRATION on Acceptance
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS Integration Services for K-12	Sub 1	One Snapshot data integration and gradebook extract to a public education SIS for a single K-12 environment, branded to the IDEAL-NM Cyber Academy.	

J. Deliverable Number 10 – Professional Services: Testing and Production Readiness

DELIVERABLE TEN		DU DATE	COMPENSATION
TESTING AND PRODUCTION READINESS		NOVEMBER 21, 2008	\$61,000.00 on Acceptance
TASK ITEM	SUB TASKS	DESCRIPTION	
Testing and Production Readiness	Sub 1	Functionality testing	
	Sub 2	End to end SIS integration testing	
	Sub 3	Performance testing	
	Sub 4	Production Readiness Review	

K. Deliverable Number 11 – Perpetual License based on 200,000 FTE (please refer to Exhibit B for detailed specifications associated with this Deliverable.)

DELIVERABLE ELEVEN		DELIVERY DUE DATE	COMPENSATION SCHEDULE
PERPETUAL LICENSE (200,000 FTE)		JUNE 15, 2008	\$2,999,160.00 due July 1, 2008
			\$1,200,000.00 due July 31, 2008
			\$520,832.00 due on July 30, 2011*
TASK ITEM	SUB TASKS	DESCRIPTION	
Perpetual Licensing based on 200,000 FTE	Sub 1	Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users) Blackboard Learning System Enterprise Suite (K-12).	?
	Sub 2	Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).	

	Sub 3	Provide Perpetual License to the Blackboard Community System™.
	Sub 4	Provide Perpetual License for the Blackboard Content System
	Sub 5	<p>Provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including</p> <ul style="list-style-type: none"> • 24/7 telephone support and web-based support through the Behind the Blackboard support portal; • Access to updates, hotfixes, patches, upgrades and future releases; and • Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.

*The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWELVE	PERIOD	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE	YEAR 1	\$100,000.00 due June 15, 2008
	YEAR 2	\$100,000.00 due June 15, 2009
	YEAR 3	\$100,000.00 due June 15, 2010
	YEAR 4	\$100,000.00 due June 15, 2011

TASK ITEM	SUB TASKS	DESCRIPTION
Annual Integration Customization and Maintenance	Sub 1	Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription due at due dates set forth above.

M. *Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)*

DELIVERABLE THIRTEEN	PERIOD	COMPENSATION
MANAGED HOSTING ASP SERVICE	YEAR 1	\$853,900.00 due June 15, 2008
	YEAR 2	\$853,900.00 due June 15, 2009
	YEAR 3	\$853,900.00 due June 15, 2010
	YEAR 4	\$776,400.00 due July 30, 2011*
TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Ensure data integrity.
	Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Migrate course content for participating institutions
	Sub 4	Provide telephone 24/7 technical support for infrastructure and operations to Statewide Service center.
	Sub 5	Provide online support resources to participating institutions
	Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall be the responsibility of Agency. X

ATTACHMENT C

1. Scope of Work.

The Contractor shall provide the following services (list only those services that are being amended or added by this amendment):

a. **"ARTICLE 2 - SCOPE OF WORK"** shall be modified as follows:

i. "Section C. License" shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:

1. Luna Community College
2. Clovis Community College
3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso, and which may – at the client's election, be separated into three individual instances solely for the purposes of the individual campuses as specified in this item a.i.3.)
4. Western New Mexico University
5. Northern New Mexico University
6. New Mexico Highlands University
7. New Mexico Junior College
8. New Mexico Tech
9. New Mexico Military Institute, and
10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C 1.-9., supra, and shall be further limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

For institutions moving directly to Blackboard Learn 9.1;

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.

In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.

Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
 - i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.
 - ii. 2 seats per Institution of Higher Education (“IHE”) in a “CE/ Vista Transition” webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

- A. Blackboard shall provide the following Program Management Services to Procuring Agency, which shall terminate on June 30, 2011.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency’s instance, or a Severity 1 issue which affects all nine (9) institutions’ instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

- A. The Phrase “October 22, 2008” shall be deleted and replaced by the phrase “Any time during the term of the Agreement”

b. **“ARTICLE 12 –CONTRACTOR PERSONNEL** shall be modified as follows:

- i. “Russ Carlson – President of North American Higher Ed” shall be deleted and replaced with “Brett Frazier -Senior Vice President of North American Higher Education Sales”
- ii. “Jessie Woolley-Wilson-President of K12” shall be deleted and replaced by “Eric Stine – Senior Vice President of K20 Strategic Accounts”
- iii. “David Marr – President and COO” shall be deleted and replaced by “Katie Blot – Vice President of Blackboard Consulting”

c. **“EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK”** shall be modified as set forth in the Attachment A to this Amendment _____.

d. **“ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS”** shall be modified as follows:

- i. The phrase “25% Time Commitment” shall be deleted and replaced by the phrase “100% Time Commitment through June 30, 2011.”

e. **“ATTACHMENT 2 TO EXHIBIT E”** shall be modified as follows:

- i. **“Availability/Service Credit”**. The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency’s Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

Contract No. 08-950-00417

STATE OF NEW MEXICO
NAME of AGENCY
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. **"ARTICLE 5 -TERM"** as described in the Contract # 08-950-00417 shall be modified to state the following:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

The parties further agree that in the event that Procuring Agency does not obtain, by February 4, 2012~~June 10, 2011~~, legislative authority commitments from all applicable institutions for the full amount of \$1,364~~440~~4,232, representing the fees for the fourth year of Deliverables, and as further described in Attachment A, both the Compensation pursuant to this Agreement (such \$1,364~~440~~4,232) and the amount of Deliverables described in Attachments A and B, shall be reduced proportionally, with the assumption that there are 382 days remaining in the Term [May 15 2011 to May 30, 2012]. By way of example, if Procuring Agency obtains funding for only \$1,264~~304~~4,232, then the Compensation for each of the Deliverables described in Exhibits A and B shall be reduced by \$100,000, allocated proportionally over all the Deliverables in Attachments A, A & B, and C, and the Term shall also be reduced proportionally by the following formula:

\$100,000 divided by \$1,364~~440~~4,232 X 382 = approximately 287 days.



(provided they remain under 2,000 FTE) would be \$41,265. If NMJC grew beyond 2,000 students, the annual price would be based on the 2011 list price for that band—which is \$55,000—plus five percent, for a total of \$57,750.)

Fees for attendant services, including ASP Annual Service, Integration and Customization Maintenance, and Training Materials Licenses (Deliverables 13, 12 and 7, respectively) shall be based on this same formula, where such services are available and elected by the participating IHE. Any services for which there is no 2011 list price, or which are priced custom according to an institution's specific needs, shall be based on the then-current list price then in effect for North America Higher Education customers, less any discounts negotiated between the parties.)

6.5. Compensation.

See Attachments A, B and C.

7.0. Term.

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall continue until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. *This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.*

Amendment purposed to Article 6

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8.7. "ARTICLE 3-PAYMENT as described in the Contract # 08-950-00417 shall be modified as follows:

The word "7,790,860" shall be changed to "\$9,1595,092".

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____
Procuring Agency

Date: _____

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

Blackboard Learn	
Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	\$853,900, which shall be reduced by \$77,500 to an amount of \$776,400***
Blackboard Training Services (Deliverable 5)	N/A. This deliverable shall terminate on May 15, 2011
Blackboard Training Materials License (Deliverable 6 & 7)	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9**, 10 and 12)	\$100,000
Decision Assistance (Deliverable 15)	N/A. This deliverable shall terminate on June 30, 2011
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A. This deliverable shall terminate on June 30, 2011
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/Vista Transition Webinar Series (Deliverable 17)	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or available, after June 30, 2011

950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

ATTACHMENT B

A. *Deliverable Number 1 – Professional Services: Detailed Implementation Plan and Project Planning and Solution Design*

<u>DELIVERABLE ONE</u>	<u>DU^E DATE</u>	<u>COMPENSATION</u>
Detailed Implementation Plan and Planning for migration	AUGUST 15, 2008	\$84,000.00 ON ACCEPTANCE
Task Item	Representative Tasks	Description
Planning for Migration	Sub-1	Develop a migration framework document that guides the application's move from Blackboard's ASP operations to the Procuring Agency's data center. The framework will consist of and address the following areas: Migration Preparation, Test Data Migration, Test Migration, and Production Data Migration. When or if the Procuring Agency's chooses to migrate the application, this framework will be utilized by the Procuring Agency to develop it's migration plan at the time of migration.

C. *Deliverable Number 3 – Professional Services: Community System Solution Design*

DELIVERABLE THREE		DUEDATE	COMPENSATION
COMMUNITY SYSTEM SOLUTION DESIGN		SEPTEMBER 18, 2008	\$64,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	

Community System Solution Design	Sub -1	Two week strategy and implementation on-site engagement with participating institutions.
	Sub -2	Initial system configuration
	Sub -3	Community System Administration face-to-face training workshop (3 days) – up to 20 participants may attend

D. *Deliverable Number 4 – Professional Services: Content System Solution Design*

DELIVERABLE FOUR		DUEDATE	COMPENSATION
CONTENT SYSTEM SOLUTION DESIGN		OCTOBER 16, 2008	\$43,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	

Content System Solution Design	Sub -1	One week strategy on-site engagement
	Sub -2	Initial system configuration
	Sub -3	Content System Administration face-to-face training workshop (1 day) – up to 20 participants may attend

E. *Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)*

DELIVERABLE FIVE		DUEDATE	COMPENSATION
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING		EST. SEPT. 30, 2008	\$29,250.00 ON ACCEPTANCE
		EST. SEPT. 30, 2009	\$8,000.00 ON ACCEPTANCE
		EST. SEPT. 30, 2010	\$8,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	

Administrator, Instructor & Designer	Sub -1	Year One: Provide Train-the-Trainer (Instructor and designer role) sessions for IDEAL-NM designated personnel up to 20 participants may attend.

I. Paragraph G shall be deleted and replaced by the following

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

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DELIVERABLE SEVEN	PERIOD	COMPENSATION
TRAINING MATERIALS LICENSE UPDATES	YEAR 2	\$7,000.00 ON JUNE 30, 2009
	YEAR 3	\$7,000.00 ON JUNE 30, 2010
	YEAR 4	<p style="text-align: center;">\$7,000, PAID IN 12 EQUAL MONTHLY PAYMENTS, COMMENCING JUNE 30, 2011, EXCEPT THAT THE JUNE 30, 2011 PAYMENT SHALL BE PRORATED TO COVER THE TIME PERIOD MAY 15, 2011-JUNE 30, 2011, ON JULY 1, 2011 FEES DUE UPON INVOICE</p>
TASK ITEM	SUB TASKS	DESCRIPTION
Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.

H. Deliverable Number 8 – Professional Services: SIS Integration Services for Higher Education (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE EIGHT	DUE DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR HIGHER EDUCATION (EACH UNIT CONSTITUTES A DELIVERABLE)	TIMING OF ADDITIONAL INTEGRATION SERVICES BASED ON INSTITUTION-SPECIFIC TIMELINES EST. OCTOBER 22, 2008	\$15,441.00 PER HIGHER EDUCATION INSTITUTION ON ACCEPTANCE FOR EACH INSTITUTION – TOTAL NOT TO EXCEED \$231,615.00
TASK ITEM	SUB TASKS	DESCRIPTION

K. Deliverable Number 11 – Perpetual License based on 200,000 FTE (please refer to Exhibit B for detailed specifications associated with this Deliverable.)

DELIVERABLE ELEVEN		DELIVERY DUE DATE	COMPENSATION SCHEDULE																								
PERPETUAL LICENSE (200,000 FTE)		JUNE 15, 2008	\$2,099,160.00 due July 1, 2008 \$1,200,000.00 due July 31, 2008 \$520,832.00 due on July 1, 2011*																								
<table border="1"> <thead> <tr> <th>TASK ITEM</th><th>SUB TASKS</th><th>DESCRIPTION</th><th></th></tr> </thead> <tbody> <tr> <td>Perpetual Licensing based on 200,000 FTE</td><td>Sub -1</td><td>Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End-Users) Blackboard Learning System Enterprise Suite (K-12).</td><td></td></tr> <tr> <td></td><td>Sub -2</td><td>Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).</td><td></td></tr> <tr> <td></td><td>Sub -3</td><td>Provide Perpetual License to the Blackboard Community System™.</td><td></td></tr> <tr> <td></td><td>Sub -4</td><td>Provide Perpetual License for the Blackboard Content System</td><td></td></tr> <tr> <td></td><td>Sub -5</td><td>Provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard delivered software licensed under this Agreement, including <ul style="list-style-type: none"> • 24/7 telephone support and web-based support through the Behind the Blackboard support portal; • Access to updates, hotfixes, patches, upgrades and future releases; and • Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America. </td><td></td></tr> </tbody> </table>				TASK ITEM	SUB TASKS	DESCRIPTION		Perpetual Licensing based on 200,000 FTE	Sub -1	Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End-Users) Blackboard Learning System Enterprise Suite (K-12).			Sub -2	Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).			Sub -3	Provide Perpetual License to the Blackboard Community System™.			Sub -4	Provide Perpetual License for the Blackboard Content System			Sub -5	Provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard delivered software licensed under this Agreement, including <ul style="list-style-type: none"> • 24/7 telephone support and web-based support through the Behind the Blackboard support portal; • Access to updates, hotfixes, patches, upgrades and future releases; and • Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America. 	
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*The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)-(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). These fees in Year 4, therefore cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417.

2. Paragraph L shall be deleted and replaced by the following:

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Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
Sub 3	Migrate course content for participating institutions
Sub 4	Provide telephone 24/7 technical support for infrastructure and operations to Statewide Service center.
Sub 5	Provide online support resources to participating institutions
Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*For year 4, these fees do not include a Complex Hosting Technical Manager ("CHM"), as described in Exhibit E to Contract # 08-950-00417. The services previously provided by the CHM shall not be provided by Blackboard for year 4. This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.

~~Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C.1.9., supra, and shall be further limited as follows:~~

~~For institutions which will migrate to Vista:~~

- ~~1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.~~
- ~~2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.~~
- ~~3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.~~

~~For institutions moving directly to Blackboard Learn 9.1:~~

- ~~1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.~~
- ~~2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.~~
- ~~3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.~~

~~Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above listed tasks.~~

~~The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.~~

~~In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.~~

~~Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.~~

~~This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.~~

~~iii. Add a new Deliverable 15 to Section III of Exhibit A:~~

A. Each of the ~~twelve (12)~~ nine (9) institutions shall be entitled to:

- i. "Russ Carlson—President of North American Higher Ed" shall be deleted and replaced with "Brett Frazier—Senior Vice President of North American Higher Education Sales"
ii. "Jessie Woolley Wilson—President of K12" shall be deleted and replaced by "Eric Stine—Senior Vice President of K20 Strategic Accounts"
iii. "David Mart—President and COO" shall be deleted and replaced by "Katie Blot—Vice President of Blackboard Consulting"

e. **EXHIBIT A—AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK** shall be modified as set forth in the Attachment A to this Amendment.

d. **ATTACHMENT 4 TO EXHIBIT E ASP SPECIFICATIONS** shall be modified as follows:

- i. The phrase "25% Time Commitment" shall be deleted and replaced by the phrase "100% Time Commitment through June 30, 2014."

III. Item 1(f) of Amendment 70950000399-01 shall be modified as follows:

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e-h. **ATTACHMENT 2 TO EXHIBIT E** as set forth in shall be modified as follows:

- i. **"Availability/Service Credit".** The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the twelve nine (129) institutions shall count 1/2448th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/2448. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

IV. Add a new Deliverable 19 to Section III of Exhibit A, which shall state as follows:

Blackboard shall provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including

- 24/7 telephone support and web-based support through the Behind the Blackboard support portal;
- Access to updates, hotfixes, patches, upgrades and future releases; and

Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America. The fees for this Deliverable shall be \$839,832, which shall be reduced by \$140,000 to \$699,832, then further subject to a one-time reduction of \$219,000 to \$480,832. These fees in Year 4, cover only Support and Maintenance, as described in Section 2 of Exhibit B of Contract # 08-950-00417. This fee will be paid in 12 equal monthly payments, commencing June 30, 2011, except that the June 30, 2011 payment shall be prorated to cover the time period May 15, 2011-June 30, 2011. Fees due upon receipt of invoice.

