

VOID IF EXECUTED AFTER September 27, 2002

Cleveland State University

**BLACKBOARD MASTER TERMS**

These Blackboard Master Terms ("Master Terms"), made this 16<sup>th</sup> day of September, 2002 ("Effective Date"), by and between Blackboard Inc., a Delaware corporation having an address at 1899 L Street, NW, Fifth Floor, Washington, DC 20036 ("Blackboard") and Cleveland State University having an address at 1983 East 24th Street, Cleveland, OH 44115 ("Customer").

Blackboard offers software and services to scale from course websites, to an entire online campus and that allows institutions to establish and manage accounts for a stored value card system and security access system. Customer wishes to adopt the Blackboard technology to enhance its own educational programs, and Blackboard is willing to provide the Blackboard technology to Customer for this purpose.

Therefore, in consideration of the following mutual covenants and agreements, the parties agree as follows:

**1. SCOPE OF AGREEMENT.**

**1.1 Exhibits and Schedules.** These Master Terms and Customer's Purchase Order Terms and Conditions, as is, and without modification, attached as Exhibit 1 ("Exhibit 1") to this Agreement, describe the general terms by which Customer may license Software (as defined below) and purchase Services (as defined below) and Equipment from Blackboard as set forth in a Schedule. The specific terms related to the license of Software and purchase of Services and/or Equipment are described in the appropriate Software or Service Schedules, and Exhibits thereto (collectively referred to as "Schedules"). Each Schedule and these Master Terms together constitute a separate agreement (the "Agreement") between Blackboard and Customer. Schedules may be added or deleted from time to time by the agreement of the parties, but Customer is only authorized to license Software or purchase Services hereunder to the extent that one or more applicable Schedules is executed and in force.

**1.2 Order of Precedence.** The provisions of any Schedule will take precedence over these Master Terms, to the extent that they are inconsistent. In the event of any inconsistencies between the terms of these Master Terms and any referenced, attached, or preprinted terms and conditions on the purchase order, Exhibit 1 to these Master Terms shall take precedence.

**2. DEFINITIONS**

**2.1 "Affiliates"** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity, whether directly or indirectly through one or more intermediaries.

**2.2 "Available Date"** means the date upon which an install copy of the Software and/or the Equipment is made available to Customer. An install copy of the Software or the Equipment is "made available" to the Customer either (i) on the date on which Blackboard has notified Customer that an install copy of the Software is available for download;

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(ii) on the date Blackboard notifies Customer that the Software may be accessed on the Blackboard ASP server; or (iii) the date on which the Software made available for installation via diagnostic modem; or (iv) on the date Blackboard ships Equipment to Customer. The download site will be made available to Customer for a period of thirty (30) days and Customer MUST download the Software within this thirty day period. A CD containing a backup copy of the Software can be sent to Customer upon Customer's request.

**2.3 "Confidential Information"** means any non-public information about a party, including, without limitation, the party's business, vendors, customers, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, nonliteral elements, capabilities and functionality, source code and object code, research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices; computer software programs and other information licensed or otherwise disclosed to a party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known.

**2.4 "Control"** and its derivatives shall mean legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding voting capital stock (or other ownership interest, if not a corporation) of an entity, or actual managerial or operational control over such entity.

**2.5 "Corrections"** shall mean a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects software errors in the Software, provided in temporary form such as a patch, and later issued in permanent form of an Update.

**2.6 "Documentation"** means Blackboard's applicable standard end user documentation for the

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Software and/or Equipment, which may be amended from time to time.

2.7 **Equipment** means the hardware and firmware related to the stored value card system and security access system as identified on Blackboard's then-current price list.

2.8 **Customer Content** means any content (including, but not limited to, course materials and the copyrights, patents, trade secrets and other intellectual property related thereto) provided by or through Customer for use with the Software or the Application Software if applicable.

2.9 **Services** means any consulting, educational, ASP installation, system administration, training or maintenance and support services provided by Blackboard to Customer.

2.10 **Software** means the object code version of the Blackboard software as described on the Software schedule(s), and Supported Interfaces (and any Documentation and help files included within the Software), including any Corrections, Updates and Upgrades provided pursuant to the maintenance and support terms of such schedule.

2.11 **Supported Interfaces** means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation ("Installation Guide").

2.12 **Updates** shall mean the object code versions of the Software that has been developed by Blackboard to correct any software error therein 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).

2.13 **Upgrades** shall mean 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).

### 3. SOFTWARE AND SERVICES

3.1 **Software License/Maintenance and Support Services**. Blackboard will provide Customer with Software as well as maintenance and support services set forth on the applicable Software Schedule attached hereto for each annual period that Customer has paid the associated License Fees.

3.2 **Sale of Equipment**. Blackboard will sell to Customer, and Customer shall purchase from Blackboard, the Equipment pursuant to the terms and conditions in Schedule A. If no Equipment Schedule is attached, Customer acknowledges that Blackboard

has no obligation to provide any Equipment to Customer.

3.3 **Learning Solutions**. Blackboard will provide Customer with the learning solutions set forth on the Learning Solutions Schedule attached hereto. If no Learning Solutions Schedule is attached, Customer acknowledges that Blackboard has no obligation to provide any learning solutions to Customer.

3.4 **ASP Services**. Blackboard will provide Customer with the ASP services set forth in any ASP Schedule attached hereto. If no ASP Services Schedule is attached, Customer acknowledges that Blackboard has no obligation to provide Customer with any installation, configuration or other professional consulting services.

3.5 **Additional Services**. Blackboard will provide Customer with any other services that are set forth in a separate schedule attached hereto. If no additional Schedules are attached, Customer acknowledges that Blackboard has no obligation to provide Customer with any additional services.

### 4. CONFIDENTIALITY

4.1 **Nondisclosure and Nonuse**. Each party receiving Confidential Information, including but not limited to, materials containing Confidential Information shall, to the fullest extent permitted under the State of Ohio open records laws (a) disclose such Confidential Information to only those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information; and (b) use such Confidential Information only for the purposes set forth in this Agreement. Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. Notwithstanding the foregoing, each party may disclose Confidential Information to the extent necessary pursuant to applicable federal, state or local law, regulation, court order, or other legal process, provided the receiving party has used every commercially reasonable effort to provide the disclosing party with prior written notice of such required disclosure and, to the extent reasonably possible, has given the disclosing party an opportunity to contest such required disclosure at the disclosing party's expense.

4.2 **Notice**. The receiving party will notify the disclosing party immediately in the event the receiving party learns of any unauthorized

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possession, use or knowledge of the Confidential Information and/or Materials containing Confidential Information and will cooperate with the disclosing party in any litigation against any third persons necessary to protect the disclosing party's rights with respect to the Confidential Information and Materials.

**4.3 Terms of Agreement.** Except as otherwise provided by law, neither party shall disclose the terms of the Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its affiliates, attorneys and accountants, or to any potential investor or acquirer of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise) that is bound by a written agreement to keep such terms confidential, or as may be required by law.

#### 5. TERM; TERMINATION

**5.1 Term.** These Master Terms and the agreement between the parties shall commence as of the Effective Date and shall continue until the expiration or termination of all Schedules.

**5.2 Default.** Either party may, at its option, terminate these Master Terms and any or all Schedules if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

**5.3 Mutual Termination.** Either party may terminate these Master Terms and any or all Schedules immediately by written notice, if the other party breaches any Software Schedule or Section 4 of these Master Terms.

**5.4 Effect of Termination.** Termination of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to such termination, nor affect or impair the rights of either party arising under the Agreement prior to such termination, except as expressly provided herein.

**5.5 Survival.** The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

#### 6. FEES; PAYMENT

**6.1 Fees.** Customer shall pay Blackboard the fees in US Dollars specified in the Schedules attached as applicable.

**6.2 Payment and Late Fees.** Customer shall pay Blackboard the Fees in accordance with the applicable Schedules, and in no event later than thirty (30) days of the date of an invoice from Blackboard, Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee

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for any Renewal Term. Any overdue amounts will bear a late fee at the rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less. All fees are payable in U.S. dollars and shall be sent to the attention of Blackboard's Accounts Receivable Department.