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Contract No. 08-950-00417

STATE OF NEW MEXICO
New Mexico Higher Education Department
IT PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. _____

remedy
THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Higher Education Department, hereinafter referred to as the "Procuring Agency," and Blackboard Inc., hereinafter referred to as the "Contractor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. **"ARTICLE 5 -TERM"** as described in the Contract # 08-950-00417 shall be modified to state the following:

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on May 30, 2012, unless terminated pursuant to Article 6 of Contract No. 08-950-00417. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

2. The total amount due and payable under this Amendment # _____ shall be \$950,000 (as further described in Attachments A & B). The parties further agree
 - a. That the New Mexico Higher Education Department will pay Contractor in the amount of \$450,000 no later than July 1, 2011, and such payment shall not be subject to cancellation; and further
 - b. That in the event the Procuring Agency does not obtain, by June 10, 2011, commitments from the New Mexico Public Education Department for the remaining \$500,000, that this Agreement shall terminate on June 15, 2011 and any performance of the Deliverables described in Attachment A shall cease on that date.
 - c. That, in the event Procuring Agency secures the commitment in Item 2.b, supra, payment of the remaining \$500,000 shall be made by Procuring Agency to Contractor no later than September 1, 2011.

new and
** 1,364.232*
3571.29/day

3. "**ATTACHMENT A**" to Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT A**" to this Amendment No. _____.
4. "**EXHIBIT A, SECTION III. DELIVERABLES**" As described in the Contract # 08-950-00417, shall be replaced in its entirety by "**ATTACHMENT B**" to this Amendment No. _____.
5. Section 1. "**Scope of Work**" as set forth in Amendment No. 709500000399-01 shall be replaced in its entirety with "**ATTACHMENT C**" to this Amendment No. _____.
6. **Preservation of Value**. If Contract No. 08-950-00417 is not renewed (including no new contract to extend the licenses and other terms of the Contract) following the end of the Term as described in Section 1 of this Amendment, Blackboard would allow each participating institution of higher learning ("IHE") (defined by having a unique production instance of the LMS, and as further described in Attachment C, Section 1(a)(i)) to license the same Blackboard products described in Deliverable 11 provided under the license to Procuring Agency, subject to the fees under the following formula:

- a. The 2011 Blackboard list price for Vista Perpetual Support;
- b. For their then-current IHE FTE size;
- c. Plus five percent

Fees for attendant services, including ASP Annual Service, Integration and Customization Maintenance, and Training Materials Licenses (Deliverables 13, 12 and , 7, respectively shall be based on this same formula, where such services are available and elected by the participating IHE. Any services for which there is no 2011 list price, or which are priced custom according to an institutions's specific needs, shall be based on the then-current list price then-in-effect for North America Higher Education customers, less any discounts negotiated between the parties.)

7. **Compensation.**

See Attachments A and B.

8. **Term.**

THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION, OR A SPECIFIED DATE, WHICHEVER IS LATER. This Contract as amended shall continue until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

9. "**ARTICLE 3-PAYMENT** as described in the Contract # 08-950-00417 shall be modified as follows:

The word "7,790,860" shall be changed to "\$8,740,860".

All other articles of the original contract remain the same. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below or a specified date whichever is later.

By: _____ Date: _____
Procuring Agency

By: _____ Date: _____
Contractor

By: _____ Date: _____
Procuring Agency CIO

By: _____ Date: _____
Procuring Agency Legal Counsel
(Certifying legal sufficiency)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **03-012743-002**

By: _____ Date: _____
Taxation and Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information

Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico

By: _____ Date: _____
Marlin Mackey, Secretary
Department of Information Technology

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

This Agreement has been approved by the State Purchasing Agent

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

ATTACHMENT A

CHANGES TO EXHIBIT A OF THE AGREEMENT

1. The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)	Year Four (May 15, 2011 to May 30, 2012*)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0	\$839,832 which shall be reduced by \$140,000 to \$699,832, and further, which shall - for Year 4- not be the responsibility of Procuring Agency**
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	N/A	N/A	\$0	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	\$853,900	\$853,900	N/A	N/A

Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	N/A	N/A	\$853,900	\$853,900, which shall be subject to a one-time reduction of \$10,900, for a net payable amount of \$843,000
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000	N/A. This deliverable shall terminate on May 15, 2011
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9***, 10 and 12)	\$620,000	\$100,000	\$100,000***	\$100,000***
Decision Assistance (Deliverable 15)	N/A	N/A	\$0	N/A. This deliverable has been performed in its entirety and any rights shall terminate on June 30, 2011
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0	N/A. This deliverable has been performed in its entirety and any rights shall terminate on June 30, 2011
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0	N/A. This deliverable has been performed during Year Three, and no further services shall be associated with it, or

				available, after June 30, 2011
Program Management (Deliverable 18)	\$0	\$0	\$0	N/A. This deliverable shall terminate on June 30, 2011
TOTAL FEES	\$5,753,060	\$968,900	\$968,900	\$950,000
Designated Server Site: Hosted By Blackboard				
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.				

*Except as otherwise indicated below

** The Support and Maintenance Service will terminate on May 14, 2011, and Contractor will provide no further Support and Maintenance Service. Rather, Blackboard plans to contract with New Mexico Highlands University for Support and Maintenance Services, for the benefit of all institutions listed on Attachment C, Article a(a)(i) of Amendment No. . The parties acknowledge that in the event Contractor does not contract for these services with NMHU, no support and maintenance will be provided by Contractor to Procuring Agency or to the institutions listed in Attachment C of this Agreement.

***Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in Year Four, the amount associated with Year Four, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first three years.

ATTACHMENT B

A. *Deliverable Number 1 – Professional Services: Detailed Implementation Plan and Project Planning and Solution Design*

<u>DELIVERABLE ONE</u>	<u>DU DATE</u>	<u>COMPENSATION</u>
Detailed Implementation Plan and Planning for migration	AUGUST 15, 2008	\$84,000.00 ON ACCEPTANCE
TASK ITEM	REPRESENTATIVE TASKS	DESCRIPTION
Planning for Migration	Sub 1	Develop a migration framework document that guides the application's move from Blackboard's ASP operations to the Procuring Agency's data center. The framework will consist of and address the following areas: Migration Preparation; Test Data Migration, Test Migration, and Production Data Migration. When or if the Procuring Agency's chooses to migrate the application, this framework will be utilized by the Procuring Agency to develop it's migration plan at the time of migration.

Solution Design and Detailed Implementation Plan	Sub 2	<p>In coordination with the Project Manager and the eLearning Technology Director the Contractor shall prepare a detailed implementation plan that documents statewide objectives, requirements, and success criteria based on input from participating Institutions, public schools, and state agencies. The Plan will reflect the solution design and will leverage implementation leading practices to effectively mitigate deployment risks and promote solution adoption by constituents.</p> <p>This Implementation Plan will become the overarching Workplan for project activities, tasks and deliverables. At a minimum, the Plan will reflect or result in the following:</p> <ul style="list-style-type: none"> • Identify project milestones, risks and constraints, including production timelines and institution-specific on-boarding dates based on input from participating Institutions. • Identify participant roles at all institutions for the collaborative planning process. • Identify the related major inter-institutional work processes that will be affected by the central implementation. • Plan migration of (legacy) content from existing systems. • Identify opportunities for institutions to work together to save on implementation costs and maximize resources. • Develop user training plans. • Develop communication management, risk mitigation strategy, and escalation strategy plans. • Identify institution level tracking and reporting requirements. • Create identity management plan for identifying roles and responsibilities of participating institutions. • Develop scope and architecture of integrations. • Develop test strategy and related plan. • Map all Blackboard Product customer organization, roles, and permissions to public schools. • Map all Blackboard Products at all eLearning organizations, roles, and permissions to public schools. • Define distributed administration workflows. • Develop an on-boarding deployment project plan with identified project milestones, risks, constraints.
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B. Deliverable Number 2 – Professional Services: ASP Service Setup (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWO	 DUE DATE	COMPENSATION
ONE TIME ASP SERVICE SETUP	JULY 15, 2008	\$20,000.00 ON ACCEPTANCE
TASK ITEM		
	SUB TASKS	DESCRIPTION
ASP Service Setup	Sub 1	Establish framework for multi-institutional environment
	Sub 2	Verify ASP hardware for multi-institutional environment
	Sub 3	Establish hosting services environment

C. Deliverable Number 3 – Professional Services: Community System Solution Design

DELIVERABLE THREE		 DUE DATE	COMPENSATION
COMMUNITY SYSTEM SOLUTION DESIGN		SEPTEMBER 18, 2008	\$64,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Community System Solution Design	Sub 1	Two week strategy and implementation on-site engagement with participating institutions.	
	Sub 2	Initial system configuration	
	Sub 3	Community System Administration face-to-face training workshop (3 days) – up to 20 participants may attend	

D. Deliverable Number 4 – Professional Services: Content System Solution Design

DELIVERABLE FOUR		 DUE DATE	COMPENSATION
CONTENT SYSTEM SOLUTION DESIGN		OCTOBER 16, 2008	\$43,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Content System Solution Design	Sub 1	One week strategy on-site engagement	
	Sub 2	Initial system configuration	
	Sub 3	Content System Administration face-to-face training workshop (1 day) – up to 20 participants may attend	

E. Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)

DELIVERABLE FIVE		 DUE DATE	COMPENSATION
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING		EST. SEPT. 30, 2008	\$29,250.00 ON ACCEPTANCE
		EST. SEPT. 30, 2009	\$8,000.00 ON ACCEPTANCE
		EST. SEPT. 30, 2010	\$8,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Administrator, Instructor & Designer	Sub 1	Year One: Provide Train the Trainer (Instructor and designer role) sessions for IDEAL-NM designated personnel - up to 20 participants may attend.	

Training	Sub 2	Year One: Provide administrator training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 3	Year One: Provide IDEAL-NM access customizable training materials for online and face to face workshops.
	Sub 4	Year Two: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 5	Year Three: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.
	Sub 6	Year Four: This service shall not be provided

F. Deliverable Number 6 – Training Materials License (please refer to Exhibit D for detailed specifications associated with this Deliverable.)

DELIVERABLE SIX		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSES		YEAR 1	\$30,750.00 ON JUNE 30, 2008
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License	Sub 1	Training Materials License for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

DELIVERABLE SEVEN		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSE UPDATES		YEAR 2	\$7,000.00 ON JUNE 30, 2009
		YEAR 3	\$7,000.00 ON JUNE 30, 2010
		YEAR 4	\$7,000 ON JULY 1, 2011
TASK ITEM	SUB TASKS	DESCRIPTION	

Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.

H. Deliverable Number 8 – Professional Services: SIS Integration Services for Higher Education (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE EIGHT		 DUE DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR HIGHER EDUCATION (EACH UNIT CONSTITUTES A DELIVERABLE)		TIMING OF ADDITIONAL INTEGRATION SERVICES BASED ON INSTITUTION-SPECIFIC TIMELINES EST. OCTOBER 22, 2008	\$15,441.00 PER HIGHER EDUCATION INSTITUTION ON ACCEPTANCE FOR EACH INSTITUTION – TOTAL NOT TO EXCEED \$231,615.00
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS (Student Information System) Integration Services for Higher Education	Sub 1	Up to 15 Banner LDI (Limited Data Integrations) with higher education institutions, branded to each Institution. Each of the 15 integrations is a separate deliverable, invoiced individually.	
	Sub 2	End to end SIS integration testing	

Each institution's integration shall be treated as a separate Deliverable under the Agreement including, for the purposes of paying the Contractor, any related retainage amounts.

I. Deliverable Number 9 – Professional Services: SIS Integration Services for K-12 (Please refer to Exhibit E for detailed specifications associated with this Deliverable)

DELIVERABLE NINE		 DUE DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR K-12		EST. OCTOBER 22, 2008	\$36,385 FOR A SINGLE K-12 SIS INTEGRATION on Acceptance
TASK ITEM	SUB TASKS	DESCRIPTION	
SIS Integration Services for K-12	Sub 1	One Snapshot data integration and gradebook extract to a public education SIS for a single K-12 environment, branded to the IDEAL-NM Cyber Academy.	

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Readiness**

Deliverable Number 10 – Professional Services: Testing and Production

DELIVERABLE TEN	DU^E DATE	COMPENSATION
TESTING AND PRODUCTION READINESS		
TASK ITEM	SUB TASKS	DESCRIPTION
Testing and Production Readiness	Sub 1	Functionality testing
	Sub 2	End to end SIS integration testing
	Sub 3	Performance testing
	Sub 4	Production Readiness Review

K. *Deliverable Number 11 – Perpetual License based on 200,000 FTE (please refer to Exhibit B for detailed specifications associated with this Deliverable.)*

<u>DELIVERABLE ELEVEN</u>	<u>DELIVERY DUE DATE</u>	<u>COMPENSATION SCHEDULE</u>
PERPETUAL LICENSE (200,000 FTE)	JUNE 15, 2008	\$2,999,160.00 due July 1, 2008 \$1,200,000.00 due July 31, 2008* \$839,832, which shall be reduced to \$699,832, and which shall not be the responsibility of the Procuring Agency for the 2011-2012 contract year. Instead, the amount shall be subject to a one-time reduction of \$245,600, for a net payable of \$454,232, and which shall be addressed in a separate agreement between Blackboard and New Mexico Highlands University. These fees, for the 2011-2012 contract year, cover only Support and Maintenance services as described in Section 2 of Exhibit B of Contract #08-950-00417.

TASK ITEM	SUB TASKS	DESCRIPTION
Perpetual Licensing based on 200,000 FTE	Sub 1	Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users) Blackboard Learning System Enterprise Suite (K-12).
	Sub 2	Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).
	Sub 3	Provide Perpetual License to the Blackboard Community System™.
	Sub 4	Provide Perpetual License for the Blackboard Content System

	Sub 5	<p>Provide each participating Institution of Higher Education and the Statewide Service Center with support and maintenance on standard-delivered software licensed under this Agreement, including</p> <ul style="list-style-type: none"> • 24/7 telephone support and web-based support through the Behind the Blackboard support portal; • Access to updates, hotfixes, patches, upgrades and future releases; and • Such other support and maintenance for the software products licensed under this agreement as is made generally available to similarly situated customers in North America.
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*The license for the Blackboard Enterprise Software Solution for the nine (9) institutions' 200,000 aggregated FTE as described in Amendment 709500000399-01, Section 1(a)(i) items 1-9 is perpetual (as described further in Exhibit B, Section 1.1 of Contract # 08-950-00417). The Support and Maintenance Service will terminate on May 30, 2011, and Contractor will provide no further Support and Maintenance Service. Rather, Blackboard plans to contract with New Mexico Highlands University for Support and Maintenance Services associated with the license granted under this Agreement, for the benefit of all institutions listed on Attachment C, Article a(a)(i) of Amendment No.

. The parties further acknowledge that a valid contract for Support and Maintenance services may impact the rights and responsibilities of the Parties under this Agreement, as such services extend rights to the Procuring Entity, and impose responsibilities on Contractor.

L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWELVE		PERIOD	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE		YEAR 1	\$100,000.00 due June 15, 2008
		YEAR 2	\$100,000.00 due June 15, 2009
		YEAR 3	\$100,000.00 due June 15, 2010
		YEAR 4	\$100,000.00 due July 1, 2011
TASK ITEM	SUB TASKS	DESCRIPTION	
Annual Integration Customization and Maintenance	Sub 1	Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription due at due dates set forth above.	

M. *Deliverable Number 13 – Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)*

<u>DELIVERABLE THIRTEEN</u>	<u>PERIOD</u>	<u>COMPENSATION</u>
MANAGED HOSTING ASP SERVICE	YEAR 1	\$853,900.00 due June 15, 2008
	YEAR 2	\$853,900.00 due June 15, 2009
	YEAR 3	\$853,900.00 due June 15, 2010
	YEAR 4	\$843,900*

TASK ITEM	SUB TASKS	DESCRIPTION
Provide data hosting	Sub 1	Ensure data integrity.
	Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Migrate course content for participating institutions
	Sub 4	Provide telephone 24/7 technical support for infrastructure and operations to Statewide Service center.
	Sub 5	Provide online support resources to participating institutions
	Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

*\$853,900.00, which shall be subject to a one-time reduction of \$10,900, for a net payable of \$843,000 due as follows: \$343,000 on July 1, 2011, and \$500,000 on September 1, 2011

ATTACHMENT C

1. Scope of Work.

The Contractor shall provide the following services (list only those services that are being amended or added by this amendment):

- a. **"ARTICLE 2 - SCOPE OF WORK"** shall be modified as follows:
 - i. "Section C. License" shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:
 1. Luna Community College
 2. Clovis Community College
 3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso, and which may – at the client's election, be separated into three individual instances solely for the purposes of the individual campuses as specified in this item a.i.3.)
 4. Western New Mexico University
 5. Northern New Mexico University
 6. New Mexico Highlands University
 7. New Mexico Junior College
 8. New Mexico Tech
 9. New Mexico Military Institute, and
 10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C 1.-9., supra, and shall be further limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

For institutions moving directly to Blackboard Learn 9.1;

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.

In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.

Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education ("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

- iv. Add a new Deliverable 16 to Section III of Exhibit A:
- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.
- v. Add a new Deliverable 17 to Section III of Exhibit A:
- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
- i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.
- ii. 2 seats per Institution of Higher Education (“IHE”) in a “CE/ Vista Transition” webinar series.
- vi. Add a new Deliverable 18 to Section III of Exhibit A:
- A. Blackboard shall provide the following Program Management Services to Procuring Agency, which shall terminate on June 30, 2011.
- Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency’s instance, or a Severity 1 issue which affects all nine (9) institutions’ instance. The Fees for these Services are set forth on Exhibit A of the Agreement.
- vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:
- A. The Phrase “October 22, 2008” shall be deleted and replaced by the phrase “Any time during the term of the Agreement”
- b. **“ARTICLE 12 –CONTRACTOR PERSONNEL** shall be modified as follows:
- i. “Russ Carlson – President of North American Higher Ed” shall be deleted and replaced with “Brett Frazier -Senior Vice President of North American Higher Education Sales”
- ii. “Jessie Woolley-Wilson-President of K12” shall be deleted and replaced by “Eric Stine – Senior Vice President of K20 Strategic Accounts”
- iii. “David Marr – President and COO” shall be deleted and replaced by “Katie Blot – Vice President of Blackboard Consulting”

c. **"EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK"** shall be modified as set forth in the Attachment A to this Amendment _____.

d. **"ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS"** shall be modified as follows:

- i. The phrase "25% Time Commitment" shall be deleted and replaced by the phrase "100% Time Commitment through June 30, 2011."

e. **"ATTACHMENT 2 TO EXHIBIT E"** shall be modified as follows:

- i. **"Availability/Service Credit".** The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.



State of New Mexico

Higher Education Department

**New Mexico Statewide eLearning System
(NMSELS)**

**Blackboard Inc.
Contract # 08-950-00417**

May 30, 2008

but does not constitute solely an Error Correction. After conferring with Procuring Agency, an Enhancement may be identified as minor or major

- J. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.
- K. "Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- L. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- M. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a project and the Deliverables to determine compliance with the Agreement.
- N. "Payment Invoice" shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- O. "Performance Bond" shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.
- P. "Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is Innovative Digital Education and Learning in New Mexico (IDEAL-NM).
- Q. "Project Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the Project or the administration of this Agreement. Under the terms of this Agreement, the Project Manager shall be Rocky Lira or designated representative.
- R. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- S. "Software" means the Blackboard Learning System- Enterprise, Blackboard Community System, Blackboard Content System, and Blackboard Learning System-Vista Enterprise proprietary software including Updates, Upgrades, Corrections, and Application Packs thereto.
- T. "State Purchasing Agent (SPA)" - shall mean the State Purchasing Agent for the State of New Mexico or designated representative.
- U. "State Purchasing Division (SPD)"- shall mean the State Purchasing Division of the General Services Department for the State of New Mexico
- V. "Updates" means the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or module, including Application Packs.
- W. "Upgrades" means the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or module.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed \$7,790,860 including all expenses. The Procuring Agency agrees to reimburse Contractor for 50% of any applicable New Mexico gross receipts tax paid by Contractor relating to the foregoing payment up to a maximum reimbursement of \$125,000. *VO# 7720 \$104,979.00 VO# 7727 \$3,1621.77
VO# 7728 \$860.00 VO# 7731 \$217.22 VO# 8067 \$5,711.25 VO# 8277 \$1,760.34*
** 10-9-09
* NO MORE TRAVEL*
Contractor may be reimbursed for reasonable travel expenses provided contractor has received prior approval for the anticipated travel from the Procuring Agency and provided the travel expenses are within allowable amounts under the per diem and mileage act of New Mexico. Said travel expenses are within the total compensation payable to the contractor. *VO# 7723 \$19,293.63
VO# 7725 \$7,177.20 VO# 7729 \$8,488.86 VO# 7732 \$5,159.24 VO# 8283 \$3,491.24
VO# 8565 \$187.44 VO# 8566 \$901.63 VO# 8684 \$1,553.59*
Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.
- C. Taxes.
Except as specifically provided for in Article 3B, the Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).
- Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- D. Retainage. The Procuring Agency shall retain twenty percent (20%) of the fixed-price Deliverable cost for deliverables ~~1, 3, 4, 8, 9, 10 and 12~~ that are subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained relating to a particular Deliverable shall be released to the Contractor upon Acceptance of said Deliverable.
- E. Performance Bond. Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a performance bond in the amount of \$1,000,000 in the name of the Procuring Agency. The bond shall be in effect for the duration of this Agreement and any renewals thereof. The required bond shall be conditioned upon full

If the Deliverable is deemed Acceptable by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within five (5) business days from the date the Executive Level Representative receives the Deliverable and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the five (5) business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, five (5) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days or other period agreed to by the parties, to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within five (5) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. Provided that Contractor is diligently working on a solution, Contractor shall not be deemed to be in breach of the Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT AND DoIT. This Agreement shall terminate on June 10, 2011, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

A. General. By either Party upon written notice to be delivered to the other party not less than ten (10) business days prior to the intended date of termination.

B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of

any source which may arise out of the performance of this Agreement, caused by the negligent act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to such injury or damage is brought against the Procuring Agency or the State of New Mexico or its employees, the Procuring Agency shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify, by certified mail, the legal counsel of Contractor.

B. Contractor's obligations under this Article 8 shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement.

C. Exceptions. Contractor shall have no liability to Procuring Agency under Article 8 or otherwise for any claim or action alleging infringement or violation of applicable privacy laws based upon: (i) any use of the Software or Equipment in a manner other than as specified by Contractor; (ii) any combination of the Software or Equipment with other products, equipment, devices, software, systems or data not supplied by Contractor (including, without limitation, any software produced by Procuring Agency for use with the Software) to the extent such claim is directed against such combination; (iii) the Procuring Agency Content or trademarks, or the use of the Procuring Agency Content; or (iv) any modifications or customization of the Software or Equipment by any person other than Contractor (any of the foregoing, separately and collectively, "Client Usage"). Procuring Agency's responsibilities for Client Usage shall be solely in respect of (i) activities of the Procuring Agency and (ii) reasonable efforts by the Procuring Agency to cause institutions and users using the Software to not cause intellectual property infringement or violation of applicable privacy laws. For avoidance of doubt, the obligation of the Procuring Agency under the preceding phrase (ii) is to undertake *reasonable efforts* through policies, terms of use or other administrative actions which do not necessarily need to cause the institutions and users to not cause intellectual property infringement or violation of applicable privacy laws.

D. Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS ARTICLE 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CONTRACTOR, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

E. Procuring Agency shall use reasonable efforts to not engage in any Client Usage that results in any infringement of any third party intellectual property right. For avoidance of doubt, the obligation of the Procuring Agency under the preceding sentence is to undertake reasonable efforts which do not necessary need to cause the institutions and users to not infringe the intellectual property rights of third parties.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

C. Exceptions. Contractor shall have no liability to Procuring Agency under Article 10A or otherwise for any claim or action alleging intellectual property infringement or violation of applicable privacy laws based upon: (i) any use of the Software or Equipment in a manner other than as specified by Contractor; (ii) any combination of the Software or Equipment with other products, equipment, devices, software, systems or data not supplied by Contractor (including, without limitation, any software produced by Procuring Agency for use with the Software) to the extent such claim is directed against such combination; (iii) the Procuring Agency Content or trademarks, or the use of the Procuring Agency Content; or (iv) any modifications or customization of the Software or Equipment by any person other than Contractor (any of the foregoing, separately and collectively, "Client Usage"). Procuring Agency's responsibilities for Client Usage shall be solely in respect of (i) activities of the Procuring Agency and (ii) reasonable efforts by the Procuring Agency through policies, terms of use or other administrative actions which do not necessarily need to cause the institutions and users to not cause intellectual property infringement or violation of applicable privacy laws to cause institutions and users using the Software to not cause intellectual property infringement or violation of applicable privacy laws.

D. Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS ARTICLE 10 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CONTRACTOR, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

ARTICLE 11 - WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverables 8 and 9 as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement for a period of 45 days after Acceptance of such Deliverable. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The Contractor warrants that the software provided under this Agreement will meet the Contractor's official published specifications from delivery until Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the period stated in the preceding sentence, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency which shall not be unreasonably conditioned or withheld. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Russ Carlson – President of North American Higher Ed
Jessie Woolley-Wilson – President of K12

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria: 1) The Project Manager shall draft a written Change Request for Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change requests, once approved, become a part of the contract and become binding as a part of the original contract.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

If Independent Validation and Verification (“IV&V”) services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to: 1) Providing project documentation; 2) Allowing the IV&V vendor to sit in on project meetings; and 3) Supplying the IV&V vendor with any other material as directed by the Project Manager. The IV&V shall have agreed to Contractor’s standard confidentiality terms prior to commencement.

ARTICLE 16 – DEFAULT/BREACH

In the event the Procuring Agency terminates the Agreement due to a material breach of this Agreement by Contractor for which Contractor has received written notice and a reasonable opportunity to cure of not less than 15-days, contractor may be held responsible by Procuring Agency for Procuring Agency’s reasonable excess costs incurred in remedying Contractor’s breach. Procuring Agency must notify Contractor within 30-days of termination of any intent to exercise the reimbursement rights of this Article 16 even if such work will not be completed within such 30-day period.

ARTICLE 17 – EQUITABLE REMEDIES

Unless prohibited under State of New Mexico law, the parties acknowledge that their failure to comply with any provision of this Agreement may cause the other party irrevocable harm and that a remedy at law for such a failure may be an inadequate remedy for either party. Both parties consent to the other obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance to the extent permitted by law after such compliance. The parties rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the parties may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the

Mexico from all payment claims under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 22—CONFIDENTIALITY

“Confidential information” means any information that is (i) disclosed by either party in any tangible form and clearly labeled or marked as confidential or proprietary (or a similar restrictive legend), or (ii) disclosed by either party in any non-tangible form and designated confidential or proprietary or its equivalent at the time of its disclosure, and is thereafter summarized and confirmed promptly in writing as being confidential or proprietary. “Confidential information” also includes information that is confidential under the Family Educational Rights and Privacy Act. The parties agree to hold each other’s Confidential information in strict confidence and not to disclose it to any third party without the prior written consent of the disclosing party. The parties agree to use such confidential information of the disclosing party only as it relates to the performance of the party’s obligations under this Agreement. Further, the receiving party will use the same degree of care it uses with respect to its own confidential information to prevent the unauthorized disclosure to a third party. Confidential information will exclude information that is (a) known to the receiving party without restriction when received or thereafter developed independently by the receiving party; (b) obtained from a source other than the disclosing party through no breach of confidence by the receiving party; (c) in the public domain when received or thereafter enters the public domain through no fault of the receiving party; (d) provided by the disclosing party without restriction; or (e) disclosed by the receiving party pursuant to statute, regulation, or the order of a court of competent jurisdiction provided that the receiving party has notified the disclosing party in order to permit the taking of appropriate protective measures.

Procuring Agency advises Contractor that Procuring Agency is subject to the New Mexico Inspection of Public Records Act (IPRA), which requires disclosure of information upon request unless the requested information falls under an IPRA exception.

ARTICLE 23 –CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during this Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, DoIT, SPA, and DFA. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 28 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY

Donna Harrington, MBA
eLearning Technology Director, IDEAL – NM
New Mexico Higher Education Department
421 Quantum Road
Rio Rancho, NM 87124
Phone: 505-892-7222
Office Fax: 505-891-9143
Email: donna.harrington@state.nm.us

For CONTRACTOR

Tess Frazier
Vice President – Contracts
Blackboard Inc.
650 Massachusetts Avenue, NW
Washington, DC 20001
Phone: 202-463-4860 ext. 2282
Office Fax: 202-318-2619
Mobile: 202-256-3228
Email: tess.frazier@blackboard.com

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 29– GENERAL PROVISIONS

A. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

ARTICLE 32 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 33 – EXISTING CONTRACTS BETWEEN CONTRACTOR AND ELIGIBLE ENTITIES

Early Withdrawal from Existing Contracts. Contractor agrees to permit entities who are eligible for coverage by or under this agreement and who utilize such coverage and who also have existing contracts or licenses with contractor to cancel those contracts or licenses without any early termination penalty or, if those entities so choose, to not renew those contracts or licenses on a quarterly basis, without any early termination penalty. The unearned portion of any pre-paid fees would be refunded to those entities choosing to cancel or not renew their contracts or licenses as provided herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the latest date of the signature by the required approval authorities below.

By: Reed Dasenbrock Date: 5/28/2008
Dr. Reed Dasenbrock
Secretary of Higher Education Department

By: Justin Tan Date: 5/28/2008
Justin Tan
Vice-President, Blackboard Inc.

By: Veronica Chavez Neuman Date: 5/29/2008
Veronica Chavez Neuman, MBA
Chief Information Officer for Higher Education Department

EXHIBIT A – AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK

I. Agency Performance Measures

This contract creates a New Mexico Statewide eLearning System (NMSELS). Through a collaborative effort, the New Mexico Public Education Department (PED), the New Mexico Higher Education Department (HED), the Department of Information Technology (DoIT), and the NM Learning Network (NMLN) have developed a program plan that combines a shared eLearning service center with an enterprise model of a standardized eLearning system in New Mexico called IDEAL-NM. NMSELS is a component of IDEAL-NM. The Procuring Agency, HED, has the responsibility for this standardized support system that will enable the New Mexico education community and state agencies to share resources and knowledge, and provide additional resources for small school districts and institutions that may not otherwise be available for their students.

This project is aligned with the Governor's priorities for education and consolidation, and the statewide IT Strategic roadmap that seeks to enhance the delivery of services to constituents.

A. Goals.

IDEAL-NM is cooperative, standardized, and cost-efficient. It combines many existing initiatives and gets them moving in the same direction, toward a common goal. Expected project achievements include:

- 1. Reduced cost of government operations through IT* - This project will reduce the number of Learning Management System installations from 22 to less than 4, and facilitate the sharing of practices, systems, processes, and data.
- 2. Reduced cost of the operations through an Enterprise Model* - The solution, IDEAL-NM, is designed as an enterprise application platform that will allow for the integration with existing campus systems, preserves the state institution's considerable investment in technology, and extends the power of the e-learning platform. This project will advance the model of providing advanced IT resources across NM education in a cost effective manner.
- 3. Enhanced Delivery of Services to Constituents* – The IDEAL-NM Service Center will provide improved facilitation and coordination of services to constituents. This will result in better organized content delivery, improved learning assessment capability, and new course management features.
- 4. Support for Economic Development* - By expanding the foundation of on-campus and distance learning through the consolidated purchase and implementation of a standards-based Learning Management System, New Mexico will foster opportunity and access for state constituents in both the public and private sectors. Leveraging the common interface for students and faculty will make it easier for matriculation between high schools and higher education institutions.

proprietary software including Updates (the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality that have been commercially released with a version number that differs from that of the prior version to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or module, including Application Packs), Upgrades (the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or module), Corrections, and Application Packs thereto) licensing, implementation, and hosting services initiated in a vendor-hosted environment that provides all required robust hardware, bandwidth, and interface tools necessary to provide quality services as requested. The learning environment will include a Learning Object Repository (LOR) based on industry standards for the storage and retrieval of digital or non-digital objects that will be used for learning, education, or training.

This contract includes plans whereby the Procuring Agency may migrate hosting services initiated in a vendor-hosted environment to an in-state, hosted environment. The preceding agency performance measures are a statement of the IDEAL-NM program aspirations but do not constitute deliverables or performance measures to be delivered by Contractor and are not intended to be binding or referenced in any manner in determining Contractor's obligations hereunder.

II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)
Blackboard Enterprise Software Solution including standard maintenance and support consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0
Blackboard ASP Annual Service (Deliverable 13)	\$853,900	\$853,900	\$853,900
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9, 10 and 12)	\$620,000	\$100,000	\$100,000
TOTAL FEES	\$5,753,060	\$968,900	\$968,900
Designated Server Site: Hosted By Blackboard			
Procuring Agency's FTE: up to 200,000.			

III. DELIVERABLES:

A. Deliverable Number 1* – Professional Services: Detailed Implementation Plan and Project Planning and Solution Design

DELIVERABLE ONE		DUE DATE	COMPENSATION
Detailed Implementation Plan and Planning for migration		AUGUST 15, 2008	\$84,000.00 ON ACCEPTANCE VDT# 7731 + 07.200.00
TASK ITEM	REPRESENTATIVE TASKS	DESCRIPTION	
Planning for Migration	Sub 1	<p>Develop a migration framework document that guides the application's move from Blackboard's ASP operations to the Procuring Agency's data center. The framework will consist of and address the following areas: Migration Preparation; Test Data Migration, Test Migration, and Production Data Migration. When or if the procurement agency's chooses to migrate the application, this framework will be utilized by the procurement agency to develop it's migration plan at the time of migration.</p>	
Solution Design and Detailed Implementation Plan	Sub 2	<p>In coordination with the Project Manager and the eLearning Technology Director the Contractor shall prepare a detailed implementation plan that documents statewide objectives, requirements, and success criteria based on input from participating Institutions, public schools, and state agencies. The Plan will reflect the solution design and will leverage implementation leading practices to effectively mitigate deployment risks and promote solution adoption by constituents.</p> <p>This Implementation Plan will become the overarching Workplan for project activites, tasks and deliverables. At a minimum, the Plan will reflect or result in the following:</p> <ul style="list-style-type: none"> • Identify project milestones, risks and constraints, including production timelines and institution-specific on-boarding dates based on input from participating Institutions. • Identify participant roles at all institutions for the collaborative planning process. • Identify the related major inter-institutional work processes that will be affected by the central implementation. • Plan migration of (legacy) content from existing systems. • Identify opportunities for institutions to work together to save on implementation costs and maximize resources. • Develop user training plans. • Develop communication management, risk mitigation strategy, and escalation strategy plans. • Identify institution level tracking and reporting requirements. • Create identity management plan for identifying roles and responsibilities of participating institutions. • Develop scope and architecture of integrations. • Develop test strategy and related plan. • Map all Blackboard Product customer organization, roles, and permissions to public schools. • Map all Blackboard Products at all eLearning organizations, roles, and permissions to public schools. • Define distributed administration workflows. • Develop an on-boarding deployment project plan with identified project milestones, risks, constraints. 	

E. Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)

DELIVERABLE FIVE		DUE DATE	COMPENSATION
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING		EST. SEPT. 30, 2008 EST. SEPT. 30, 2009 EST. SEPT. 30, 2010	\$29,250.00 ON ACCEPTANCE \$8,000.00 ON ACCEPTANCE \$8,000.00 ON ACCEPTANCE
			UOT# 7730
TASK ITEM	SUB TASKS	DESCRIPTION	
Administrator, Instructor & Designer Training	Sub 1	Year One: Provide Train the Trainer (Instructor and designer role) sessions for IDEAL-NM designated personnel - up to 20 participants may attend.	
	Sub 2	Year One: Provide administrator training for IDEAL-NM designated personnel - up to 20 participants may attend. .	
	Sub 3	Year One: Provide IDEAL-NM access customizable training materials for online and face to face workshops.	
	Sub 4	Year Two: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.	
	Sub 5	Year Three: Provide customized training for IDEAL-NM designated personnel - up to 20 participants may attend.	

F. Deliverable Number 6 – Training Materials License (please refer to Exhibit D for detailed specifications associated with this Deliverable.)