**6.3 Audit.** For the sole purpose of ensuring compliance with this Agreement, Blackboard shall have the right, at its expense, to audit Customer's use of the Software upon at least seven (7) days advance notice. Any such audit shall be during Customer's normal business hours and shall not be made more frequently than once every twelve months.

**6.4 Shipping, Insurance, and Taxes.** The fees hereunder do not include shipping, insurance or any sales, use, excise, import or export, value-added or similar tax and interest, as well as any costs associated with the collection or withholding thereof, and all government permit fees, license fees and customs and similar fees levied on the delivery of the Software or the performance of Services by Blackboard to Customer. Such shipping fees, insurance costs and taxes are the responsibility of the Customer. If Customer is exempt from any sales, use, excise, import or export, value-added or similar tax and interest, as well as any costs associated with the collection or withholding thereof, and all government permit fees, license fees and customs and similar fees levied on the delivery of the Software or the performance of Services by Blackboard to Customer then such taxes or fees shall not be charged to Customer upon Blackboard's receipt of Customer's tax exemption certificate. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, pay the required amount to the relevant governmental authority, provide Blackboard with an official receipt or certified copy, or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard, in addition to the payment to which Blackboard is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Blackboard equals the full amount Blackboard would have received had no such deduction or withholding been required.

**6.5 Billing Contact.** Customer's billing/invoicing point of contact is:

Name	Gary Meszaros
Title	Director of Auxiliary Services

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Address	Rhodes Tower, Room 1205 1880 East 22nd Street Cleveland, OH 44114-4435
E-mail:	g.meszaros@csuohio.edu
Telephone number	216-687-5541

## 7. DISCLAIMERS AND REMEDIES

**7.1 Limited Warranty.** Unless otherwise indicated on an attached Schedule, Blackboard warrants to Customer, subject to the remedy limitations set forth herein, that during (i) a period of twelve (12) months from the Available Date of the Equipment manufactured by Blackboard or third-party Equipment sold by Blackboard, unless otherwise specified in the applicable Schedule(s) and (ii) a period of ninety (90) days from License Available Date for the Software manufactured by Blackboard, that such Equipment and Software will substantially conform to the applicable Documentation, provided that Blackboard has received all amounts owed under this Agreement and Customer is not in default of any part of this Agreement. Customer must notify Blackboard in writing of the deficiency within the warranty period and must install any generally-released Corrections, Upgrades and Updates. Blackboard's sole obligation is limited to repair or replacement of the defective Software or Equipment in a timely manner.

**7.2 Disclaimer of Warranty.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 7.1 ABOVE AND ANY SPECIFIC WARRANTIES PROVIDED IN AN ATTACHED SCHEDULE(S), THE SOFTWARE, EQUIPMENT AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SPECIFICALLY PROVIDED IN AN ATTACHED SCHEDULE(S), NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR OPERATING SYSTEM. BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS OF ACCURACY OF

THE CONTENT CONTAINED ON OR ACCESSED THROUGH THE SOFTWARE.

**7.3 Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL BLACKBOARD OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EQUIPMENT OR ANY PORTION THEREOF, DEFECTS IN WARRANTY, ANY SERVICES, OR FOR ANY CLAIM BY ANY OTHER PARTY. EVEN IF BLACKBOARD AND/OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL BLACKBOARD'S LIABILITY EXCEED THE AMOUNT OF FEES PAID FOR THE PARTICULAR SOFTWARE, EQUIPMENT AND/OR SERVICE LICENSED UNDER EACH SCHEDULE HEREUNDER FOR THE CURRENT TWELVE (12) MONTH PERIOD.

## 8. INDEMNIFICATION

**8.1 Blackboard.** If Customer receives a claim that the use of the Software or Equipment infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard shall, at its own expense and option: (i) defend and settle such claim, (ii) procure, Customer the right to use the Software or Equipment, (iii) modify or replace the Software or Equipment to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event Blackboard exercises option (i) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Blackboard will keep Customer informed of, and will consult with any independent attorneys appointed by Customer at Customer's own expense regarding the progress of such litigation.

**8.2 Exceptions.** Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement based upon (i) any use of the Software or Equipment in a manner other than as specified by Blackboard; (ii) any combination of the Software or Equipment by Customer with other products, equipment, devices, software, systems or data not supplied by Blackboard (including, without limitation, any software produced by Customer for use with the Software) to the extent such claim is directed against such combination; or (iii) any modifications or customization of the Software or Equipment by any person other than Blackboard ("Customer Matter").

**8.3 Customer.** Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising

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out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter ("Blackboard Claim"); provided that Blackboard provides Customer with (i) prompt written notice of such Blackboard Claim; (ii) control over the defense and settlement of such Blackboard Claim; and (iii) proper and full information and assistance to settle or defend any such Blackboard Claim.

**8.4 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

## 9. MISCELLANEOUS

**9.1 Severability.** Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law, and the parties shall use their best efforts to substitute for the offending provision new terms having similar economic effect.

**9.2 Conflict Resolution.** In the event of a dispute between the Parties relating to the terms and conditions of this Master Terms or any Schedule, or the performance of the Parties hereunder, the Parties shall first attempt to resolve the dispute by internal discussions involving their appointed representatives within thirty (30) days of the dispute arising, reasonable attorneys' fees.

**9.3 Governing Law.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Ohio. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**9.4 Modification and Waiver.** Any modification, amendment, supplement, or other change to this Agreement or any Schedule attached hereto must be in writing and signed by a duly authorized representative of Blackboard and Customer. All waivers must be in writing. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

**9.5 Assignment.** No right or obligation of Customer under this Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Blackboard, and any attempt to assign, delegate or otherwise transfer any of Customer's rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, this Agreement shall bind each party and its permitted successors and assigns.

**9.6 Remedies.** The parties agree that any breach of this Agreement would cause irreparable injury for which no adequate remedy at law exists; therefore, the parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, may be appropriate remedies to redress any breach or threatened breach of this Agreement, in addition to other remedies available to the parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 5, 7 and 8.

**9.7 Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth above or to such other address as shall be given in accordance with this Section 9.8, and shall be effective upon receipt.

**9.8 Force Majeure.** Except with regard to payment obligations, neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, material shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.

**9.9 U.S. Government Sales.** If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 500, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

**9.10 Export Control.** Customer shall not export or allow the export or re-export the Software, any

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components thereof or any Confidential Information of Blackboard without the express, prior, written consent of Blackboard and in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.

**9.11 Relationship.** Blackboard and Customer are independent contracting parties. This Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

IN WITNESS WHEREOF, the parties hereto have executed these Master Terms as of the date first written above.

**BLACKBOARD**

Signature

Print Name and Title

Date:

9/26/02

**9.12 Entire Agreement.** An Agreement, which includes these Master Terms, and the applicable Schedule(s) and Exhibit(s), constitute the entire, full and complete Agreement between the parties concerning the subject matter hereof, and they collectively supersede all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter.

Cleveland State University

Signature

Print Name and Title

Date:

Megan

GARY HESCHLER, DIRECTOR, AUX SERVICES

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## Exhibit 1 to the Blackboard Master Terms