DELIVERABLE SIX		PERIOD	COMPENSATION
TRAINING MATERIALS LICENSES		YEAR 1	UOT# 6080 Total Pd
\$30,750.00 ON JUNE 30, 2008			
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License	Sub 1	Training Materials License for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

**I. Deliverable Number 9^K – Professional Services: SIS Integration Services for K-12
(Please refer to Exhibit E for detailed specifications associated with this Deliverable)**

<u>DELIVERABLE NINE</u>		<u>DUe DATE</u>	<u>COMPENSATION</u>
SIS INTEGRATION SERVICES FOR K-12		EST. OCTOBER 22, 2008 Due 10/23/08 100% Payment	\$36,385 FOR A SINGLE K-12 SIS INTEGRATION on Acceptance
<u>TASK ITEM</u>	<u>SUB TASKS</u>	<u>DESCRIPTION</u>	
SIS Integration Services for K-12	Sub 1	One Snapshot data integration and gradebook extract to a public education SIS for a single K-12 environment, branded to the IDEAL-NM Cyber Academy.	

J. Deliverable Number 10^K – Professional Services: Testing and Production Readiness

<u>DELIVERABLE TEN</u>		<u>DUe DATE</u>	<u>COMPENSATION</u>
TESTING AND PRODUCTION READINESS		NOVEMBER 21, 2008	\$61,000.00 on Acceptance
<u>TASK ITEM</u>	<u>SUB TASKS</u>	<u>DESCRIPTION</u>	
Testing and Production Readiness	Sub 1	Functionality testing	VO# 6281 \$ 17,200.00
	Sub 2	End to end SIS integration testing	VO# 7924 \$ 45,000.00
	Sub 3	Performance testing	
	Sub 4	Production Readiness Review	

K. Deliverable Number 11 – Perpetual License based on 200,000 FTE (please refer to Exhibit B for detailed specifications associated with this Deliverable.)

<u>DELIVERABLE ELEVEN</u>		<u>DELIVERY DUE DATE</u>	<u>COMPENSATION SCHEDULE</u>
PERPETUAL LICENSE (200,000 FTE)		JUNE 15, 2008	\$2,999,160.00 due July 1, 2008 \$1,200,000.00 due July 31, 2008 Total \$4,200,000.00
<u>TASK ITEM</u>	<u>SUB TASKS</u>	<u>DESCRIPTION</u>	

Provide data hosting	Sub 1	Ensure data integrity.
	Sub 2	Ensure system stability and Procuring Agency support to prepare for phased move to centralized LMS hosting environment.
	Sub 3	Migrate course content for participating institutions
	Sub 4	Provide telephone 24/7 technical support to Statewide Service center.
	Sub 5	Provide online support resources to participating institutions
	Sub 6	Define support and escalation procedures and responsibilities for hosting and client institutions and reassess annually.

configuring the Software to the extent permitted by the Software's standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Procuring Agency's rights under the license granted above; or (vi) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Procuring Agency will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Procuring Agency add any other notices or markings to the Software or any portion thereof except as permitted by the Software stander user interface. Procuring Agency shall not use the Software in violation of Contractor's obligations to any third party incurred prior to the Effective Date, provided that Contractor has notified Procuring Agency of such obligation. Procuring Agency shall not provide access to the Software to anyone other than Authorized End Users without Contractor's prior written consent; provided, however, that Procuring Agency may provide access to *Blackboard Building Blocks*® partners that are subject to a valid Contractor developer's license agreement for the limited purpose of installing, maintaining and supporting their *Blackboard Building Blocks*® applications. Procuring Agency shall use its reasonable efforts through policies or terms of use or otherwise to cause (but is not required to cause) its use of the Software to comply with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Procuring Agency shall use its reasonable efforts through policies or terms of use or otherwise to cause (but is not required to cause) its Authorized End Users to comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this section. Under no circumstances shall Procuring Agency permit any third party to host the Software.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1.3 Further Restrictions. Procuring Agency acknowledges that certain Blackboard Software contains an "Auto Report" feature, which feature provides to Blackboard aggregate usage statistics regarding the Software and Blackboard represents and warrants that the Auto Report feature does not report individually identifiable use information to Blackboard or any third party. Procuring Agency will not disable the Auto Report feature of the Software, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby.

1.4 Interoperability. To the extent permitted by the specifications as outlined in the Contractor's official published specifications for the Software at <http://behind.blackboard.com>, if the Procuring Agency wishes to achieve interoperability of the Software with another software program and requires interface specifications or other information in order to do so, the Procuring Agency should request that information from Blackboard. Nothing in this Section authorizes Procuring Agency to use any interfaces except the Supported Interfaces (application-based interfaces (API) provided pursuant to the *Blackboard Building Blocks*® program, to the extent the program is available, network protocols, data formats, database schemas, and file formats available for use in the Software as expressly specified in the Contractor's official

researcher of Procuring Agency or a Procuring Agency employee (solely to the extent any such employee use the Software for Procuring Agency's internal training purposes).

B. In K-12 institutions, Authorized End User means any individual who is a student, teacher, parent of student or employee of Procuring Agency (solely to the extent any such employee uses the Software for Procuring Agency's internal training purposes).

C. In New Mexico state agencies, Authorized End User means any individual who is an employee of Procuring Agency or student registered to take one of Procuring Agency's regularly offered courses of instruction or training programs.

"FTE" or "Full Time Equivalent" means the numbers as defined below for Higher Education, K-12 and New Mexico state agencies users.

Higher Education: For purposes of this Agreement for Higher Education institutions, "FTE" or "Full Time Equivalent" is defined as the number of full-time students plus half of the part-time students. To the extent that Procuring Agency desires non traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses to utilize the Contractor Software the total number of such other users shall be communicated to Blackboard to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total FTE number reported by Procuring Agency.

K-12: For the purposes of this agreement for K-12 institutions, "FTE" or "Full Time Equivalent" means all users which may, at any particular time, have an account to access one (1) or more courses provided through the Contractor Software, and less those users that have the "Parent Role" as defined in the Contractor Software that Procuring Agency expressly and in good faith notifies to Contractor.

New Mexico state agencies: For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined to be the number of actual users accessing and utilizing the product for one year. The combined New Mexico state agencies FTE shall be comprised of Authorized End Users.

2. SUPPORT AND MAINTENANCE

2.1 Product Support. Procuring Agency will receive Support and Maintenance services from Blackboard as described in the Blackboard Client Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/supportsvccguide.pdf>. Blackboard may not reduce its Product Support for this contract below that provided by Blackboard when this contract is executed.

2.2 Support and Maintenance Term. The Support and Maintenance services shall continue in effect for a period of three (3) years, unless earlier terminated. Upon termination of the Support and Maintenance services, all such services granted under this Exhibit shall immediately cease, and Procuring Agency will: (i) immediately discontinue all use of the Support and Maintenance services provided under this Exhibit; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) no longer receive, unless already paid for, any Application Packs (the

EXHIBIT C
BLACKBOARD TRAINING SERVICES

SCHEDULE OF TRAINING SERVICES (YEAR ONE))

Blackboard Training Services	Total Maximum Authorized End Users per Workshop
Blackboard Learning System Administration Onsite Workshop	20
Vista Administration Onsite Workshop	20
Blackboard Vista Essentials Onsite Workshop	20
Blackboard Learning System Essentials Onsite Workshop	20
Blackboard Content System Essentials Onsite Workshop	20
Blackboard Content System Essentials for Vista Onsite Workshop	20

SCHEDULE OF TRAINING SERVICES (YEARS TWO & THREE)

Blackboard Training Services	Total Maximum Authorized End Users per Workshop
Three days (each year) Custom Training	20

1. BLACKBOARD ONSITE TRAINING SERVICES

A. Blackboard, upon request of Procuring Agency and in accordance with the terms as stated in Exhibit A (Deliverable 5), shall provide Onsite Training Services to Procuring Agency. To request or schedule a training event for Procuring Agency, Procuring Agency shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

B. Hands-on class size is restricted to a maximum of 20 authorized end users to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format. Training events are only for Procuring Agency's on-campus, internal use. Training events may not be video recorded.

C. Each class is structured as a hands-on/active training seminar held in a computer classroom unless otherwise agreed. To insure the best learning experience, Procuring Agency must provide:

4. OUT YEARS. In both Years Two and Three, Blackboard's Training department and a representative of the eLearning Service Center (IDEAL-NM) will mutually develop a three (3) day custom training workshop which will have agendas around the Blackboard products and their use.

5. SECURITY.

While on Procuring Agency's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Procuring Agency, to the extent that such practices and procedures have been notified to Blackboard in writing in advance. Blackboard's employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Procuring Agency's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and shall have no effect. Procuring Agency shall be responsible for all costs associated with Blackboard's compliance with Procuring Agency's security practices and procedures.

6. TRAINING DELIVERABLES

A Blackboard shall provide Procuring Agency with up to twenty (20) copies of the Training Materials for the onsite workshop, for use by up to twenty (20) of the Procuring Agency's participants in the training. Procuring Agency is prohibited from photocopying or duplicating in any way, reselling, or sublicensing the Training Materials.

Blackboard Materials can also be used by NMHED and NMPED to train training contacts at each participating agency. Except as expressly permitted herein, Procuring Agency shall not, (i) transfer or otherwise distribute the Blackboard Materials to any third party, (ii) use the Blackboard Materials for the benefit of any third party, (iii) charge a direct or indirect fee for use of the Blackboard Materials or (iv) post the Blackboard Materials to any website or make the Blackboard Materials available for download in any location which is not restricted to only persons who are authorized under this Exhibit to access the Blackboard Materials. Further, without limiting the foregoing, Procuring Agency agrees to include a statement in any Blackboard Materials distributed internally by Procuring Agency as permitted hereunder, expressly stating that such materials are for Procuring Agency's internal training purposes only and may not be distributed to or used for the benefit of any third party or used for any other purpose. Procuring Agency shall not alter, remove or conceal any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the Blackboard Materials and shall reproduce all such notices on any copies made by Procuring Agency. Unless otherwise expressly stated, the license granted hereunder applies to the latest Version of the applicable Blackboard Materials made generally available by Blackboard as of the date on which delivery is made by Blackboard pursuant to the Delivery Section below and nothing herein shall be deemed to grant to Procuring Agency a license to any prior or subsequent Version of the Blackboard Materials unless a separate license for such Version has been acquired by Procuring Agency. Further, nothing herein shall be construed to grant to Procuring Agency or any other party any license with respect to any Blackboard products or services (including without limitation Blackboard's software products and services), except as expressly stated herein. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Blackboard Materials, and Procuring Agency acknowledges that it neither owns nor acquires any additional rights in and to the Blackboard Materials not expressly granted by this Exhibit and the Agreement, and Procuring Agency further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Exhibit or the Agreement, including, without limitation, the right to use the Blackboard Materials for any purpose in Blackboard's sole discretion.

B. License to create Derivative Works. Subject to the terms and conditions of this Agreement and payment by Procuring Agency of the applicable license fees for the Blackboard Materials Blackboard grants to Procuring Agency a perpetual, non-exclusive, non-transferable, limited, Version-specific, internal use license to create, develop, copy and use Derivative Works (any materials and other works in any media now known or hereafter developed that are based upon or derived from the Blackboard Materials or any portion thereof, including, without limitation, revisions, modifications, translations, abridgments, condensations, expansions, enhancements and any other form in which the Blackboard Materials may be incorporated, recast, transformed or adapted and any other work that if prepared without authorization would constitute a copyright infringement or other infringement of proprietary or intellectual property rights in the Blackboard Materials; provided, however, that the term Derivative Works shall not include and Blackboard shall not obtain any rights with respect to any Confidential Information of the Procuring Agency or any Procuring Agency-developed content or other Procuring Agency materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof) of the Blackboard Materials licensed hereunder solely for Procuring Agency's internal training purposes, subject to the use restrictions set forth herein. Subject to the patent and copyright act, NMSA 1978, Section 57-3c-1 to 5 and any required approval of the Economic Development Department, Procuring Agency

EXHIBIT E
BLACKBOARD APPLICATION SERVICE PROVIDER (“ASP”)
SERVICES

ASP - SCHEDULE OF SERVICES

Product Description	Initial Active User Capacity	Initial Bandwidth	Initial storage
Blackboard ASP – Learning System™, Community System, Content System & Learning System Vista Enterprise License – Dedicated Hosting Setup			
Blackboard ASP – Learning System™, Community System, Content System & Vista Enterprise License – Dedicated Hosting	200,000	20 Mbps	4 TB
Staging Environment	Limited to 50 Users	512 Kbps	100 GB
Test & Development Environment	Limited to 50 Users		20 GB
Complex Hosting Technical Manager – 25% Time Commitment			
Secure Socket Layer (SSL)			

1. BLACKBOARD RESPONSIBILITES.

1.1 Responsibility for Hosting. Blackboard shall install and operate the Hosted Software on computer servers and systems under its direct or indirect control. Blackboard will also install and store the Procuring Agency Content for purposes of access by the Hosted Software, provided that nothing in this Agreement shall be construed to require Blackboard to provide for, or bear any responsibility with respect to, the design, development, operation or maintenance of any Web site owned or operated by Procuring Agency, or with respect to any telecommunications or computer network hardware required by Procuring Agency to provide access from the Internet to any such Procuring Agency Web site. Nothing in this Agreement shall be construed to grant to Procuring Agency a license to access and/or use Blackboard's systems except for purposes of accessing and using the Hosted Software and except pursuant to the procedures and protocols specified by Blackboard. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Agreement, Procuring Agency grants to Blackboard a royalty-free, non-exclusive, worldwide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the Hosted Software, modify and create derivative works from the Procuring Agency Content. Blackboard and Procuring Agency agree that procuring Agency and the entities participating under this agreement shall own all right, title and interest in and to the respectably owned Content of Procuring Agency and of the entities participating under this

database query. Blackboard will make reasonable efforts to perform up to four (4) data archiving and cleanup related tickets per Procuring Agency per year (the tasks can be grouped together as one support ticket to be addressed at once per semester or per quarter). After four (4) free services per year, Blackboard reserves the right to charge a flat fee of \$800 per ticket created for data archiving and cleanup related tasks. If Procuring Agency requires Blackboard to batch archive data on to a hard-drive and ship to Procuring Agency, Blackboard will charge \$200 for the cost of each of 200 GB hard-drive required. The hard-drive can be shipped back to ASP at the time of next task for reuse.

1.5 Supplemental Storage and Bandwidth Policy. (Refer to Exhibit F for detailed specifications associated with Supplemental Storage and Bandwidth policy.)

1.6 Supplemental ASP Services. (Refer to Exhibit F for detailed specifications associated with Supplemental ASP Services.)

1.7 IP Addresses. Any IP addresses assigned or allocated to Procuring Agency by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable and Procuring Agency shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Procuring Agency to the Blackboard allocated addresses must be agreed to by the Parties. Procuring Agency understands that the IP Services provided under this Agreement (including Internet use) may require registrations and related administrative reports that are public in nature.

2. PROCURING AGENCY RESPONSIBILITIES.

2.1 General Usage Limitations. Procuring Agency acknowledges that use and operation of the Hosted Software by Procuring Agency and/or participating entities are subject to the terms of the Software license.

2.2 Procuring Agency Content. Procuring Agency shall use its reasonable efforts to make certain ensure through its policies, terms of use or other administrative actions) (but is not required to actually ensure) that: (i) Procuring Agency owns or has sufficient rights in and to the Procuring Agency Content, including, without limitation, personal, educational and financial information contained within the Procuring Agency Content, in order to use, and permit use of, the Procuring Agency Content as contemplated herein and to grant the license granted herein; and (ii) the Procuring Agency Content does not and shall not contain any content, materials, advertising or services that infringe on or violate any applicable law, regulation or right of a third party. Procuring Agency also acknowledges that Procuring Agency Content may be stored on servers located within the United States or accessed by Blackboard's support or ASP personnel in the United States, and hereby authorizes such access and storage. Blackboard only provides access to the Hosted Software; Blackboard does not operate or control the information, services, opinions or other content of the Internet. Contractor does not monitor and shall have no liability or responsibility whatsoever for the Procuring Agency Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. Procuring Agency agrees that it shall make no claim whatsoever against Contractor relating to the Procuring Agency Content or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet.

- Per Procuring Agency request, ASP will provide up to four (4) clones of the Procuring Agency production data per year. Up to 500GB of storage can be used for a period of up to six (6) months of the year. This cloned data will not be backed up/.
- The Staging Environment is designed for Procuring Agency to test and approve new update/upgrade software and changes in software configuration before implementing such software in a production environment. It may not be used for production purposes.

+ Complex Hosting Technical Manager – 25% Time Commitment

Roles and responsibilities of the Blackboard Complex Hosting Manager (“CHM”) will primarily fall under the following three objectives: management, communication and documentation.

A. Management – Plan and project manage Procuring Agency’s ASP infrastructure implementation, growth, and planned and reactive changes. To meet this objective, the CHM’s tasks may include, but not be limited to, the following:

- Central Point of Contact and Escalation: The CHM will be the central point-of-contact within Blackboard ASP CHM Services and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Procuring Agency’s hosted environment
- Infrastructure Management: Plan and manage projects involving Procuring Agency’s infrastructure for scalability, optimal performance, and growth in coordination with Procuring Agency and all elements within Blackboard
- Internal Blackboard Delivery Coordination: Coordinate with Blackboard Global Services Project Management, Developers, and Procuring Agency’s Technical Support Manager in ASP CHM Services, and ASP Operations and Engineering and other elements of Blackboard to deliver and manage Procuring Agency’s requirements
- ASP Support Activities: Support directly the hosted Blackboard application and infrastructure through:
 - Direct ASP ticket escalation management and documentation
 - Development support activities focused on impact analysis and evaluation based on updates and upgrades
- Infrastructure Expansion: Modify and order hardware when necessary in coordination with Procuring Agency
- Infrastructure and Software Upgrade Management: Design and implement ASP testing and/or staging in coordination with Procuring Agency as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another, upgrading application servers)
- Auditing: Regularly conduct systems audit and analysis on Procuring Agency’s ASP environment’s performance and utilization for proactive monitoring, infrastructure management, forecasting and reporting purposes
- Procuring Agency Business Planning Integration: Keep master schedule of Procuring Agency’s academic activities and key events/milestones. Communicate to entire Blackboard Team on critical events on the calendar.

B. Communication - Build and execute business processes for communication and Procuring Agency support (with a special focus on providing transparency and visibility into the purchased ASP services and change management). To meet this objective, the CHM’s tasks may include, but not be limited to, the following:

*95th Percentile calculation – 95th Percentile calculation is performed by: 1) collecting IP traffic samples (both inbound and outbound traffic) every five (5) minutes over the course of a month; 2) discarding the top 5 percent of the highest peak samples; and 3) measuring the peak usage from the remaining samples.

Data Restoration Policy – per restore fees are separately charged per chargeable restore incident. See 1.3 of Exhibit E.

maintenance, or inability of a user to connect with the ASP Services due to Internet or telecommunications problems outside the control of Blackboard. In order to receive any service credit, Procuring Agency must notify Blackboard within seven (7) days from the time Procuring Agency becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Procuring Agency's right to receive a service credit. The aggregate maximum number of service credits to be issued by Blackboard to Procuring Agency for any and all downtime periods and performance problems during any given calendar month shall not exceed one month of service. Service credits are issued as follows:

<u>Length of Unavailability (per calendar month)</u>	<u>Service Credit</u>
1 to 4 hours of aggregate unavailability below 99.7% credited (i.e., 1/30 monthly fees)	1 day of service fees
4 to 48 hours of aggregate unavailability below 99.7% credited (i.e., 1/15* monthly fees)	2 days of services fees
48 to 96 hours of aggregate unavailability below 99.7% credited (i.e., 1/6 * monthly fees)	5 days of service fees

*Each block of 96 hours of aggregate unavailability thereafter shall be credited 5 days of service fees.

*All Service Credit shall be applied to the next period's ASP fees.

Backup and Disaster Recovery:

Blackboard provides comprehensive redundant backups which are stored online and at a separate facility. Blackboard retains backup data for one month. In the event of a disaster, Blackboard will use reasonable efforts to restore service. Blackboard will not attempt to restore service if such attempt shall put Blackboard, its employees or its agents at risk for injury.

Outages

If a system outage occurs, Blackboard will notify Procuring Agency's designated technical contact via email. This notice will include the reason for the system outage and estimated time for restoration of ASP Services if Blackboard knows this information when it gives this notice.

Following recovery from any particular system outage, Blackboard will provide Procuring Agency with a post-incident summary that will include:

- cause of the system outage (if determined);
- method used to correct the problem; and
- measures Blackboard will take to prevent similar system outages in the future (if any).

Upon receipt of notification of a problem with the Blackboard system or the ASP Services, Blackboard will investigate the problem and determine if a system outage exists. If a system outage exists, Blackboard will provide Procuring Agency with a time estimate for resolution of the problem, if known at that time. Blackboard will promptly commence remedial activities and use commercially reasonable efforts to resolve the system outage within the time estimate provided to Procuring Agency.

The servers are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and 99.7% uptime.

PROCURING AGENCY RESPONSIBILITES. Blackboard is not responsible for management and actual use of the features and function of the Hosted Software. Procuring Agency bears all responsibility for such management and actual use, including, without limitation:

- The Procuring Agency has full access to the Administrator Menu and is responsible for the following:
 - Creating/Removing Users including Students, Teachers, System Administrators, etc.
 - Modifying all User Information
 - Creating/Removing all Course Web Sites
 - Building and Managing all Course Web Sites
 - Customization to the Site
 - System Usage Tracking Reports
 - Deciding which product features will be available or unavailable, how much functionality instructors will be allowed, etc.
 - Choosing Icon Themes
- All changes to the Blackboard-named URL. All Blackboard Procuring Agencies are assigned a URL that reads <http://institutionname.blackboard.com>. The institution is allowed to pick the “institutionname”. However, any re-directs to other URLs are the responsibility of the Procuring Agency and not Blackboard. For example, if the Procuring Agency chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record. Any IP addresses are allocated by Blackboard to Procuring Agency are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

Includes 9 GB Storage and test server environment – no backup	\$13,000/Yr
• RAC Staging Environment	\$20,000/setup
Includes 20 GB Storage, 512 Kbps and Oracle RAC DB Nodes and Load-Balanced App Servers staging environment	\$70,000/Yr
• Data hard backup and shipping	\$1,000
Supplemental Training & Professional Development Blackboard Facilitated Courses	Blackboard's then current list price
Online Training modules Licenses	\$8000 each*
Face to Face Workshop Training Materials License	\$5000 each*
<i>*Pricing for Contract year 1. Market adjustments may be applied for years 2 and 3.</i>	

Addendum to amendment to Contract 70-950-0000399 between Blackboard (Contractor) and New Mexico Higher Education Department (Procuring Agency).

(Withholding funds from the Blackboard performance bond or, alternatively, withholding money from the 2009 and 2010 installments of the Blackboard contract.)

Introduction

Blackboard presented itself as an “expert” in implementing the scope of work of this contract, and hence the request for services for NMHED was not put out to competitive bid. (See second paragraph, “Whereas, ...the Contractor has held itself out as an expert in implementing the Scope of Work as contained herein”) However, Blackboard clearly was not an expert in providing the promised “common” instance or it would not be changing to a 10-instance system now.

The Blackboard system was predicated on having a “common” or single instance (Blackboard promised to establish a “common infrastructure for online learning”) a “common infrastructure for online learning” (get penalty amount)

Problems that existed prior to the May, 2010 intervention in which NMHED requested daily conferences with Blackboard AND the problems that continued to occur during the May finals period at various IHEs reside with Blackboard (i.e., the problem did not arise because of any IHE misuse or misapplication of the programs. The problems were in the Blackboard architecture.)

Problems at IHEs have been so consistent and they so undermine the program that the use of e-learning at all is being questioned.

The New Mexico Higher Education Department (NMHED) intends to withhold funds from the \$1 million performance bond or to withhold money from portions of the three-year Blackboard contract on these grounds:

- (1) The training NMHED paid Blackboard to give to institutions of higher education (IHEs) also presumed a common architecture. **PENALTY-\$20,000 for one-time set-up that was ineffective, \$64,000 paid for common system design and \$43,000 for content system design.ⁱ Total: \$127,000**
- (2) Planning for migration (deliverable one) The “migration” of various IHE systems presumed that the migration would be to a single, common system. The current plan to “migrate” information to 10 instances is not fulfillment of the original contract, is not “accepted” and is not adequate. The purpose of finding a common system for e-learning was so that information, data and student performance could be unified and uniform. **\$84,000ⁱⁱ**
- (3) Blackboard failed to deliver data hosting and technical support Deliverable 13. NMHED has paid \$1,565,491 for hosting through February 2010, yet Blackboard failed to monitor or perform. Blackboard’s contract promise was for monitoring and maintaining the hardware, software and

		solution design	need for a “community system solution”
10	\$61,000	Testing and production readiness	\$61,000 (testing of old system will need to be redone)
Total			209,000

I. Total general sanctions \$1,169,515

II. Total retainage \$ 32,600

III. Total “voids” \$209,000

Sanctions: to be withheld from performance bond: \$1,411, 115

Since the bond is only for \$1,000,000 the remaining dollars will be withheld from general payments.

ⁱ Note, these were paid in full, “on acceptance”. However, the definition “acceptance” includes the requirement that “ALL” deliverables . NMHED asserts that these deliverables were not accepted because they will not be in place after the proposed revisions and constitute money paid for a system that does not work.

ⁱⁱ See above.

No 5

**Amendment to the Information Technology Agreement
by and among the State of New Mexico, Higher Education Department and Blackboard Inc.**

WHEREAS, Blackboard Inc., hereinafter referred to as "Contractor" and the State of New Mexico, Higher Education Department, hereinafter referred to as "Procuring Agency", and collectively referred to as the "Parties" entered into an Information Technology Agreement (the "Agreement"), dated May 30, 2008;

WHEREAS, Contractor and Procuring Agency desire to modify the terms of the Agreement as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Conflicts, Use of Terms. In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment will control.

2. Modifications of the Terms and Conditions of the Agreement. The Agreement is modified as follows:

a. **"ARTICLE 2 - SCOPE OF WORK"** shall be modified as follows:

i. "Section C. License" shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:

1. Luna Community College
2. Clovis Community College
3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso)
4. Western New Mexico University
5. Northern New Mexico University
6. New Mexico Highlands University
7. New Mexico Junior College
8. New Mexico Tech
9. New Mexico Military Institute, and
10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users,

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

- ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course redesign work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

No institutions will move directly to Blackboard Learn 9.1 without first moving to Vista.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education ("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and
- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

A. The following services, offered to all CE or Vista clients moving Blackboard Learn 9.1

- i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.

ii. 2 seats per Institution of Higher Education (“IHE”) in a “CE/ Vista Transition” webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

- A. Blackboard shall provide the following Program Management Services to Procuring Agency.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency’s instance, or a Severity 1 issue which affects all nine (9) institutions’ instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

- A. The Phrase “October 22, 2008” shall be deleted and replaced by the phrase “Any time during the term of the Agreement”

b. **“ARTICLE 3 – COMPENSATION”** shall be modified as follows:

- i. The word “\$7,790,860” shall be deleted and replaced by the word “10,218,242”.

c. **“ARTICLE 5 – TERM”** shall be modified as follows:

- i. The phrase “June 10, 2011” shall be deleted and replaced by the phrase “June 30, 2013”.

d. **“ARTICLE 12 –CONTRACTOR PERSONNEL”** shall be modified as follows:

- i. “Russ Carlson – President of North American Higher Ed” shall be deleted and replaced with “Brett Frazier - Senior Vice President of North American Higher Education Sales”
ii. “Jessie Woolley-Wilson-President of K12” shall be deleted and replaced by “Eric Stine – Senior Vice President of K20 Strategic Accounts”
iii. “David Marr – President and COO” shall be deleted and replaced by “Katie Blot – Vice President of Blackboard Consulting”

e. **“EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK”** shall be modified as set forth in the Attachment A which is attached hereto.

f. **“ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS”** shall be modified as follows:

- i. The phrase “25% Time Commitment” shall be deleted and replaced by the phrase “100% Time Commitment through June 30, 2011, and 25% Time Commitment, thereafter”.

g. **Additional Pricing.** During the term of this Agreement, Contractor agrees to the pricing set forth on Exhibit B, which is attached hereto.

h. **“ATTACHMENT 2 TO EXHIBIT E”** shall be modified as follows:

- i. **“Availability/Service Credit”.** The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

- i. **"EXHIBIT B BLACKBOARD ENTERPRISE SOFTWARE SOLUTION"** shall be modified as follows:

The phrase "period of three (3) years" in Section 2.2 shall be deleted in its entirety and replaced by the phrase "period of five (5) years".

3. Miscellaneous This Amendment No. 2 shall be effective upon the signature of both Parties and shall continue in effect until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

4. No Other Modifications. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written below.

Blackboard Inc.

State of New Mexico, Higher Education Department

Signature

Signature

Print Name and Title

Print Name and Title

Date:

Date

ATTACHMENT A
CHANGES TO EXHIBIT A OF THE AGREEMENT

1. The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)	Year Four (May 15, 2011 to May 14, 2012)	Year Five (May 15, 2012 to May 14, 2013)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0	\$0	\$0
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0	\$0	\$0
Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); Set-up and hosting for nine separate Vista or 9.1 installations for IHEs (starting in year 3); (Deliverable 13 &14)	\$853,900	\$853,900	\$853,900 (Discount of \$838,100)	\$896,595 (Discount of \$527,205)	\$941,425 (Discount of \$553,565)
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000	\$8,400	\$8,820
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000	\$7,350	\$7,717
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9, 10 and 12)	\$620,000	\$100,000	\$100,000	\$105,000	\$110,250
Decision Assistance (Deliverable 15)	N/A	N/A	\$0 (Discount of \$31,500)	N/A	N/A
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn	N/A	N/A	\$0 (Discount of \$117,000)	N/A	N/A

9.1 test server through June 30, 2011 (Deliverable 16)					
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/ Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0	\$0	\$0
Program Management (Deliverable 18)	\$0	\$0	\$0	\$136,500	\$143,325
TOTAL FEES	\$5,753,060	\$968,900	\$968,900	\$1,153,845	\$1,211,537
Designated Server Site: Hosted By Blackboard					
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.					

2. "E. Deliverable Number 5 – Training Services (please refer to Exhibit C for detailed specifications associated with this Deliverable.)" shall be modified as follow by adding the following Due Dates and Compensation associated with such Due Dates:

<u>DELIVERABLE FIVE</u>	<u>DU DATE</u>	<u>COMPENSATION</u>
ADMINISTRATOR, INSTRUCTOR & DESIGNER TRAINING	EST. SEPT. 30, 2011 EST. SEPT. 30, 2012	\$8,400.00 ON ACCEPTANCE \$8,820.00 ON ACCEPTANCE

3. "G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)" shall be modified by adding the following Years, along with the Compensation associated with such years:

<u>DELIVERABLE SEVEN</u>	<u>PERIOD</u>	<u>COMPENSATION</u>
TRAINING MATERIALS LICENSE UPDATES	YEAR 4	\$7,350.00 ON JUNE 30, 2011*
	YEAR 5	\$7,717.00 ON JUNE 30, 2012**
		*=DISCOUNT OF \$58.800
		**= DISCOUNT OF \$61,744

4. "L. Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)" shall be modified by adding the following years, along with the Compensation associated with those years:

<u>DELIVERABLE TWELVE</u>	<u>PERIOD</u>	<u>COMPENSATION</u>
INTEGRATION CUSTOMIZATION AND MAINTENANCE	YEAR 4	\$105,000.00 due June 15, 2011
	YEAR 5	\$110,250.00 due June 15, 2012

5. "M. Deliverable Number 13 - Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)" shall be modified by the adding the following years, along with Compensation associated with those years:

<u>DELIVERABLE THIRTEEN</u>	<u>PERIOD</u>	<u>COMPENSATION</u>
3 YEAR HOSTING & TECHNICAL SUPPORT	YEAR 4 YEAR 5	\$896,595.00 due June 15, 2011 \$941,425.00 due June 15, 2012

Attachment B
Additional Pricing

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may only be purchased on only one occasion, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Migration Planning Services*	\$30,190
Content and Community Refresher*	\$20,000

*Subject to additional requirements to be included in an agreement upon actual purchase.

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may be purchased on multiple occasions.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Blackboard Course Consultation – Two day training workshop focused on course consultation and change management	No charge for first session**, each additional session \$6,000
Onsite Training Workshops- <i>Academic Collaboration Essentials and Academic Collaboration Administration</i> (each session has a maximum of 15 participants)	No charge for first session**, each additional session \$8,000

**Only one no charge session for Purchasing Agency and all nine (9) other institutions as a whole, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

**Amendment to the Information Technology Agreement
by and among the State of New Mexico, Higher Education Department and Blackboard Inc.**

WHEREAS, Blackboard Inc., hereinafter referred to as "Contractor" and the State of New Mexico, Higher Education Department, hereinafter referred to as "Procuring Agency", and collectively referred to as the "Parties" entered into an Information Technology Agreement (the "Agreement"), dated May 30, 2008;

WHEREAS, Contractor and Procuring Agency desire to modify the terms of the Agreement as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Conflicts, Use of Terms. In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment will control.

2. Modifications of the Terms and Conditions of the Agreement. The Agreement is modified as follows:

a. **"ARTICLE 2 - SCOPE OF WORK"** shall be modified as follows:

i. **"Section C. License"** shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy to the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:

1. Luna Community College
2. Clovis Community College
3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso)
4. Western New Mexico University
5. Northern New Mexico University
6. New Mexico Highlands University
7. New Mexico Junior College
8. New Mexico Tech
9. New Mexico Military Institute, and
10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.

where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

ii. Add a new Deliverable 14 to Section III of Exhibit A:

"Contractor agrees to perform the migration from a single instance of Blackboard Vista licensed to Procuring Agency pursuant to the Agreement, to the aforementioned nine (9) instances at no additional charge as described below. The migration to the nine (9) aforementioned instances shall be limited to institutions named in Article 2, Section C 1.-9., supra, and shall be further limited as follows:

For institutions which will migrate to Vista:

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course migration, which is a migration that runs standard course and section migration tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive a migration of its existing SIS integration. This migration does not include any changes to the functions performed by the institution's existing SIS integration.

For institutions moving directly to Blackboard Learn 9.1;

1. Each institution will receive a setup of a standalone production environment to servers in Contractor's datacenter.
2. Each institution will receive a standard course conversion, which is a migration that runs standard course conversion tools. This migration does not include any course re-design work, course clean-up or manual migration activities.
3. Each institution will receive an installation of an SIS converter tool. This does not include any changes to the institution's existing SIS integration.

Procuring Agency shall be responsible for providing remote network access, access to SIS files and access to knowledgeable system administrator staff necessary to complete the above-listed tasks.