Cleveland State University  
Purchase Order Terms and Conditions

1. ACKNOWLEDGE ORDER PROMPTLY ADVISING SHIPPING DATE.
2. TAX EXEMPT: STATE UNIVERSITY - DIVISION OF OHIO STATE GOVERNMENT, NO TAX EXEMPT NO. REQUIRED, MATERIAL ON THIS ORDER IS EXEMPT FROM OHIO SALES TAX REVISED CODE OF OHIO SEC. 5739.02, AND FEDERAL EXCISE TAX EXEMPTION NO. 34 73 0221F. FEDERAL TAX IS. 34-0866056.
3. BY SHIPPING ABOVE GOODS OR ACKNOWLEDGING THE RECEIPT OF THIS ORDER, YOU AGREE TO THE TERMS AND CONDITIONS OF SALE SET FORTH. UNLESS SET FORTH IN A SEPARATE SUBSEQUENTLY MUTUALLY EXECUTED AGREEMENT, ANY DELETIONS OR ADDITIONAL TERMS IN YOUR ACCEPTANCE OF THIS ORDER ARE HEREBY OBJECTED TO.
4. DO NOT SUBSTITUTE OR ACCEPT ANY ALTERATION TO THIS ORDER WITHOUT AUTHORITY FROM THE PURCHASING SERVICES DEPARTMENT. CORRESPONDENCE OR CONTACTS PERTAINING TO THIS ORDER MUST BE WITH THE PURCHASING SERVICES DEPARTMENT.
5. Contractor shall indemnify and save Cleveland State University, its agents and employees harmless from and against any and all losses, liabilities, costs, expenses, actions and claims and any reasonable attorney's fees and legal costs resulting from injury to or death of any person or damage, or loss or destruction to property of any person arising out of the performance, default or breach hereunder by Contractor. Contractor shall not be held responsible for any losses, liabilities costs, expenses, actions or claims directly, solely, and proximately caused by the negligence of Cleveland State University.
6. Any vendor or contractor performing work on University property shall place on file with the Purchasing Department copies of such liability insurance and Worker's Compensation coverage as required by Ohio State law, prior to any work being done. The vendor or contractor shall insure his workers and hold Cleveland State University, its agents and employees harmless from and against any and all losses, liabilities, costs, expenses, and claims arising out of any damage to life, limb, material or property of such workers incurred during or as a result of, the execution of work under these specifications.
7. Inspection - All articles delivered hereunder shall be received subject to Buyer's inspection and approval, and payment therefore shall not constitute acceptance thereof. After inspection and acceptance, Seller's liability shall be limited to liability for fraud or such gross mistakes of the Seller as amount to fraud.
8. This Exhibit 1 specifically does not include Section 8 of Customer's Purchase Order Terms and Conditions as it's deleted.
9. The University will not responsible for goods delivered without written order, or authorization from the Purchasing Department.
10. On all Invoices subject to discount, the discount period will be calculated from date correct invoice is received or material is received, whichever is the later.
11. If items on this order are F.O.B shipping point please prepay shipping charges and add them to your invoice with receipted freight or express bill. No C.O.D.'s will be accepted.
12. All shipments should be fully insured unless otherwise stated.
13. This Purchase Order is subject to all applicable State of Ohio and Federal laws and regulations.
14. Terms and Conditions Relating to Federally Funded Purchase Orders:

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It is understood that by accepting this purchase order, the vendor or contractor agrees to comply with the following: the Equal Employment Opportunity Act, Copeland "Anti-Kickback" Act, Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Clean Air Act, Federal Water Pollution Act, Byrd Anti-Lobbying Amendment, and Debarments and Suspension (E.O.s 12549 and 12689).

15. In the event that prevailing wage applies, invoices will not be honored unless enclosed prevailing wage rate forms are completed in entirety and returned to CSU Prevailing Wage Coordinator. The following signed statement shall appear on all invoices: "I certify prevailing wages were paid in accordance with Section 41115 Ohio Revised Code."

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**SCHEDULE A -1  
EQUIPMENT PURCHASE**

This EQUIPMENT PURCHASE SCHEDULE ("Schedule") shall be governed by the terms and conditions of the Blackboard Master Terms ("Master Terms") dated as of the 26<sup>th</sup> day of SEPTEMBER, 2002 between Blackboard and Customer. Terms used in this Schedule that are not defined below shall have the meaning set forth in the Master Terms.

**1. CONVEYANCE OF EQUIPMENT.**

During the Term of this Agreement, if Customer purchases Equipment from Blackboard, Customer shall purchase, acquire, and accept from Blackboard, and Blackboard shall sell, transfer and convey all of Blackboard's right, title and interest in and to the Equipment listed in the initial Purchase Orders that are subject to this purchase and any Purchase Orders which may be provided subsequent to the Initial Purchase.

**2. CONSIDERATION FOR EQUIPMENT.**

**2.1 Fees.** Customer shall pay to Blackboard the amount set forth in the Purchase Order for the Equipment in accordance with the payment provisions of the Agreement. Payments shall be sent to Blackboard, Inc. Box 200188 Pittsburgh, PA 15251-0188.

**2.2 Changes in Fees.** Blackboard reserves the right to change its fees during the Term. Any increase in Fees shall not affect any Purchase Orders accepted by Blackboard prior to the effective date of such new prices. All Purchase Orders placed by Customer after implementation of any fee increase but before the date such fee increase is effective, shall be, by the Purchase Order's terms, for delivery no later than ninety (90) days after the date such price increase is effective, unless otherwise agreed by Blackboard.

**3. ORDERING; DELIVERY**

**3.1 Order Process.** Customer must request Equipment by submitting to Blackboard a (1) Purchase Order or (2) a valid quote accompanied by check or credit card information. No Purchase Order will be binding until accepted by Blackboard in writing, and Blackboard will have no liability to Customer with respect to any Purchase Orders that are not accepted. No partial shipment of a Purchase Order shall constitute the acceptance of the entire Purchase Order. All Purchase Orders issued by Customer to Blackboard shall be governed in all respects by the terms and conditions of this Agreement. Except for non-conflicting administrative terms as provided below, any additional or preprinted terms or conditions on a Purchase Order shall be null, void, and of no effect unless Blackboard has expressly agreed in writing, in advance, to terms and conditions inconsistent with or not otherwise addressed in the Master Terms or any of the Schedules.

**3.2 Cancellation.** Customer may not cancel a Purchase Order executed concurrently with the execution of this Agreement. However, Customer may cancel any subsequent Purchase Order on written notice to Blackboard of at least thirty (30) days prior to the estimated shipment date; provided that Customer first pays Blackboard a cancellation charge, as liquidated damages and not a penalty, equaling fifteen percent (15%) of the total price of the affected Purchase Order.

**3.3 Shipment and Delivery Terms.** Shipping dates will be established by Blackboard upon acceptance of Purchase Orders. Shipping dates will be assigned as close as practicable to the Customer's requested date based on Blackboard's then-current lead time. Blackboard shall not be liable for damage or penalty for delay in delivery or failure to give notice of any delay. Packing slips will be included in all shipments and an order number or agreement number will be shown on all acknowledgments, packing slips and invoices. Blackboard shall make deliveries under this Schedule in accordance with its standard delivery procedures. All freight, insurance, and other shipping expenses, as well as expenses for any special packing requested by Customer shall be prepaid by Blackboard and subsequently invoiced to Customer. Should Customer desire to expedite shipment of Equipment, Customer will be charged an additional 10 (ten) percent of the total purchase price for such expedited shipment to cover the additional administration costs.

**3.4 Title and Risk of Loss.** Title to any product that Blackboard sells outright to Customer hereunder shall vest in Customer immediately upon shipment FOB Shipping Point. Risk of loss or damage to any product shall pass to Customer upon passage of title or upon shipment if title does not pass to Customer.

**4. Equipment Warranty Exclusion.** Blackboard does not warrant or provide support for all third-party Equipment sold by Blackboard, including, but not limited to, Hewlett Packard Server, Datacard Video Imaging Equipment, and Lantronix Terminal Server. Customer must contact Equipment manufacturer directly for any warranty or support issues related to the Equipment.

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5. Term. This Schedule shall commence on the Available Date and shall continue until the Master Terms is terminated.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

**BLACKBOARD**

Signature

Print Name and Title

Date:

9/26/02

**Cleveland State University**

Signature

Print Name and Title

Date:

9/26/02

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**SOFTWARE SCHEDULE B -1****BLACKBOARD TRANSACTION SYSTEM™ SOFTWARE LICENSE**

This Blackboard Software Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the Effective Date. The Master Terms are an integral part of this Schedule and are incorporated herein by reference. Capitalized terms shall have the meaning set forth in the Master Terms.

**SITE: SCHEDULE OF LICENSE FEES**

Software	Level of Support	Initial Term Fees (USD)
Blackboard Transaction System - Windows Edition Video Imaging Interface 3rd Party Bb Enabled Tools Missouri B/S Interface UniPRINT Networked Laser Printing Interface	Basic-Included In Initial Term	\$22438
Additional Maintenance and Support for Initial Term		\$TBD
Total Fees Due:		\$22438
Designated Server Site (Physical Location of the Software): c/o IS & T Rhodes Tower 1104	Designated Server: Compaq Proliant 6000Xeon	Operating System: Windows Blackboard User Band: 4,000 to 7,999

**1. LICENSE**

**1.1 Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a limited, non-exclusive, nontransferable, license to use one executable version of the Software at Customer's site and on the server designated above solely with the number of workstations, point-of-sale devices or other Equipment identified on the attached Equipment Schedule (as such may be amended) that are covered by the limited warranty in Section 7.1 of the Master Terms or maintenance and support services.