The parties anticipate that no institution of higher education, listed above in Article 2, Section C, will move directly to Blackboard Learn 9.1 without first moving to Vista. Notwithstanding the foregoing, nothing in this Amendment shall be construed to conflict with Procuring Agency's license rights as set forth in Article 2, Section C, and any of the nine (9) institutions listed above may elect to move to Blackboard Learn during the term of this Agreement without incurring additional licensing fees.

In addition, for any institution migrating from an individual instance of Vista under this Deliverable 14, to an individual instance of Blackboard Learn 9.1 prior to December 31, 2010, that institution shall be provided with the standard course conversion and the installation of the SIS converter tool, as described above, at no additional charge.

Furthermore, for any institutions moving from an instance of Vista to an instance of Blackboard Learn 9.1, Blackboard will provide all Services applicable to production environments under this Agreement, specifically, Deliverables 5, 7, 12, 13 and 15.

This Deliverable 14 expires on August 23, 2010 if not utilized prior to such date. However, services associated with migrations from an individual instance of Vista to an individual instance of Blackboard 9.1 prior to December 31, 2010, as described above, shall be provided consistent with the provisions herein and any such unused services will expire on December 31, 2010.

iii. Add a new Deliverable 15 to Section III of Exhibit A:

A. Each of the nine (9) institutions shall be entitled to:

- i. 5 seats per Institution of Higher Education("IHE") in a "Life in R9" webinar which highlights the major differences between Vista and Learn 9.1; and

- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
 - i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.
 - ii. 2 seats per Institution of Higher Education ("IHE") in a "CE/ Vista Transition" webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

- A. Blackboard shall provide the following Program Management Services to Procuring Agency.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency's instance, or a Severity 1 issue which affects all nine (9) institutions' instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

- A. The Phrase "October 22, 2008" shall be deleted and replaced by the phrase "Any time during the term of the Agreement"

b. "ARTICLE 12 -CONTRACTOR PERSONNEL" shall be modified as follows:

- i. "Russ Carlson – President of North American Higher Ed" shall be deleted and replaced with "Brett Frazier - Senior Vice President of North American Higher Education Sales"
- ii. "Jessie Woolley-Wilson-President of K12" shall be deleted and replaced by "Eric Stine – Senior Vice President of K20 Strategic Accounts"

**Amendment to the Information Technology Agreement
by and among the State of New Mexico, Higher Education Department and Blackboard Inc.**

WHEREAS, Blackboard Inc., hereinafter referred to as "Contractor" and the State of New Mexico, Higher Education Department, hereinafter referred to as "Procuring Agency", and collectively referred to as the "Parties" entered into an Information Technology Agreement (the "Agreement"), dated May 30, 2008;

WHEREAS, Contractor and Procuring Agency desire to modify the terms of the Agreement as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

- 1. Conflicts, Use of Terms.** In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment will control.
- 2. Modifications of the Terms and Conditions of the Agreement.** The Agreement is modified as follows:

a. "**ARTICLE 2 - SCOPE OF WORK**" shall be modified as follows:

- i. "Section C. License" shall be deleted in its entirety and replaced with the following: "Contractor hereby grants to Procuring Agency a non-exclusive, non-transferable, irrevocable, perpetual license to use, modify, and copy the Software. However, such license shall include ten (10) separate instances of such Software, in that Contractor shall host the Software as separate instances for the sole and exclusive benefit of each of the following institutions:
 1. Luna Community College
 2. Clovis Community College
 3. Eastern New Mexico University (inclusive of all three campuses: Portales, Roswell and Ruidoso)
 4. Western New Mexico University
 5. Northern New Mexico University
 6. New Mexico Highlands University
 7. New Mexico Junior College
 8. New Mexico Tech
 9. New Mexico Military Institute, and
 10. State of New Mexico, Higher Education Department on behalf of other Authorized End Users, including the State of New Mexico Public Education Department, on behalf of the state's public school districts.where each such instance may consist of either (i) Blackboard Learning System - Vista Enterprise or (ii) Blackboard Learning System-Enterprise, Blackboard Community System and Blackboard Content System.

Each specific instance of the Software is non-transferable and may only be utilized by the end users of the named institution and the aggregate FTE of the institutions utilizing any of the 10 instances may not exceed the licensed FTE under the Agreement. Procuring Agency in all instances remains the licensee; however, Contractor shall be entitled to take direction from any of the named nine (9) institutions (references to nine (9) institutions or instances shall hereinafter mean the above set-forth ten (10) organizations, less Procuring Agency) with respect to such institution's specific instance. Each institution shall be entitled to one (1) copy of all training materials provided to Procuring Agency hereunder. The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

- ii. Add a new Deliverable 14 to Section III of Exhibit A:

- ii. A 2-hour individual session to discuss migration strategies for the institution's move to a stand-alone Vista environment.

This Deliverable 15 expires on June 30, 2011 if not utilized prior to such date.

iv. Add a new Deliverable 16 to Section III of Exhibit A:

- A. Provide each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server at no additional charge through June 30, 2011, which will allow such institutions to become familiar with the functionality, architecture and user interface, so they may assess the impact of moving from Vista to Blackboard Learn 9.1. Service level agreements are not applicable to test servers.

v. Add a new Deliverable 17 to Section III of Exhibit A:

- A. The following services, offered to all CE or Vista clients moving to Blackboard Learn 9.1
 - i. Section Merge Downloadable Solution (including integration customization maintenance through December 31, 2011). Each institution will be responsible for signing a license agreement prior to taking delivery of this solution.
 - ii. 2 seats per Institution of Higher Education ("IHE") in a "CE/ Vista Transition" webinar series.

vi. Add a new Deliverable 18 to Section III of Exhibit A:

- A. Blackboard shall provide the following Program Management Services to Procuring Agency.

Blackboard will provide a Program Manager responsible for system-wide operational communication, status reporting, issue management and resource management related to the Software. This resource will serve as an on-site, single point of contact in the event of a system-wide outage, which is defined as a Severity 1 issue (as described in the Blackboard client Support Services Guide) with the Procuring Agency's instance, or a Severity 1 issue which affects all nine (9) institutions' instance. The Fees for these Services are set forth on Exhibit A of the Agreement.

vii. Deliverable 9 to Section III of Exhibit A shall be modified as follows:

- A. The Phrase "October 22, 2008" shall be deleted and replaced by the phrase "Any time during the term of the Agreement"

b. "**ARTICLE 12 -CONTRACTOR PERSONNEL**" shall be modified as follows:

- i. "Russ Carlson – President of North American Higher Ed" shall be deleted and replaced with "Brett Frazier - Senior Vice President of North American Higher Education Sales"
- ii. "Jessie Woolley-Wilson-President of K12" shall be deleted and replaced by "Eric Stine – Senior Vice President of K20 Strategic Accounts"

9*, 10 and 12)			
Decision Assistance (Deliverable 15)	N/A	N/A	\$0
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/ Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0
Program Management (Deliverable 18)	\$0	\$0	\$0
TOTAL FEES	\$5,753,060	\$968,900	\$968,900
Designated Server Site: Hosted By Blackboard			
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.			

*Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in year three, the amount associated with Year three, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first two years.

Attachment B
Additional Pricing

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may only be purchased on only one occasion, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Migration Planning Services*	\$30,190
Content and Community Refresher*	\$20,000

*Subject to additional requirements to be included in an agreement upon actual purchase.

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may be purchased on multiple occasions.

Service Offering for IHE opting to move to Stand-alone, hosted instance of Blackboard Learn 9.1 instead of, but not in addition to, Vista	Price
Blackboard Course Consultation – Two day training workshop focused on course consultation and change management	No charge for first session**, each additional session \$6,000
Onsite Training Workshops-Academic Collaboration Essentials and Academic Collaboration Administration (each session has a maximum of 15 participants)	No charge for first session**, each additional session \$8,000

**Only one no charge session for Purchasing Agency and all nine (9) other institutions as a whole, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

- iii. "David Marr – President and COO" shall be deleted and replaced by "Katie Blot – Vice President of Blackboard Consulting"
- c. **"EXHIBIT A- AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK"** shall be modified as set forth in the Attachment A which is attached hereto.
- d. **"ATTACHMENT 1 TO EXHIBIT E ASP SPECIFICATIONS"** shall be modified as follows:
 - i. The phrase "25% Time Commitment" shall be deleted and replaced by the phrase "100% Time Commitment through June 30, 2011..
- e. **Additional Pricing.** During the term of this Agreement, Contractor agrees to the pricing set forth on Exhibit B, which is attached hereto.
- f. **"ATTACHMENT 2 TO EXHIBIT E"** shall be modified as follows:

- i. **"Availability/Service Credit".** The following paragraph shall be inserted immediately at the end of this Section:

In determining the service fee credit, the Unavailability of each of the 9 institutions, plus Procuring Agency, shall be included in the determination. However, the Service Credit shall be determined on a pro-rata basis, except that Procuring Agency's Unavailability shall count 50% towards the Service Credit, and each of the nine (9) institutions shall count 1/18th towards the Service Credit. For example, in the event that one of the institutions experiences one hour of downtime during an applicable month, the Length of the Unavailability for that month (and for that institution) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day of service fees multiplied by 1/18. Similarly, if the Procuring Agency experiences one hour of downtime during an applicable month, the Length of Unavailability for that month (and for the Procuring Agency) shall be one hour; however, the Service Credit (to the extent that the unavailability for that institution is below the 99.7% threshold as further described in this Attachment 2) shall be one day multiplied by .50.

3. Miscellaneous This Amendment No. 2 shall be effective upon the signature of both Parties and shall continue in effect until the termination of the Agreement, after which it shall expire and be of no effect. With the exception of any accounts receivable owed to Contractor, upon execution of this Amendment, each party releases the other from all claims and liability which have accrued prior to the date of execution of this Amendment. This amendment shall be effective upon the last date that either party's duly authorized signatory executes this Amendment.

4. No Other Modifications. Except as provided above, the terms and conditions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written below.

Blackboard Inc.

Ted Boris

Signature

Ted Boris, Senior Counsel

Print Name and Title

June 24, 2010

State of New Mexico, Higher Education Department

Viola E. Flores

Signature

Viola E. Flores

Print Name and Title

6-24-10

**New Mexico Department of Information
and Technology**

Signature

Print Name and Title

Date: _____

This Amendment has been approved by the SPA:

By: _____ Date _____
Purchasing Agent for the State of New Mexico

ATTACHMENT A**CHANGES TO EXHIBIT A OF THE AGREEMENT**

1. The Chart within "II. Summary of the Products, Services and Pricing under the Deliverables provided pursuant to this Agreement is outlined below:" shall be deleted and replaced by the following:

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)
Blackboard Enterprise Software Solution consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0
Set-up for nine separate Vista or 9.1 installations for IHEs (starting in year 3) (Deliverable 14)	N/A	N/A	\$0
Blackboard ASP Annual Service for one (1) production instance of Blackboard Vista and one (1) production instance of Blackboard Learn	\$853,900	\$853,900	N/A
Blackboard ASP Annual Service for 10 instances (including standard maintenance and support); (Deliverable 13)	N/A	N/A	\$853,900
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000
Blackboard Professional	\$620,000	\$100,000	\$100,000*

Services (Deliverables 1, 3, 4, 8, 9*, 10 and 12)			
Decision Assistance (Deliverable 15)	N/A	N/A	\$0
Test Server for each institution electing to move to Vista with a hosted Blackboard Learn 9.1 test server through June 30, 2011 (Deliverable 16)	N/A	N/A	\$0
Auto-Sign On Tool; Section Merge Downloadable Solution; CE/ Vista Transition Webinar Series (Deliverable 17)	N/A	N/A	\$0
Program Management (Deliverable 18)	\$0	\$0	\$0
TOTAL FEES	\$5,753,060	\$968,900	\$968,900
Designated Server Site: Hosted By Blackboard			
Procuring Agency's and Nine (9) institutions' aggregated FTE: up to 200,000 total for all ten organizations.			

*Deliverable 9, SIS Integration Services for K-12, remains unperformed as of the date of execution of the Amendment. The cost of those services, \$36,385, was included within the original \$620,000 associated with year one, but never consumed. Should those services be requested, performed, and accepted in year three, the amount associated with Year three, Deliverables 1, 3, 4, 8, 9, 10 and 12 , would increase from \$100,000 to \$136,385. However, this change does not constitute a net increase in the overall amount of this Agreement as the applicable service was not performed or billed during the first two years.

Attachment B
Additional Pricing

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*Subject to additional requirements to be included in an agreement upon actual purchase.

With regards to the following services, Contractor agrees that such services may be purchased, until June 30, 2011, by Procuring Agency, at the prices listed below. Such services may be purchased on multiple occasions.

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**Only one no charge session for Purchasing Agency and all nine (9) other institutions as a whole, but Contractor will provide such Services at a central location so that representatives of any or all of the ten (10) institutions may attend.

NEW MEXICO HIGHER EDUCATION DEPARTMENT



June 3, 2008

Tess Frazier
Vice President – Contracts
Blackboard Inc.
650 Massachusetts Avenue, NW
Washington, DC 20001

Congratulations!

Blackboard Inc. has been awarded the State of New Mexico Learning Management System (LMS) Contract for the IDEAL-NM project. We are very excited to work with Blackboard in moving our IDEAL-NM initiative forward for the State of New Mexico.

Your contract work can begin immediately, so we are looking forward to form our planning teams to get started. Please communicate with our project manager and director of eLearning technologies to schedule our time with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica Chavez Neuman".

Veronica Chavez Neuman,
Chief Information Officer
New Mexico Higher Education Department

653-1400
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465-2336
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State of New Mexico
Higher Education Department
Information Technology
Agreement
Contract No. 08-950-00417

THIS Information Technology Agreement ("Agreement") is made by and between the State of New Mexico, Higher Education Department hereinafter referred to as the "Procuring Agency" and Blackboard Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the New Mexico Statewide eLearning System (NMSELS) RFP #08-950-00417 are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. **“Acceptance”** shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.
- B. **“Blackboard”** means Blackboard Inc., a Delaware corporation with its principal office and place of business at 1899 L Street, NW, Fifth Floor, Washington, D.C. 20036, U.S.A, including its wholly owned subsidiaries. After June 30, 2008, Blackboard's principal office and place of business shall be 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20001
- C. **“Change Request”** shall mean the document utilized to request changes or revisions in the Scope of Work.
- D. **“Chief Information Officer (“CIO”)** shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.
- E. **“Deliverable”** shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- F. **“DoIT”** shall mean the Department of Information Technology.
- G. **“DFA”** shall mean the Department of Finance and Administration; “DFA/CRB” shall mean the Department of Finance and Administration, Contracts Review Bureau.
- H. **“Escrow”** shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- I. **“Enhancement”** means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application,

ARTICLE 2 – SCOPE OF WORK

A. **Scope of Work.** The Contractor shall perform the Scope of Work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

B. **Schedule.** The due dates, as set forth in Exhibit A, shall not be altered or waived by the Procuring Agency without prior written approval, through the Change Management process, as defined in Article 14.

C. **License.** Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, perpetual license to use, modify, and copy the Blackboard Software meaning the blackboard learning system-enterprise, blackboard community system, blackboard content system, and blackboard learning system-vista enterprise, including updates, upgrades, corrections, application packs, and revisions thereto as defined in Article 2 and Exhibit A.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

D. **Escrow.**

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the Procuring Agency as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the Procuring Agency to top load, compile and maintain the software in the event of a breach.

2) In the event of (i) failure of a trustee or Contractor in any bankruptcy case hereafter filed by or against Contractor either to assume this Agreement within sixty (60) days after the filing of the initial bankruptcy petition or to perform this Agreement within the meaning of Section 365(n)(4)(A)(i) of Title 11 of the United States Code; or (ii) the termination of substantially all of Contractor's (or its successors, if applicable) ongoing business operations relating to the Software and (iii) cessation of Contractor's business operations, the Contractor shall make available to the Procuring Agency: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the source code and documentation.

Acceptance of each and every Deliverable other than Deliverables waived by Procuring Agency. The Procuring Agency's right to recover from the bond shall include all costs and damages associated with the transfer of services provided under this Agreement to another contractor or to the State of New Mexico as a result of Contractor's failure to perform. The bond shall be released upon earliest of (i) Acceptance of all Deliverables under this Agreement, (ii) the termination of the Agreement or (iii) the third anniversary of the Agreement.

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less twenty percent (20%) retainage for deliverables 1, 3, 4, 8, 9, 10 and 12 that are subject of this Agreement.

B. Acceptance. Procuring Agency shall have a period of five (5) business days unless otherwise agreed to by the parties, commencing on the installation date of the Software licensed pursuant to the applicable Contractor Software to test that such Software operates substantially in accordance with the Documentation ("Acceptance Period"). Procuring Agency shall notify Contractor of any Nonconformities during the Acceptance Period ("Nonconformance List") by providing in writing, a list of Nonconformities, such list to be received by Contractor during the Acceptance Period. Upon receipt of the Nonconformance List, Contractor shall have a period of ten (10) business days or as otherwise agreed by the parties ("Cure Period") to repair any Nonconformities listed on the Nonconformance List at its own expense, such that such Software affected by the Nonconformity operates substantially in accordance with the Documentation. Notwithstanding anything herein to the contrary, in no event shall acceptance ("Acceptance") be postponed beyond two months from schedule effective date ("Final Date"). Upon: (i) Procuring Agency's delivery to Contractor of written notice of Acceptance; or (ii) conclusion of the Acceptance Period, if Procuring Agency has not notified and provided to Contractor a list of Nonconformities; such Software shall be deemed to have reached Acceptance. If Acceptance has not been deemed to have occurred, and Nonconformities listed on a Nonconformance List have not been resolved on the Final Date, Procuring Agency shall have the option of terminating this Agreement by notifying Contractor in writing of its intent to terminate the Agreement on or before the Final Date, and, upon receipt of such Software by Contractor, receiving the license fees paid to Contractor. "Nonconformities" shall mean a material failure of the Software licensed pursuant to this Schedule, or any component thereof, to substantially conform to the Contractor's official published specifications.