**1.2 Copies.** Customer may not copy the Software, or any portion thereof, in whole or in part, except as is necessary to load, operate and use one installation copy of the Software. In addition, Customer may make one (1) copy of the Software for backup and archival purposes, provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software. Customer may transfer the Software from one server to another at no additional license fee provided that Customer gives written notice to Blackboard within five (5) business days of such installation and Customer deletes the Software from the server no longer in use and from each back-up copy for that server.

**1.3 Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule, in an addendum to this Schedule executed by both parties, or in the Master Terms, Customer shall not (i) copy the Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Software in whole or in part to any third party in any form; (iv) electronically transfer the Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Software; (v) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Software; (vi) add any other notices or markings to the Software or any portion thereof; or (viii) reverse engineer, decompile or disassemble any component of the Software or otherwise obtain or attempt to obtain the source code for the Software. Customer acknowledges that Blackboard shall be entitled to seek equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that Customer breaches this Article.

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**1.4 Ownership of Software.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest in and to the Software and all portions and copies thereof. In addition, Blackboard or its licensors shall have sole and exclusive ownership of any Corrections, Updates and/or Upgrades provided to Customer for the Software. Customer acknowledges that Blackboard shall be entitled to seek equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that Customer breaches either this Article 1 or the confidentiality provisions set forth in the Master Terms.

**1.5 Third Party Software.** Customer acknowledges that the Software may utilize software made available to Blackboard by third parties ("Third Party Software"). Pursuant to its agreements with these third parties, Blackboard hereby grants to Customer a non-exclusive, nontransferable license to load and/or operate and use the Third Party Software solely in connection with Customer's transaction system license. Customer will be required to agree to the terms and conditions contained in the Third Party Software agreement(s).

## 2. FEES

**2.1** In consideration of the license granted herein, Customer shall pay to Blackboard the non-cancelable, non-refundable License Fee specified above in accordance with the terms and conditions of the Master Terms. Payments shall be sent to Blackboard, Inc. Box 200188 Pittsburgh, PA 15251-0188. Blackboard reserves the right to modify the License Fee at any time after the Initial Term. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Schedule, including the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel, supplies and the like.

### 2.2 Expansion of Licensed Use.

Blackboard Transaction System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the number of cardholders. A cardholder will be defined as any individual associated with a licensing institution that can reasonably be anticipated to use a card within the forward licensing period (12 months).

For the Software on this Schedule, Customer's license for the Software on this Schedule may be expanded in increments as indicated below:

Cardholder Ranges	Annual Software Fee
Fewer than 2000 cardholders	\$5000
2000-3999 cardholders	\$12500
4000-7999 cardholders	\$25000
8000-14999 cardholders	\$37500
15000-24999 cardholders	\$50000
25000-49999 cardholders	\$60000
50000-74999 cardholders	\$65000
75000-99999 cardholders	\$70000

Additional bands of 25,000 cardholders will be priced at an additional \$5,000 / year.

Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing. In the event of growth related to a Customer merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing.

## 3. TERM, TERMINATION

This Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Schedule will remain in effect for a period of one (1) year ("Initial Term"). Thereafter, this Schedule will renew.

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automatically for successive one (1) year terms (each, a "Renewal Term") provided that Customer remits the License Fee within thirty (30) days of receipt of an invoice from Blackboard. If Customer decides not to renew this Schedule or if the Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with proof of the destruction of the original copy and any other copies of the Software and return all Documentation to Blackboard within a reasonable time at Customer's cost.

#### 4. SUPPORT AND MAINTENANCE

4.1 Maintenance. Blackboard will provide Customer with Upgrades, Corrections and Updates to the Software as they are made generally available from time to time. Software declared by Blackboard to be a general release ("General Release") shall be installed within ninety (90) days of being made generally available by Blackboard. Blackboard reserves the right to terminate this Schedule upon thirty (30) days prior written notice, provided, Customer has not installed such Software. Notwithstanding any other provision of this Schedule, Blackboard shall provide maintenance and support only with respect to the then current generally available version(s) and/or General Release version.

4.2 Installation and Assistance. Blackboard will install Software provided pursuant to this Schedule during the Coverage Hours as defined in Schedule C-1, provided, Blackboard has not deemed Software to be customer installable. In the event Software is deemed by Blackboard to be customer installable, Blackboard will provide telephone assistance during Coverage Hours. In either instance, Customer will schedule in advance with Blackboard for such telephone assistance or installation of Software.

4.3 Purchase of Maintenance and Support Services. Customer may purchase maintenance and support services in accordance with the applicable Schedule.

4.4 Additional Services. Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Software or are not covered by the maintenance and support services are billable to Customer at Blackboard's then-existing rates, with a minimum charge of \$175.00 per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement and applicable Schedule(s) for the services.

#### 5. ONLINE CARD OFFICE TECHNICAL SPECIFICATIONS

5.1 Hosting Storage and Access. Blackboard shall provide Customer storage space on and access to Online Card Office software (the "Application Software") through a server maintained by Blackboard (the "Site") for the purpose of making the Application Software accessible to authorized users via the Internet (the "Application Hosting Services").

5.2 Security Specifications. Blackboard shall maintain commercially reasonable physical and system security measures, including, but not limited to, those set forth on Attachment 1 to this Software Schedule.

5.3. Card Processor. Blackboard provides connectivity with such credit card processors, at the levels designated, as set forth on Attachment 1 to this Software Schedule ("Processors") for the purpose of authorization and settlement of credit card transactions. Customer shall establish a merchant account with a financial institution that processes credit card transactions with one of the Processors prior to deployment of the Application Software. Changes required to support changes of Customer's bank, credit cards accepted by Customer, credit card processor of Customer's bank, or communication interfaces with the credit card processor will be chargeable to Customer and performed on a timely basis upon written notice to Blackboard. Changes required to the Software to enable Customer to change card processors or communication interfaces to a card processor will be subject to a one-time charge for labor and licensing of software, to be determined by Blackboard at the time of the change request.

5.4 Set up and Installation. Prior to set up of the Application Software, Customer shall provide Blackboard with a completed Online Card Office Deployment Worksheet. Blackboard shall review the Deployment Worksheet with Customer to determine if any elements of Customer's Application Software deployment exceed the standard deployment. Standard deployment of the Applications Software includes text changes to the standard template, inclusion of up to 2 institution-specific graphic elements, installation of the Online Card Office software on to the System including any necessary patches, verification of banking information to allow for the opening of a merchant store, configuration of the commerce server, connectivity tests for communication between the web servers and the System, and the completion of test transactions. Blackboard will gain pre-launch approval from the institution following the successful completion of test transactions. Any additional activities, changes or customization beyond the standard deployment ("Additional Deployment") shall be subject to the terms of a Professional Services Agreement and a Statement of Work. Customer shall provide Blackboard with Customer content to be placed on the Customer-accessible web site, in accordance with the Documentation. Customer acknowledges that

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Blackboard may include links on the Blackboard Online Card Office web site that promotes, offers, or links to other Blackboard products and services within the Blackboard.com website.

**5.5 Fiscal responsibility.** Customer retains responsibility for compliance with all rules and regulations of any bank, card association, card processor and other entities related to issuance, acceptance, and settlement and clearing of payment transactions conducted through the System.

IN WITNESS WHEREOF, the parties hereto have executed this Software Schedule as of the date first written above.

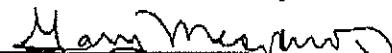
**BLACKBOARD**

Signature

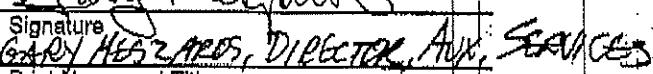


Print Name and Title

Date:

**Cleveland State University**

Signature



Print Name and Title

9/26/02

Date:

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**ATTACHMENT 1 TO SCHEDULE B -1  
ONLINE CARD OFFICE SPECIFICATIONS****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 a customers' 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 18 hr. fuel supply.

**ACCESSIBILITY/SERVICE CREDIT:**

The Software is accessible 24/7, with a 99% uptime guarantee. 99% uptime means that for 99% of the time during any calendar month, the Online Card Office portion of the Software shall be available. Unavailability is a condition in which there is unavailability of the hardware 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 hosting services during such period; unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard Online Card Office portion of the Software due to Internet or telecommunications problems outside the control of Blackboard.

**DISASTER RECOVERY:**

Blackboard provides comprehensive backups, which are stored 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 designated System Administrator via email. This notice will include the reason for the System Outage and estimated time for restoration of Services if Blackboard knows this information when it gives this notice.

Following recovery from the System Outage, Blackboard will provide Customer 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 notification of a problem with the Blackboard system or the Services, Blackboard will investigate the problem and determine if a System Outage exists. If a System Outage exists, Blackboard will provide Customer 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 Customer.

**MONITORING AND PERFORMANCE**

Blackboard will make network performance reports available focusing on the technical aspect of remote access network services. The reports provide information to help in the continual improvement of the design and operation of the network. This includes information such as port availability, connection quality, usage profiles, and throughput.

**STARTUP:**

Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the dedicated server. 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 Blackboard Software.

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**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 client shall be notified by email. In addition, Blackboard continuously evaluates emerging hardware for speed and robustness and possible use in our environment.

- 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 guarantees the functioning of all hardware components 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 Blackboard application will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily incremental & weekly full backups with a retention period of 1 month. Standard tape rotation is performed on a weekly basis with secure offsite storage.
- Blackboard collects bandwidth usage and web hit statistics on all client hosted machines. This information will be provided upon request.
- Monitoring and event notification procedures are standardized, and are described in a separate document

**ONLINE CARD OFFICE HOSTING SUPPORT**

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 client shall be notified by email. In addition, Blackboard continuously evaluates emerging hardware for speed and robustness and possible use in our environment.

**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°F, plus or minus 2½°F, with humidity of 45%.

**SERVER SETUP:**

- The servers are set up to maintain failover, redundant connectivity, comprehensive backups, 24x7 monitoring, 99% uptime.

**CARD PROCESSORS**

Customer's bank shall process credit cards through:

- First Data Merchant Services - Nashville, OR
- Vital Processing Services.

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**SCHEDULE C****BLACKBOARD TRANSACTION SYSTEM™**  
**SOFTWARE AND EQUIPMENT MAINTENANCE AND BASIC SUPPORT**

This BLACKBOARD TRANSACTION SYSTEM SOFTWARE AND EQUIPMENT MAINTENANCE AND SUPPORT SCHEDULE ("Schedule") shall be governed by the terms and conditions of the Blackboard Master Terms ("Master Terms") dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002 between Blackboard and Customer. Terms used in this Schedule that are not defined below shall have the meaning set forth in the Master Terms.

**CHECK APPLICABLE EXHIBIT(S):**

<input checked="" type="checkbox"/>	Schedule C-1: Blackboard Transaction System™ Maintenance and Support
<input type="checkbox"/>	Exhibit C1.1 - Add on Software Platinum Package (Optional)
<input type="checkbox"/>	Exhibit C1.2 - Add on Software Gold Package (Optional)
<input checked="" type="checkbox"/>	Exhibit C1.3 - Equipment List
<input type="checkbox"/>	Exhibit C1.4 - Add on Equipment Silver Package (Optional)

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

**BLACKBOARD**

Signature

Print Name and Title

Date:

**Cleveland State University**

Signature

GARY MESSAKOS, DIRECTOR, AVN SERVICES

Print Name and Title

Date:

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**SCHEDULE C-1**  
**BLACKBOARD TRANSACTION SYSTEM™ MAINTENANCE AND SUPPORT**

This BLACKBOARD TRANSACTION SYSTEM MAINTENANCE AND SUPPORT SCHEDULE ("Schedule") shall be governed by the terms and conditions of the Blackboard Master Terms ("Master Terms") dated as of the 26<sup>th</sup> day of SEPTEMBER, 2002 between Blackboard and Customer. Terms used in this Schedule that are not defined below shall have the meaning set forth in the Master Terms.

**1. SCOPE**

1.1 After the initial warranty period described in the Master Terms for the applicable Software or Equipment, Blackboard will provide Customer with the maintenance and support services for the applicable Blackboard Transaction System™ Software and Equipment covered by this Schedule and attached Exhibits in accordance with Blackboard's then-current maintenance and support policies. Blackboard shall determine in its sole discretion, based on its policies, the most appropriate manner in which to provide maintenance and support. To the extent that Customer has purchased Silver, Gold or Platinum level service, such additional services are covered by the applicable exhibit to this Schedule.

1.2 In order to provide these services in a timely, efficient and effective manner, Blackboard may require the Customer's reasonable cooperation, at no cost to Blackboard. For the purposes of providing the support and maintenance services under this Schedule, and upon Blackboard's request, Customer shall provide Blackboard service personnel with full, free, safe, and timely access to all System components covered by this Schedule or components which materially affect the operation of System components covered by this Schedule.

1.3 Blackboard's access to the Software may include, as Blackboard recommends, but is not limited to, dial-in access to the diagnostic modem on the applications and/or host computer or workstations and physical access to the Customer premises.

1.4 Solely to permit Blackboard to provide maintenance and support services, Customer shall maintain (i.) Internet access protocols as agreed with Blackboard; or (ii.) a diagnostic dial up modem attached to the applications and/or host computer. Customer shall also maintain and run, on its applications and/or host computer, a fully licensed copy of the remote system management communication software recommended by Blackboard. If Customer requires Blackboard to notify System Administrator prior to initiating dial-in access, Customer may disable dial-in access during periods when scheduled access is not required or requested. Customer may request that Blackboard provide the modem and communication software to Software Maintenance customers for a nominal yearly maintenance fee. Such modem and communication software shall be returned to Blackboard upon the termination of this Schedule or Customer will pay Blackboard the then current retail price of the modem and communication software.

1.5 If reasonable access is not provided upon reasonable request, Customer shall be deemed to have waived Blackboard's performance of the maintenance and support services until such access is provided. Blackboard shall have no liability for such inability to perform maintenance and support services in such event.

1.6 Customer shall identify a System Administrator to be trained and certified through Blackboard Learning Center. Blackboard reserves the right to add a surcharge to annual maintenance and support service fees in the event that a certified System Administrator is not provided. Blackboard shall not be held responsible for any costs incurred by the Customer in providing a certified System Operator. Customer shall provide time for the System Administrator to diagnose, troubleshoot, and replace components as necessary.

**2. EXCLUSIONS.**

2.1 If problems or defects with the System or any of its components result from a Force Majeure Event (as defined in the Master Terms) or Customer misuse or abuse, Blackboard shall charge Customer, and Customer shall pay Blackboard, its then current hourly repair rates and any related charges then in effect for maintenance services.

2.2 Blackboard shall only provide on-site maintenance when and in accordance with its standard procedures. Prior to Blackboard providing any on-site maintenance, Blackboard shall provide Customer with, and Customer shall perform the appropriate test and verification analysis on the applicable Software/Equipment in accordance with routines, documentation and instructions provided by Blackboard. Customer shall promptly inform Blackboard of the results of these tests. Customer shall provide Blackboard with troubleshooting assistance.

2.3 Any on-site maintenance service not covered by the applicable maintenance and support services schedules provided by Blackboard shall be subject to a minimum charge of eight (8) hours. Such items excluded from maintenance and support services include (but are not limited to):

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- (a) The resolution of any problems due to inspection, service, relocation, tampering, configuration changes, installation of additional feature, functions, or software not provided, authorized or installed by Blackboard.
- (b) Software or Equipment sold but not manufactured by Blackboard, and not covered by this Schedule, including, but not limited to Hewlett Packard, Datacard, Windows®, etc.
- (c) The resolution of any problems due to or caused by knowing disregard for System Administration procedures as outlined in the current version of the Blackboard System Administration Guide or other relevant documentation.
- (d) Computer Viruses and any damage caused by viruses.