In accord with Section 13-1-158 NMSA 1978; the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will determine that the Deliverable:

- 1.) Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
- 2.) Complies with all the requirements of this Agreement.

termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

D. Effect of Termination. Upon termination of this Agreement, all licensed perpetual licenses granted under this Agreement shall remain in force. Upon termination, Procuring Agency will pay to Blackboard amounts due and payable as of the intended date of termination. Each Party: (i) will immediately cease any use of the other Party's Confidential Information not licensed under the perpetual licensing agreement; (ii) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries not covered by the perpetual licensing agreement; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession other than items covered by the perpetual licensing agreement.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1.) Transfer, deliver, and/or make readily available to the Procuring Agency work product or documentation created for Procuring Agency under this Agreement.
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
- 4.) Protect and preserve all property and all records required by this Agreement;
- 5.) Reasonably cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency programs;
- 6.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall transfer files, computer software, documentation, system turnover plan, Intellectual Property and other materials to which Procuring Agency has a right to use after termination of the Agreement and for which Procuring Agency has made full payment, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency.

B. Procuring Agency. In the event this Agreement is terminated or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall 1) other than a termination for Procuring Agency's breach, be granted a license to use and modify documentation created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for Deliverables Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 –INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from

1. Ownership of Procuring Agency Property. As between Procuring Agency and Contractor, Procuring Agency Property, together with all Derivative Works therefrom, are and shall, subject to the provisions of Contractor Use of Procuring Agency Property section below, remain the sole and exclusive property of Procuring Agency, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein.
2. Ownership of Contractor Property and Software. As between Procuring Agency and Contractor, Contractor Property and Software, and all other content not deemed to be Procuring Agency Property, together with any and all Derivative Works therefrom, are and shall remain the sole and exclusive property of Contractor or its licensors or suppliers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto. Nothing in this Agreement shall be construed to grant Procuring Agency any ownership right in Contractor Software, Contractor Property or any other software owned or licensed by Contractor.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall (1) defend and settle such claim, including paying all costs, any settlement amounts, damages and attorneys fees that may be awarded as a result of such claim or (2) satisfy one of the options under Article 10(B). In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

- 1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2.) Allow the Contractor to control the defense and settlement of the claim; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

- 1.) Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
- 2.) Replace or modify the product or service so that it becomes non-infringing; or
- 3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

David Marr – President & COO

B. Personnel Changes. Replacement of any personnel for professional services shall be made with personnel of equal ability, experience, and qualification and shall be agreeable by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to agreement. If the number of Contractor's personnel assigned to the Project for professional services is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency agreement. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE CONTROL

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such changes may be made only with mutual agreement of Contractor and Procuring Agency except pursuant to an amendment of this Agreement, under no circumstance shall such changes cause:

- 1) Compensation due under the terms of this Agreement to exceed the maximum compensation listed in Article 3(B); or
- 2) Due Date of any Deliverable to change in a manner, which would cause the term of this Agreement to be extended.

equipment, either at the Contractor's site or the Procuring Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Procuring Agency or for losses occasioned by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL CONTRACTOR OR ITS LICENSORS BE LIABLE TO PROCURING AGENCY FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, EQUIPMENT OR SERVICES, WHETHER OR NOT CONTRACTOR WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE:(A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CONTRACTOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS OF THE PROCURING AGENCY ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED \$7,800,000. For avoidance of doubt, the parties agree that in the event that Procuring Agency incurs expenses resulting from work on the Blackboard software which the State incurs to remedy Blackboard's failure to meet its obligations under the contract would not be deemed indirect or consequential damages.

ARTICLE 19 – ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other party, except that Contractor may assign this Agreement to: (a) a subsidiary, affiliate, or parent company; or (b) an entity which succeeds to all or substantially all of a party's assets whether by merger, sale or other transaction.

ARTICLE 20 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment to the subcontractor from the Procuring Agency.

ARTICLE 21 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 27 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or

B. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

C. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

E. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

F. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 30 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Limitation of Liability, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement.

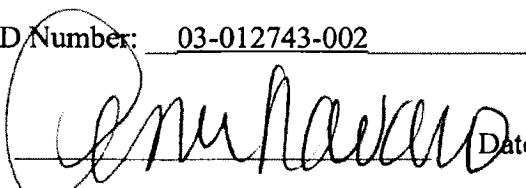
ARTICLE 31 – TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless otherwise specified; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 03-012743-002

By:


Dennis Nakai Date: 5/30/08
Taxation & Revenue Department

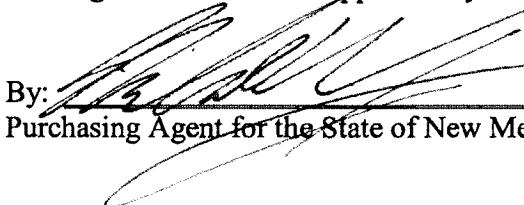
Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By:


Roy Soto, Secretary Date: 5/30/08
Department of Information Technology

This Agreement has been approved by the SPA:

By:


Purchasing Agent for the State of New Mexico Date: 5/30/08

5. Efficient Use of Technology to Increase Educational Access - The demand for increased access comes from a number of different pressures: sharing resources between districts, an increasing percentage of the population participating in higher education, workforce retraining for a dispersed population, population growth in a specific geography, and global demand and opportunities for specialized programs.

B. Objectives.

Implementation of this contract will create a centralized statewide eLearning system for the Procuring Agency that is intended to implement the provisions of the statewide Cyber Academy Act, and the long term goals of eLearning in New Mexico to:

- Develop a more skilled workforce to support New Mexico economic development
- Minimize barriers of location (distance) and schedule (time) to accessing educational opportunities
- Create a collaborative, scalable, and cost-effective eLearning system for K-12, higher education, state agencies, and workforce development
- Provide highly qualified eTeachers (both in subject and eLearning methods) and expanded course choices for rural (and urban) schools
- Increase just-in-time workforce development opportunities while minimizing travel costs
- Build capacity and skill for eLearning in NM using national best practices

C. Activities.

The Contractor is expected to support the Procuring Agency with the implementation of a Commercial off the Shelf (COTS), standards-based Learning Management System (LMS) that includes learner tools (communication tools, productivity tools, and student involvement tools) and support tools (administration tools, course delivery tools, and curriculum design tools) that enable the delivery of online learning.

The Contractor will establish a common infrastructure for online learning for the three major components. Here are some examples within these components:

Higher Education	Public Education (PK-12)	State Agencies
<ul style="list-style-type: none">• Common LMS• eLearning Course Clearinghouse• Distance and Extended Learning programs• Dual Enrollment• Online College Credit	<ul style="list-style-type: none">• K12 Courses• Professional Development• Teacher Training• Statewide Collaboration• Web-Socialization Software• Dual Enrollment	<ul style="list-style-type: none">• Children Youth and Families Professional Development• Department of Corrections Inmate Education Program• Tele-health programs• Workforce Training Opportunities• State Personnel Office Employee Training• Other State Agencies

This contract includes perpetual software (the Blackboard Learning System- Enterprise, Blackboard Community System, Blackboard Content System, and Blackboard Learning System-Vista Enterprise

The following sections describe the required Task Items to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task, but is not limited to performing only the task. The Parties hereby agree that the Deliverables are the controlling items and that the Contractor's obligation is to perform and deliver the Deliverable as described in the following Sections.

The table below provides the summary of planning and implementation services to be provided.

Integration and Customization Maintenance (ICM) in Deliverable Twelve will be activated in year one. The actual timing of integration activities and ICM activation will be determined during the planning phase of the program and is dependent on institution/school district/agency decision and/or ability to move to NMSELS.

B. Deliverable Number 2 – Professional Services: ASP Service Setup (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE TWO		DUe DATE	COMPENSATION
ONE TIME ASP SERVICE SETUP		JULY 15, 2008	\$20,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
ASP Service Setup	Sub 1	Establish framework for multi-institutional environment	
	Sub 2	Verify ASP hardware for multi-institutional environment	
	Sub 3	Establish hosting services environment	

C. Deliverable Number 3 – Professional Services: Community System Solution Design

DELIVERABLE THREE		DUe DATE	COMPENSATION
COMMUNITY SYSTEM SOLUTION DESIGN		SEPTEMBER 18, 2008	\$64,000.00 ON ACCEPTANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Community System Solution Design	Sub 1	Two week strategy and implementation on-site engagement with participating institutions.	
	Sub 2	Initial system configuration	
	Sub 3	Community System Administration face-to-face training workshop (3 days) - up to 20 participants may attend	

D. Deliverable Number 4 – Professional Services: Content System Solution Design

DELIVERABLE FOUR		DUe DATE	COMPENSATION
CONTENT SYSTEM SOLUTION DESIGN		OCTOBER 16, 2008	\$43,000.00 ON ACCPETANCE
TASK ITEM	SUB TASKS	DESCRIPTION	
Content System Solution Design	Sub 1	One week strategy on-site engagement	
	Sub 2	Initial system configuration	
	Sub 3	Content System Administration face-to-face training workshop (1 day) - up to 20 participants may attend	

G. Deliverable Number 7 – Training Materials License Update (Please refer to Exhibit D for detailed specifications associated with this Deliverable)

DELIVERABLE SEVEN	PERIOD	COMPENSATION
TRAINING MATERIALS LICENSE UPDATES	YEAR 2	\$7,000.00 ON JUNE 30, 2009
	YEAR 3	\$7,000.00 ON JUNE 30, 2010

TASK ITEM	SUB TASKS	DESCRIPTION
Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.

H. Deliverable Number 8 – Professional Services: SIS Integration Services for Higher Education (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

DELIVERABLE EIGHT	DU DATE	COMPENSATION
SIS INTEGRATION SERVICES FOR HIGHER EDUCATION (EACH UNIT CONSTITUES A DELIVERABLE)	TIMING OF ADDITIONAL INTEGRATION SERVICES BASED ON INSTITUTION-SPECIFIC TIMELINES EST. OCTOBER 22, 2008	\$15,441.00 PER HIGHER EDUCATION INSTITUTION ON ACCEPTANCE FOR EACH INSTITUTION – TOTAL NOT TO EXCEED \$231,615.00

TASK ITEM	SUB TASKS	DESCRIPTION
SIS (Student Information System) Integration Services for Higher Education	Sub 1	Up to 15 Banner LDI (Limited Data Integrations) with higher education institutions, branded to each Institution. Each of the 15 integrations is a separate deliverable, invoiced individually.
	Sub 2	End to end SIS integration testing

Each institution's integration shall be treated as a separate Deliverable under the Agreement including, for the purposes of paying the Contractor, any related retainage amounts.

Perpetual Licensing based on 200,000 FTE	Sub 1	Provide Perpetual License (a non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users) Blackboard Learning System Enterprise Suite (K-12).
	Sub 2	Provide Perpetual License for the Blackboard Vista Enterprise License (HED institutions).
	Sub 3	Provide Perpetual License to the Blackboard Community System™.
	Sub 4	Provide Perpetual License for the Blackboard Content System

L. *Deliverable Number 12 – Professional Services: Integration Customization and Maintenance (please refer to Exhibit E for detailed specifications associated with this Deliverable.)*

DELIVERABLE TWELVE	PERIOD	COMPENSATION
INTEGRATION CUSTOMIZATION AND MAINTENANCE	YEAR 1	\$100,000.00 due June 15, 2008
	YEAR 2	\$100,000.00 due June 15, 2009
	YEAR 3	\$100,000.00 due June 15, 2010
TASK ITEM	SUB TASKS	DESCRIPTION
Annual Integration Customization and Maintenance	Sub 1	Annual subscription-based maintenance program for SIS integrations and gradebook extract customization. Integration Customization Maintenance (ICM) is an annual subscription billed as a maintenance fee. ICM will be billed and activated at initial system Acceptance when the named service consulting project is completed. Year 2 costs will be billed to align with the Contractor Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis concurrent with the ASP service unless otherwise requested. Payment for each annual subscription due at due dates set forth above.

M. *Deliverable Number 13 - Data Hosting and Technical Support (please refer to Exhibit E for detailed specifications associated with this Deliverable.)*

DELIVERABLE THIRTEEN	PERIOD	COMPENSATION
3 YEAR HOSTING & TECHNICAL SUPPORT	YEAR 1	\$853,900.00 due June 15, 2008
	YEAR 2	\$853,900.00 due June 15, 2009
	YEAR 3	\$853,900.00 due June 15, 2010
TASK ITEM	SUB TASKS	DESCRIPTION

EXHIBIT B

BLACKBOARD ENTERPRISE SOFTWARE SOLUTION including standard maintenance and support (consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System):

1. ADDITIONAL SOFTWARE LICENSE TERMS AND CONDITIONS

1.1. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants Procuring Agency a limited, non-exclusive, non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (a) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers or (a) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained. Procuring Agency acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Procuring Agency's Authorized End Users, Procuring Agency will be required to obtain additional license rights from Contractor pursuant to a separately executed Exhibit and payment of additional license fees. Procuring Agency will use its reasonable efforts to cause access information to the Blackboard Software (including user identification data and passwords) not to be provided to third parties except as expressly permitted under this Agreement. Under no circumstances shall Procuring Agency permit any third party to host the Software.

1.2. General Usage Restrictions. Procuring Agency agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in the Grant of License section above. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Procuring Agency shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Procuring Agency shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Procuring Agency reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software is compiled or interpreted, and Procuring Agency hereby acknowledges that nothing in this Agreement shall be construed to grant Procuring Agency any right to obtain or use such source code (except as provided for in Article 2, D-2); (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Contractor; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Contractor, provided that the foregoing shall not be construed to prohibit Procuring Agency from

published specifications) for the Software level. Procuring Agency may not use any Supported Interface in a manner that is inconsistent with the Contractor's official published specifications.

1.5 Third Party Software/Content. Procuring Agency acknowledges that the Software may utilize Third Party Software (the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software). Pursuant to its agreements with these third parties, Blackboard hereby grants to Procuring Agency a non-exclusive, non-transferable license or sublicense, as applicable, to load and/or operate and use the Third Party Software solely in connection with the Software and Procuring Agency's own instructional activities.

1.6 Ownership of Software. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Software and Contractor's official published specifications, and Procuring Agency acknowledges that it neither owns nor acquires any additional rights in and to the Software and Contractor's official published specifications not expressly granted by this Agreement, and Procuring Agency further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Agreement, including, without limitation, the right to use the Software or Contractor's official published specifications for any purpose in Blackboard's sole discretion.

1.7 Permissible Licensed Use.

(1) When Contractor is hosting the Contractor Software for Procuring Agency, the maximum number of users which may, at any particular time, be permitted to be registered to access one (1) or more educational courses provided through the Hosted Software shall not exceed 200,000 users.

(2) In the event that Contractor is not hosting the Contractor Software, the FTE of the institutions utilizing the Contractor Software shall not exceed 200,000.

(3) Upon request, Procuring Agency will inform Contractor of any increase in its FTE or users. In the event that Procuring Agency has exceeded the permissible FTE or users, Procuring Agency shall have the option to promptly (1) pay additional license fees for the Software for such increases in accordance with Contractor's then-current pricing via amendment to this contract or other authorized means under state law or (2) decrease the usage below the applicable cap and use good faith efforts to obtain state authorization to pay the applicable license fees for the period that the usage was above the cap.

(4) In no event may Procuring Agency permit any access to the Contractor Software other than by Authorized End Users, as defined below.

"Authorized End User" means any Higher Ed, K-12 or New Mexico state agencies user as described in A, B, or C, below.

A. In Higher Education institutions, Authorized End User means any individual who is a student resident in a degree- or certificate- granting program of Procuring Agency, prospective student, alumni, consortia student registered to take one of Procuring Agency's regularly offered courses of instruction, employee, trustee or collaborating

object code software utility release(s) that are designed to work with the Software that may be, in Blackboard's sole discretion, issued in between Upgrades, designated by AP#, and/or later incorporated into Upgrades), Corrections (a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects Software Errors (a failure of any Software materially and substantially to conform to applicable Contractor's official published specifications, provided that such failure can be reproduced and verified by Blackboard using the most recent version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Procuring Agency, and further provided that Software Errors do not include any nonconformity to applicable Contractor's official published specifications caused by: (i) Procuring Agencies or its end users' negligence; (ii) any modification or alteration to the Software not made by Blackboard; (iii) data that does not conform to Blackboard's specified data format; (iv) operator error; (v) use on any system other than the operating system specified in the Contractor's official published specifications, (v) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule) in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update), or Updates to the Software that Blackboard may develop from time to time; and (iv) return all Contractor's official published specifications and related training materials to Blackboard within a reasonable time at Procuring Agency's cost.

A computer lab containing one computer for each student. Each computer must have at least 800 MHz processors and 256 MB or RAM and monitors capable of at least 1024x768 of resolution.
A high bandwidth Internet connection from each computer
Microsoft Internet Explorer 6.0 or later installed on each computer
Microsoft 2000 or later installed on each computer
<u>Recommended:</u> <ul style="list-style-type: none"> ➤ Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer. ➤ A video projection device capable of 1024x768 of resolution attached to a "lead" computer. ➤ Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. BLACKBOARD ONLINE TRAINING SERVICES

A. Blackboard, upon request of Procuring Agency and in accordance with exhibit A (Deliverable 5), shall provide Online Training Services to Procuring Agency. To request enrollment in an online training course for Procuring Agency, Procuring Agency shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement.