### 3. CUSTOMER SUPPORT

3.1 **Coverage Hours.** Blackboard shall provide Customer with customer support services available 6:00 a.m. to 6:00 p.m. MST time, five (5) days a week, Monday through Friday, excluding US Federal and Arizona State holidays ("Coverage Hours"). Outside of the Coverage Hours, Blackboard shall make available to Customer access to on-call personnel for support services, deemed by Blackboard to be an emergency.

3.2 **Limits.** Customer support is limited to questions on product configuration, usage and notification of defects and is available by calling or notifying Blackboard. Upon receipt of a call or notification by Blackboard approved methods, Blackboard will determine whether an error is related to or directly caused by the Software or Equipment. If so, Blackboard will (a) create an error report, (b) assign a Severity Code and (c) attempt to resolve the error in accordance with the procedures below.

#### 3.3 Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the System is not functioning. Some examples of Severity Code 1 System Errors are as follows: (i) System is down and will not restart; (ii) System is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 System Error reports on a twenty-four (24) hour basis. When a Severity Code 1 System Error is reported, Blackboard will assign resources necessary to correct the System Error. If access to the System is required, Customer will provide a contact available to Blackboard and access to Customer's system and other software for the duration of the error correction procedures.

(b) **Severity Code 2.** Severity Code 2 implies that the System is running but that Customer is unable to use major parts of the System. Some examples of Severity Code 2 System Errors are as follows: (i) intermittent System Error and (ii) major functional component is unavailable. Severity Code 1 System Errors will take priority over Severity Code 2 System Errors. Blackboard will assign appropriate technical resources to Severity Code 2 System Errors as long as there are no Severity Code 1 System Errors awaiting resolutions.

(c) **Severity Code 3.** Severity Code 3 implies that the System is operating but there is a non-critical System Error. Severity Code 3 System Errors may be fixed in the next scheduled Upgrade or Update or made available on Blackboard's Web site. Blackboard will research Severity Code 3 System Errors after Severity Code 1 and Severity Code 2 System Errors. Blackboard may correct Severity Code 3 System Errors in the next scheduled Upgrade or Update or make corrections available to Customer on Blackboard's Web site.

(d) **Severity Code 4.** Severity Code 4 implies that the System is operating but the Customer is requesting additional functionality. Blackboard may, at its sole discretion, incorporate in a future Upgrade or Update or make available to Customer on Blackboard's Web site.

(e) **Severity Code 5.** Severity Code 5 implies that the System is operating but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 System Errors will take priority over Severity Code 5 calls. Blackboard will assign appropriate technical resources to Severity Code 5 calls as long as there are no Severity Code 1, 2, or 3 System Error reports awaiting resolution.

3.4 **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Silver level Equipment or Platinum or Gold level Software maintenance and support services in accordance with the applicable terms and conditions. Refer to attached Exhibits.

### NETWORK PROCESSOR COVERAGE (UNIX EDITION ONLY)

4.1 Subject to the definition of Coverage Hours, Network Processor/Server equipment will be handled as high priority since it is the most critical to System operation.

4.2 Upon Customer's notification and Blackboard's acknowledgement that the Network Processor/Server or a component thereof, is defective, Blackboard will promptly ship to Customer a temporary replacement component or Network Processor/Server. Blackboard will use its commercially reasonable efforts to ensure that such temporary replacement component or Network Processor/Server is delivered within forty-eight (48) hours of Blackboard's acknowledgment of problem. Customer shall return to Blackboard the defective component or Network

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Processor/Server within five (5) business days of receipt of temporary replacement component or Network Processor/Server.

4.3 Upon Customer's receipt of the temporary replacement component or Network Processor/Server, telephone support will be provided Customer to ensure the System is operative.

4.4 At Blackboard's sole discretion, the defective component or Network Processor/Server will either be repaired or replaced. Blackboard is under no obligation to return the original component or Network Processor/Server to Customer. If the original component or Network Processor/Server is returned to Customer, then Customer shall ship the temporary replacement component or Network Processor/Server to Blackboard within five (5) business days after receipt of the original repaired component.

4.5 If the Network Processor/Server is Inoperative and all reader terminals are in an "offline" mode, Blackboard will dispatch a technician to Customer's site, who shall arrive no later than the next day of Coverage Hour, provided, however, that Blackboard determines, in its sole discretion, that either the replacement of the defective part cannot be accomplished by Customer, or that it cannot be easily ascertained which component is defective. Customer will pay Blackboard the then-current rates for on-site services and reimburse Blackboard for applicable travel and living expenses incurred by Blackboard, provided, Customer has not purchased Blackboard Transaction System Software Platinum Coverage™ or Blackboard Transaction System Software Gold Coverage™ in accordance with the applicable Exhibit.

#### 5. EQUIPMENT MAINTENANCE AND SUPPORT SERVICES

5.1 Upon payment of the applicable annual Equipment maintenance fees, Blackboard will provide the following:

(I.) Reader and peripheral Equipment to the System may be supported by e-mail and telephone support to assist Customer in diagnosing Equipment problems during Coverage Hours.

(II.) Reader and peripheral Equipment manufactured by Blackboard is supported by way of depot repair. At Blackboard's sole discretion, such Equipment shall be repaired or replaced. Customer shall request a Return Material Authorization (RMA) number from Blackboard and return such reader and/or peripheral Equipment to the factory for repair. Repaired or replaced Equipment will be returned to the customer within 5 business days using standard shipping methods outlined in Master Terms.

(III.) Reader and peripheral equipment manufactured by a third party vendor is supported by way of depot repair. At Blackboard's sole discretion, such Equipment shall be repaired or replaced. Customer shall request a Return Material Authorization (RMA) number from Blackboard and return such reader and/or peripheral Equipment to the factory for repair. Repaired or replaced Equipment will be returned to the customer within 10 business days using standard shipping methods outlined in Master Terms.

(IV.) Equipment including, but not limited to, NCR, Dell, Compaq, and Gateway are supported by onsite third party repair.

#### 6. TIME AND MATERIALS SERVICES

6.1 At Blackboard's sole discretion, repair or maintenance and support services may be made available to Customer at Blackboard's then current fees and applicable hourly minimums for Software and/or Equipment which Customer has not paid the applicable maintenance and support fees or Blackboard has excluded in accordance with this Schedule.

6.2 Blackboard will provide Customer with an estimate for the provision of such services. Blackboard, at its sole discretion, will require either a Purchase Order or written approval for the estimated fees prior to providing any repairs or maintenance and support services in accordance with this section.

#### 7. FEES

7.1 Software basic maintenance and support services are covered under the Customer's annual license fee for the Software. To the extent Customer has purchased Gold or Platinum level Software maintenance and support services, Customer shall pay annually for such additional fees related to such services. Customer shall pay an annual Equipment maintenance and support fee (the "Annual Equipment Maintenance and Support Fee") to Blackboard for the services provided hereunder related to the Equipment. Payments shall be sent to Blackboard, Inc. Box 200188 Pittsburgh, PA 15251-0188. To the extent Customer has purchased Silver level Equipment maintenance and support services, Customer shall pay annually for such additional fees related to such services. If Customer fails to pay the Annual Equipment Maintenance Fee in accordance with this Schedule and the Master Terms, Blackboard may suspend any and all Equipment maintenance and support to Customer. Blackboard reserves the right to modify the Annual Maintenance and Support Fee for each Renewal Term.

#### 8. TERM AND TERMINATION

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**8.1 Term.** This Schedule shall commence upon the end of the applicable Initial warranty period, and, unless suspended as provided for in Section 5, shall continue for a period of one (1) year. ("Initial Term"). Thereafter, this Schedule will renew automatically for successive one (1) year terms or as mutually agreed (each a "Renewal Term"), provided that Customer remits the applicable Maintenance and Support Fee within thirty (30) days of receipt of an invoice from Blackboard.

**8.2 Termination.** This Schedule may be terminated in accordance with the termination provisions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD

Signature

Print Name and Title

Date:

Cleveland State University

Signature

Print Name and Title

Date:

GARY MESZAROS, DIRECTOR, AUX SERVICES

9/26/02

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**EXHIBIT C1.1****BLACKBOARD TRANSACTION SYSTEM SOFTWARE PLATINUM COVERAGE™****1. MAINTENANCE**

**1.1 Basic Obligations.** Upon payment of applicable fees, Blackboard shall provide Customer with maintenance and support services in accordance with the terms and conditions of Schedule C and the Master Terms and its then-current maintenance and support policy.

In addition to the Basic coverage, the following items are included in the Platinum Coverage

**1.2 System Administration On-Site or Remote Technical System Checkup**

Blackboard will travel to Customer site to review software configurations, conduct refresher training and discuss future implementation plans. Trips may not be scheduled June through September and scheduled dates must be mutually agreed upon by Customer and Blackboard and be scheduled twenty-four (24) days in advance. This work may include onsite or remote system administration assistance to not exceed twenty-four (24) hours or three (3) business days. This is limited to one business trip and may not be split into multiple trips. Travel and living expenses shall be at the Customer's expense.

**1.3 Network Reader Coverage**

(i.) Blackboard, with the assistance of Customer, will diagnosis a reader problem and determine if the problem is related to Equipment or communication protocols.

(ii.) If the problem is with Equipment, the current maintenance options will prevail. If the problem is with the communication protocols, the Customer will be advised on the steps to take for resolution. It is up to the Customer to solve all on-campus communication problems. Blackboard is not responsible for campus communication problems.

**1.4 Network Processor Coverage (UNIX EDITION ONLY)**

(i.) Subject to the definition of Coverage Hours, Network Processor/Server equipment will be handled as high priority since it is the most critical to System operation.

(ii.) Upon Customer's notification and Blackboard's acknowledgement that the Network Processor/Server or a component thereof, is defective, Blackboard will promptly ship to Customer a temporary replacement component or Network Processor/Server. Blackboard will use its commercially reasonable efforts to ensure that such temporary replacement component or Network Processor/Server is delivered within forty-eight (48) hours of Blackboard's acknowledgement of problem. Customer shall return to Blackboard the defective component or Network Processor/Server within five (5) business days of receipt of temporary replacement component or Network Processor/Server.

(iii.) Upon Customer's receipt of the temporary replacement component or Network Processor/Server, telephone support will be provided Customer to ensure the System is operative.

(iv.) At Blackboard's sole discretion, the defective component or Network Processor/Server will either be repaired or replaced. Blackboard is under no obligation to return the original component or Network Processor/Server to Customer. If the original component or Network Processor/Server is returned to Customer, then Customer shall ship the temporary replacement component or Network Processor/Server to Blackboard within five (5) business days after receipt of the original repaired component.

(v.) If the Network Processor/Server is inoperative and all reader terminals are in an "offline" mode, Blackboard will dispatch a technician to Customer's site, who shall arrive no later than the next day of Coverage Hour, provided, however, that Blackboard determines, in its sole discretion, that either the replacement of the defective part cannot be accomplished by Customer, or that it cannot be easily ascertained which component is defective.

**1.5 Emergency Onsite Assistance**

In the event of a Network Processor failure (UNIX Edition) or Server failure (Windows Edition), Customer may choose to have a Blackboard employee travel to customer site to assist with Network Processor replacement or Server restoration. Travel and living expenses shall be at the Customer's expense.

**1.6 Application Restoration**

In the event of a host hardware failure, Blackboard will perform the following services remotely:

(i.) Blackboard will install both Application Software and Operating System software from backup media.

(ii.) Blackboard will configure partitions (if necessary)

(iii.) Blackboard will analyze and resolve database corruption (if necessary)

(iv.) Blackboard will start the application processes

(v.) Blackboard will confirm readers are online and processing transactions

**1.7 24/7 Customer Support (call anytime - any reason)**

Blackboard will provide Customer Support 24x7 troubleshooting assistance on Software problems. During non-standard office hours, calls are responded to within 30 minutes

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**1.8 Disaster Recovery and Business Resumption**

- (I.) Blackboard will maintain a recovery system to include a Network Processor (where applicable) and Server (the "Recovery System") with suitable capacity, tested and ready for shipment within forty-eight (48) hours of written notification from Customer that a disaster has occurred. A disaster is defined as a disastrous loss of Customer's UNIX or Windows Edition system ("Disaster") for purposes of this Exhibit.
- (II.) A reasonable number of Recovery Systems, as determined by Blackboard, will be allocated to our inventory for Disaster Recovery and Business Resumption. In the unlikely event a Disaster occurs to more than one Customer at the same time, the first written request received by Blackboard will prevail for each Recovery System available.
- (III.) In the event of a Disaster and upon receipt of written notification from Customer, Blackboard will make a Recovery System available for a maximum of sixty (60) calendar days. If Customer has not shipped the Recovery System to Blackboard within the sixty (60) day period, a penalty of \$10,000 will be charged for each additional thirty (30) day period, or portion thereof.
- (IV.) If on-site assistance is required to set-up the Recovery System and/or subsequent replacement system, a Blackboard technician's labor will be provided at no charge to Customer. However, travel and living expenses shall be at Customer's expense.
- (V.) Shipping costs for the Recovery System from Blackboard to Customer and from Customer to Blackboard shall be at Customer's expense. Customer must return the Recovery System to Blackboard's Phoenix facility by the same shipping method as received.
- (VI.) Customer is responsible for providing current back-up tapes to be used in restoring full system functionality utilizing the Recovery System and subsequent replacement system.

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**EXHIBIT C1.2**  
**BLACKBOARD TRANSACTION SYSTEM SOFTWARE GOLD COVERAGE™**

**1. MAINTENANCE**

**1.1 Basic Obligations.** Upon payment of applicable fees, Blackboard shall provide Customer with maintenance and support services in accordance with the terms and conditions of Schedule C and the Master Terms and its then-current maintenance and support policy.

In addition to the Basic coverage, the following items are included in the Gold Coverage:

**1.2 Network Reader Coverage**

Blackboard, with the assistance of Customer, will diagnose a reader problem and determine if the problem is related to Equipment or communication protocols. If the problem is with Equipment, the current maintenance options will prevail. If the problem is with the communication protocols, the Customer will be advised on the steps to take for resolution. It is up to the Customer to solve all on campus communication problems. Blackboard is not responsible for campus communication problems.

**1.3 Network Processor Coverage (UNIX EDITION ONLY)**

(i.) Subject to the definition of Coverage Hours, Network Processor/Server equipment will be handled as high priority since it is the most critical to System operation.

(ii.) Upon Customer's notification and Blackboard's acknowledgement that the Network Processor/Server or a component thereof, is defective, Blackboard will promptly ship to Customer a temporary replacement component or Network Processor/Server. Blackboard will use its commercially reasonable efforts to ensure that such temporary replacement component or Network Processor/Server is delivered within forty-eight (48) hours of Blackboard's acknowledgement of problem. Customer shall return to Blackboard the defective component or Network Processor/Server within five (5) business days of receipt of temporary replacement component or Network Processor/Server.

(iii.) Upon Customer's receipt of the temporary replacement component or Network Processor/Server, telephone support will be provided Customer to ensure the System is operative.

(iv.) At Blackboard's sole discretion, the defective component or Network Processor/Server will either be repaired, or replaced. Blackboard is under no obligation to return the original component or Network Processor/Server to Customer. If the original component or Network Processor/Server is returned to Customer, then Customer shall ship the temporary replacement component or Network Processor/Server to Blackboard within five (5) business days after receipt of the original repaired component.

(v.) If the Network Processor/Server is inoperative and all reader terminals are in an "offline" mode, Blackboard will dispatch a technician to Customer's site, who shall arrive no later than the next day of Coverage Hour, provided, however, that Blackboard determines, in its sole discretion, that either the replacement of the defective part cannot be accomplished by Customer, or that it cannot be easily ascertained which component is defective.

**1.4 Emergency Onsite Assistance**

In the event of a Network Processor failure (UNIX Edition) or Server failure (Windows Edition), Customer may choose to have a Blackboard employee travel to customer site to assist with Network Processor replacement or Server restoration. Travel and living expenses shall be at the Customer's expense.