B. Online training course/workshop class sizes are restricted to a maximum of 20 authorized end users to maintain an effective instructor-student ratio.

C. While there are no course prerequisites for enrollment, each participant must possess basic Web navigation and file management skills, internet access, and an email address. Students in online training courses should expect to spend eight to fifteen hours per week reading assignments, completing exercises, and participating in Discussion Board forums. The Procuring Agency must provide the name(s) and email address(es) of each participant in advance of the course start date.

3. CANCELLATION. Participants are encouraged to complete the course(s) which begin on the dates(s) selected. If a participant needs to reschedule before the course start date, please email training@blackboard.com.

A. In extraordinary circumstances, participants may be allowed to withdraw and participate in an online training workshop at a later time.

B. Blackboard reserves the right to cancel online courses/workshops due to low enrollment. Registered participants will be notified one week prior to the start of the course/workshop of any cancellation.

EXHIBIT D
BLACKBOARD TRAINING MATERIALS

TRAINING MATERIALS (YEAR ONE)

Blackboard Training Services
Blackboard Vista Face-to-Face Training Materials Package*
Blackboard Learning System Face-to-Face Training Materials Package: K-12 Edition*
Blackboard Learning System Face-to-Face Training Materials Package*
Blackboard Vista Online Training Series Package*
Blackboard Learning System Online Training Series Package*
Blackboard Content System Training Package*

* Each Materials License training package listed above are to be used solely by IDEAL-NM staff, from NMHED or NMPED to train training contacts at each participating agency. Individual institutions or agencies who wish to locally brand materials and train their faculty or staff using Blackboard Inc. licensed materials will need to purchase their own Materials License training package at prices not to exceed those depicted on Exhibit A.

TRAINING MATERIALS SUBSCRIPTION* (YEARS TWO & THREE)

Blackboard Face to Face Training Materials Package subscription for Application Pack Upgrades
Blackboard Online Training Series Package subscription for Application Pack Upgrades

1. LICENSE

A. **Grant of License.** Subject to the terms and conditions and payment by Procuring Agency as provided in this agreement, Blackboard grants to Procuring Agency a perpetual, non-exclusive, non-transferable, limited, Version-specific, internal use license to (i) use and copy the Blackboard Materials (the Blackboard training materials, instructor's manuals, product documentation and all other instructional materials (or on any Procuring Agency purchase order or other payment documentation accepted by Blackboard and delivered to Procuring Agency. For purposes of the Training Materials herein, unless otherwise expressly stated, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard) and (ii) to conduct the Blackboard courses related thereto, if applicable. Procuring Agency is authorized hereunder to use the Blackboard Materials on an internal basis only for the sole benefit of Procuring Agency, solely for purposes of training its employees, contractors, and/or students on the use of the Blackboard software and for conducting development sessions for its faculty that are sponsored and delivered by Procuring Agency.

agrees that Blackboard shall own all right, title and interest in and to any and all Derivative Works developed by Procuring Agency or Procuring Agency's employees, contractors, agents and other related parties ("Procuring Agency Derivative Works"). Subject to the patent and copyright act, NMSA 1978, Section 57-3c-1 to 5 and any required approval of the Economic Development Department, Procuring Agency agrees to, and does hereby, assign to Blackboard all right, title and interest, including, without limitation, worldwide copyrights, patents and other intellectual property rights, in and to any and all Procuring Agency Derivative Works, and agrees to execute and deliver to Blackboard all documentation reasonably requested by Blackboard to reflect such assignment. Except for the license rights expressly set forth herein, Blackboard does not hereby convey and Procuring Agency shall not obtain any right, title or interest in or to all or any part of the Blackboard Materials or the Derivative Works. Notwithstanding anything to the contrary contained herein, Blackboard shall not obtain any rights with respect to any Confidential Information of the Procuring Agency or any Procuring Agency-developed content or other Procuring Agency materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof.

C. License to use Trademarks. During the term of this Agreement, Blackboard grants to Procuring Agency a license to use Blackboard's trademarks and trade names only for the purpose of identifying Blackboard's rights in and to the Blackboard Materials and the Procuring Agency Derivative Works. Procuring Agency agrees that it will reproduce Blackboard's name, trademark, trade name and copyright notices on all copies of the Blackboard Materials and any Procuring Agency Derivative Works in addition to any IDEAL-NM branding in use by the Procuring Agency. Procuring Agency shall acquire no rights to Blackboard's copyrights, trademarks or trade names by virtue of their use. Procuring Agency shall not use any trade name, trademark or other marks that are confusingly similar to those used by Blackboard or use Blackboard's trademarks or trade names in connection with any goods or services other than the Blackboard Materials and the Procuring Agency Derivative Works. Procuring Agency acknowledges that all copyrights, trademark, trade name, or any other proprietary mark applied to or used by Blackboard in reference to the Blackboard Materials, the Procuring Agency Derivative Works or other Blackboard products or services are the sole and exclusive property of Blackboard, whether registered or not. Blackboard grants Procuring Agency the right to brand materials for agency training under IDEAL-NM. Procuring Agency owns the trademark or trade name IDEAL-NM.

D. Delivery. After the Effective Date, Blackboard will make an electronic source file of the applicable licensed Blackboard Materials available to the Procuring Agency for downloading and Procuring Agency's use. Delivery of the Blackboard Materials shall be deemed complete when Blackboard notifies Procuring Agency that the Blackboard is available for download. Procuring Agency acknowledges that the download site will be made available to Procuring Agency for a period not longer than ninety (90) days from the date of such notice, and Procuring Agency will have no right to download the Blackboard Materials after this ninety (90)-day period.

E. TRAINING MATERIALS MAINTENANCE AND UPGRADES

The Procuring Agency shall pay to Blackboard an annual subscription fee as specified in Deliverable number 6 and 7, for maintenance and upgrade of materials licenses. Upon payment of this fee the Procuring Agency shall be eligible to receive access to the most current version of the Blackboard materials licenses as specified in Deliverable number 6 and 7.

agreement, including all right, title and interest in and to any derivative work created by Blackboard. Blackboard agrees to, and does hereby, assign to Procuring Agency and to the entities participating under this agreement all right, title and interest including, without limitation, worldwide copyright, patent and other intellectual right, in and to any and all such derivative work, and agrees to execute and deliver to Procuring Agency and to the entities participating under this agreement all documentation reasonably requested by Procuring Agency or the entities participating under this agreement to reflect such assignment. As between Procuring Agency and Blackboard, Procuring Agency retains ownership of the Procuring Agency Content. Blackboard shall maintain the confidentiality of all Procuring Agency Content and participating entities content that is stored on its servers in accordance with this Agreement.

1.2 Availability and Operational Specifications. Blackboard will undertake commercially reasonable measures to ensure that, from and after the Available Date and for so long as this Agreement remains in effect, the ASP Services (Application services provided by Blackboard pursuant to this Agreement provided pursuant to this Agreement) will: (i) be available and accessible as contemplated herein twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Attachment 2 to this Exhibit; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Attachment 2 to this Exhibit. Attachment 2 to this Exhibit may be modified from time to time, upon notice to Procuring Agency. Notwithstanding the foregoing, Blackboard will have no liability under this Section to the extent any nonconformity with the standards set forth in Attachment 2 arises, in whole or in part, from: (i) any use of the Hosted Software by Procuring Agency other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Procuring Agency to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to this Agreement; or (iii) any causes beyond the control of Blackboard or which are not reasonably foreseeable to Blackboard, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. Blackboard does not warrant or guarantee the ASP Services except as expressly stated in this Agreement.

1.3 Data Restoration Policy. Blackboard will back-up and archive Procuring Agency Content at a secure location for the retention period(s) specified in Attachment 2. In the event that Procuring Agency requests recovery of any lost or damaged Procuring Agency Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Procuring Agency), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Procuring Agency has provided to Blackboard all information necessary to enable Blackboard to perform such services. Blackboard shall perform up to four (4) data restorations at no charge to Procuring Agency; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the ASP Services, Procuring Agency agrees to pay Blackboard its then-standard applicable rates for such restoration services.

1.4 Data Archiving and Cleanup Policy. Blackboard will undertake commercially reasonable efforts to accommodate Procuring Agency's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Procuring Agency's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a

ATTACHMENT 1 TO EXHIBIT E
ASP SPECIFICATIONS

+ Blackboard Learning System™:- Enterprise License & Learning System – Vista License Production Environment Hosting

- Set Up Fee includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Annual Fee includes service for up to **200,000 total Active Users** and **4 TB** of storage and **20 Mbps** of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)

+ Blackboard High Availability/High Performance ASP Service on the Production Environment

- Oracle RAC (Real Application Clusters) clustered database nodes configuration pointing to a separate Procuring Agency-dedicated RAID-4 (Redundant Array's of Independent Disk) protected storage volumes for redundant and load balanced database servers configuration.
- Oracle RAC license included
- Minimum of two (2) dedicated database servers as database nodes
- Includes Oracle Recovery Manager (RMAN) database backup service, which allows point-in-time database backup and restore capability.

+ Blackboard Non-Production Test Environment:

- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
- Fee includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Procuring Agency full root access to servers.
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Test Environment by its nature DOES NOT meet the Service Level specifications under Attachment 2, and therefore, DOES NOT qualify for Service Level Guarantees.

+ Blackboard Staging Environment

- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
- Fee includes **100 GB** of storage and **512 kbps** of bandwidth measured using the 95th percentile calculation (as defined above) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- The Staging Environment (hosting additional test copy of the licensed Blackboard Software used for Procuring Agency to test new updates/upgrades to the Software. The staging environment may not be used for production purposes) is not designed to fully replicate or clone the production environment in terms of physical infrastructure.

- Contact: Be fully dedicated to Procuring Agency's Systems Administrators and Operations staff through a dedicated phone number for day-to-day ASP support requests and status reporting
- Project Communication: Build two-way communication processes in coordination with Procuring Agency for project management, support issue escalation, and other communication procedures as necessary
- Regular Reporting: Coordinate and facilitate regularly scheduled (weekly or monthly or quarterly) and ad-hoc project and status update meetings
- Channel Management: Modify and update communication processes and channels as deemed necessary
- On-site Support: CHM will make two on-site visits within the one year contract period.

C. Documentation - Document and report on Procuring Agency's ASP infrastructure, projects status, escalation issues, and other Procuring Agency ASP environment-relevant knowledge. Complete and thorough documentation will be a key aspect of meeting the management and communications objectives of the CHM. As such, the CHM will provide the following documents during the life of the relationship between the CHM and Procuring Agency:

- Operations and Plans: Develop detailed documents including Escalation process, Operations Handbook, Infrastructure test and implementation plans
- Regular Status Reporting: Document and provide weekly reports to Procuring Agency on all project plans and updates
- Infrastructure Reporting: Document and provide monthly updated reports to Procuring Agency on Infrastructure design, hardware inventory, monitoring and management infrastructure, change management logs and other relevant materials
- Change Management/Status (I): Provide timely and detailed reports of planned infrastructure changes; planned or unplanned service outages, or degradation of services; and issue resolution reports
- Change Management/Status (II): Document and communicate any procedural changes that regulate the flow of code fixes, patches to the production environment
- SLA Performance Reporting/Analysis: Provide monthly reports (and as often as necessary to manage system stability) on system utilization and performance, including MRTG graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Procuring Agency, a standard set of reporting for overall systems management.

+ Secure Socket Layer –

- Secure Socket Layer (SSL) is an encryption protocol that prevents eavesdropping of data that passes between a web server and an end-user's browser. SSL enabled websites encrypt data before it is transmitted from the web server to the end user and from the end user to the web server. Blackboard's Learning System 6.1 and higher versions contain SSL Choice feature, which once turned on allows Procuring Agency to choose which parts of the site should be encrypted and which should not, which in turn effectively reduces unnecessary CPU usage associated with SSL software. In order to take advantage of the SSL Choice, Procuring Agency must have SSL software enabled.

**ATTACHMENT 2 TO EXHIBIT E
ASP SERVICES SPECIFICATIONS**

NOTE: PROCURING AGENCY ACKNOWLEDGES THAT NOTHING IN THIS ATTACHMENT 2 CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE AGREEMENT AS APPLICABLE.

SERVICE LEVEL

Security:

- Single point of entry to co-location is guarded 24 hours a day with access controlled by an access database and video surveillance
- Monitoring of the co-location area and only those persons authorized by Blackboard's access list are allowed past a central point.
- Surveillance cameras located throughout the facility capture activity to help ensure no unauthorized entry to protected areas.

Power:

- State-of-the-art generators clean and condition commercial electrical power to remove irregularities in the signal. Power is run through the generators before being passed into the facility.
- In the event of a loss of power from the grid, power backups are utilized in the following order: commercial utility underground conduits, two-hour battery backup (industry standard only 15 minutes), diesel generator with full-load capability and additional fuel supply.

Network:

- Redundant Internet connections through dual Tier-1 Internet Service Providers

Startup:

Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Procuring Agency server(s). This includes but not limited to, the server hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Hosted Software.

Initial Access Date:

The Hosted Software is typically accessible from the hosting site within 7 business days after execution of the Agreement provided that Procuring Agency has provided to Blackboard a URL and any other information required by Blackboard. Blackboard shall provide Procuring Agency with procedures for access; the procedures may include, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Procuring Agency to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Agreement.

Availability/Service Credit:

The Hosted Software is accessible 24/7, with a 99.7% targeted uptime. 99.7% uptime means that for 99.7% of the time during any calendar month, the ASP Services shall be available. Unavailability is a condition in which there is unavailability of the Hosted Software due to hardware failure OR sustained packet loss in excess of fifty percent within the Blackboard hosting facilities for at least fifteen consecutive minutes due to a failure of Blackboard to provide ASP Services during such period; unavailability does not include packet loss or network unavailability due to scheduled

MONITORING AND PERFORMANCE

Blackboard will make network performance reports available to the Procuring Agency via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment.. Upon request by Procuring Agency, Blackboard will provide Procuring Agency with monthly reports including information on ASP Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Procuring Agency with the following report:

Specific System Outage Details:

- Time of outage
- Length of outage
- Affected areas
- Reason for outage
- Procuring Agency contact notified (if any)
- Remedy to prevent outage reoccurrence (if any)

Ongoing:

The hardware, software and network are monitored and maintained by Blackboard and will be accessible twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which the Procuring Agency shall be notified by email.

- Blackboard maintains responsibility for all day-to-day server maintenance. Server maintenance may include, but is not limited to, hardware upgrades, OS upgrades, patch installations, database administration, server user administration and performance tuning.
- Blackboard maintains a software monitoring system to provide real-time information about the ASP environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the ASP environment.
- Blackboard maintains the functioning of all hardware components for which it is responsible under this Exhibit and will replace any failed components. Hardware replacement will begin immediately upon identification of the hardware failure and if cannot be completed with a reasonable amount of time, the access to the Hosted Software will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily backups with a retention period of 1 month. Where possible, data is replicated to an offsite location.
- Blackboard collects bandwidth usage and web hit statistics on all Procuring Agency-hosted machines. This information will be provided upon request.

DATA CENTER SPECIFICATIONS

Blackboard houses servers in a facility that offers environment control, security, and backup power, as more specifically described below:

Environment:

- The data center is designed to maintain a constant temperature of 68 $\frac{1}{4}$ F, plus or minus 2 $\frac{1}{4}$ F, with humidity of 45%.

Server Setup:

EXHIBIT F

SUPPLEMENTAL SERVICES – FEE SCHEDULE FOR IDEAL-NM AND PARTICIPATING INSTITUTIONS

Supplemental Storage and Bandwidth Policy: As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Procuring Agency's storage and bandwidth usage. In the event Procuring Agency has exceeded Initial Storage and/or Initial Bandwidth in a sustained period of sixty (60) days or more, Blackboard will provide a report to Procuring Agency concerning the current storage and bandwidth usage. In the event Procuring Agency or participating institutions desire to purchase supplemental storage, user capacity, ASP services and/or bandwidth, the price which Blackboard agrees to charge is listed below.

In the first three years of the Agreement, additional hours for consulting services will be billed at a blended rate of \$205 per hour. Supplemental Consulting Services procured by the Procuring Agency will be within the total compensation under this agreement. Participating Agencies and Institutions desiring to procure supplemental services may do so at prices not to exceed those depicted in this exhibit.

Supplemental ASP Services: In the event that Procuring Agency desires to receive ASP Services in addition to the particular services specified in the table above, including, by way of example, incremental storage capacity and/or additional bandwidth capacity and/or higher Active User Capacity, Procuring Agency may submit a written and executed purchase order requesting such additional ASP Services. Subject to Procuring Agency's payment of all applicable fees, and further subject to all applicable provisions of this Agreement, Blackboard agrees to make such additional ASP Services available to Procuring Agency for so long as this Agreement and ASP service remains in effect after acceptance of such purchase order. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Procuring Agency with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

Description of Service	Price
Supplemental Consulting Services	\$205 per hour
Supplemental ASP Services	
• Additional Service Unit – to support additional 10,000 Active Users	\$47,000/Yr
• Additional 1 TB Storage	\$30,000/Yr
• Additional 2 TB Storage	\$58,000/Yr
• Additional 5 TB Storage	\$140,000/Yr
• Additional Bandwidth – in 1 Mbps increments	\$480/month/1 Mbps
• Additional CHM Commitment – 25% Increment	\$60,000/Yr
• Test and Development Environment	\$1,000/setup