**1.5 Application Restoration**

In the event of a host hardware failure, Blackboard will perform the following services remotely:

- (i.) Blackboard will install both Application Software and Operating System software from backup media.
- (ii.) Blackboard will configure partitions (if necessary)
- (iii.) Blackboard will analyze and resolve database corruption (if necessary)
- (iv.) Blackboard will start the application processes
- (v.) Blackboard will confirm readers are online and processing transactions

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## EXHIBIT C1.3

## LIST OF EQUIPMENT

At the time Schedule C is signed, the equipment list is provided as an estimate only. Upon completion of the warranty period, the list will be updated to reflect the actual items covered under maintenance.

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Description	Qty	Basic	Final Cost
Lantronix MSS-100 MicroSerial Terminal Server (RS-232)	8	x	\$ 380
Modem External (Standard)	2	x	\$ 29
Multi Application Transaction Terminal(s) Omni 395	5	x	\$ 448
Multi-Controller Host EPC/X Card	1	x	\$ 81
Poll Display(s) for Register (7453)	14	x	\$ 420
Thermal Receipt Printer w/o Journal (7453 Register)	14	x	\$ 770
Multi-Controller, C/CON-16 Port Box RJ45 Rackmount)	1	x	\$ 126
Deluxe Color Touch Register(s) (7453)	14	x	\$ 5,250
Scale with Interface to 7453 (RS-232)	4	x	\$ 280
Scanner, Presentation - Table/Handheld (NCR 7890)	1	x	\$ 100
RS-232 TO Ip Converter (Lantronix)	3	x	\$ 90
External Tape Backup Unit (20/40 GB DLT)	1	x	\$ 494
Level 3e- Dual PIII Xeon w/512MB, 24X, 10/100TX NIC	1	x	\$ 1,025
Transaction Gateway (Omni 395) Device	1	x	\$ 90
Transaction Terminal Printer (250) w/stand	1	x	\$ 33
Transaction Terminal Thermal Printer (350)	4	x	\$ 138
P400 w/32MB, 4.3GB HD, 10/100 NIC, Win 95/98, Monitor	3	x	\$ 388
Load Station	1	x	\$ 250
Copy/Business Equipment Reader	10	x	\$ 1,000
<b>Grand Total</b>	<b>89</b>		<b>\$ 11,345</b>

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**EXHIBIT C1.4**  
**BLACKBOARD TRANSACTION SYSTEM SILVER EQUIPMENT COVERAGE™**

**1. MAINTENANCE**

**1.1 Basic Obligations.** Upon payment of applicable fees, Blackboard shall provide Customer with maintenance and support services in accordance with the terms and conditions of Schedule C and the Master Terms and its then-current maintenance and support policy.

In addition to the Basic coverage, the following items are included in the Silver Equipment Coverage

**1.2 Reader On-Site Technical Training**

Blackboard will travel to Customer site to conduct Reader Installation Training and/or Reader Communication training. Trips may not be scheduled June through September and scheduled dates must be mutually agreed upon by Customer and Blackboard and be scheduled twenty-four (24) days in advance. This work may include remote Reader training not to exceed twenty-four (24) hours or three (3) Business days. This is limited to one business trip and may not be split into multiple trips. Travel and living expenses shall be at the Customer's expense.

**1.3 Replacement of Worn components**

Blackboard will replace Equipment components if at their discretion the component is showing wear and tear. This includes but is not limited to reader faceplates, read heads and card slots.

**1.4 Expedited Shipping (Overnight shipping)**

Blackboard will return repaired or replacement Equipment to Customer using overnight shipping methods.

**1.5 Temporary Replacement Availability**

(i.) When requested by Customer and Equipment is available, Blackboard will provide Customer with a temporary replacement for Equipment that is defective or not functioning properly. Blackboard will use its commercially reasonable efforts to ensure that such temporary replacement Equipment is shipped within twenty-four (24) hours of receipt of notice from Customer and/or Blackboard's acknowledgement of defective or non-functioning Equipment. Customer will send to Blackboard the defective or non-functioning Equipment within five (5) business days after receipt of the temporary replacement unit. Temporary replacement equipment not received by Blackboard within twenty (20) days of Customer's receipt of the repaired component will be billed to Customer at the then current retail price.

(ii.) At Blackboard's sole discretion, Blackboard may provide Customer with replacement Equipment. Blackboard will use its commercially reasonable efforts to ensure that such replacement Equipment is shipped within twenty-four (24) hours of Blackboard's acknowledgement of defective or non-functioning Equipment. Customer will send to Blackboard the defective or non-functioning Equipment within five (5) business days after receipt of replacement Equipment. Defective or non-functioning Equipment not received by Blackboard within twenty (20) days of the Customer's receipt of replacement Equipment will be billed to Customer at the then current retail price.

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**SCHEDULE D  
CARDS AND SUPPLIES PURCHASE**

This CARDS AND SUPPLIES SCHEDULE ("Schedule") shall be governed by the terms and conditions of the Blackboard Master Terms ("Master Terms") dated as of the 30th day of September, 2002 between Blackboard and Customer. Terms used in this Schedule that are not defined below shall have the meaning set forth in the Master Terms.

**1. CONVEYANCE OF CARDS AND SUPPLIES.**

During the Term of this Agreement, if Customer purchases ID Cards or Card Stock ("Cards") and Supplies from Blackboard, Customer shall purchase, acquire, and accept from Blackboard, and Blackboard shall sell, transfer and convey all of Blackboard's right, title and interest in and to the Cards and Supplies listed in the initial Purchase Orders that are subject to this purchase and any Purchase Orders which may be provided subsequent to the Initial Purchase.

**2. CONSIDERATION FOR CARDS AND SUPPLIES.**

**2.1 Fees.** Customer shall pay to Blackboard the amount set forth in the Purchase Order for the Cards or Supplies in accordance with the payment provisions of the Agreement. Payments shall be sent to Blackboard, Inc. Box 200188 Pittsburgh, PA 15251-0188. The standard quantity variation on custom-printed cards is +/- 10 percent. Blackboard will invoice for the quantity shipped. In the event additional services are requested by Customer, including but not limited to, artwork, design, typesetting and proof charges, fees for these additional services will be in accordance with Blackboard's then current rates such additional services.

**2.2 Changes in Fees.** Blackboard reserves the right to change its fees during the Term. Any increase in fees shall not affect any Purchase Orders accepted by Blackboard prior to the effective date implementation of such new prices. All Purchase Orders placed by Customer after implementation of any fee increase but before the date such fee increase is effective, shall be, by the Purchase Order's terms, for delivery no later than ninety (90) days after the date such price increase is effective, unless otherwise agreed by Blackboard.

**3. ORDERING; DELIVERY**

**3.1 Order Process.** Customer must request Cards or Supplies by submitting to Blackboard a (1) Purchase Order or (2) a valid quote accompanied by check or credit card information. No Purchase Order will be binding until accepted by Blackboard in writing, and Blackboard will have no liability to Customer with respect to any Purchase Orders that are not accepted. No partial shipment of a Purchase Order shall constitute the acceptance of the entire Purchase Order. All Purchase Orders issued by Customer to Blackboard shall be governed in all respects by the terms and conditions of this Agreement. Except for non-conflicting administrative terms as provided below, any additional or preprinted terms or conditions on a Purchase Order shall be null, void, and of no effect unless Blackboard has expressly agreed in writing, in advance, to terms and conditions inconsistent with or not otherwise addressed in the Master Terms or any of the Schedules.

**3.2 Cancellation.** Customer may not cancel a Purchase Order executed concurrently with the execution of this Agreement. However, Customer may cancel any subsequent Purchase Order on written notice to Blackboard of at least forty-five (45) days prior to the estimated shipment date; provided that if Blackboard has incurred a charge for cancellation of such Cards or Supplies from an outside supplier then Customer shall pay Blackboard a cancellation charge, as liquidated damages and not a penalty, equaling fifteen percent (15%) of the total price of the affected Purchase Order or the actual cancellation charge incurred by Blackboard, whichever is less.

**3.3 Shipment and Delivery Terms.** Shipping dates will be established by Blackboard upon acceptance of Purchase Orders. Shipping dates will be assigned as close as practicable to the Customer's requested dates based on Blackboard's then-current lead time. Blackboard shall not be liable for damage or penalty for delay in delivery or failure to give notice of any delay. Packing slips will be included in all shipments and an order number or agreement number will be shown on all acknowledgments, packing slips and invoices. Blackboard shall make deliveries under this Schedule in accordance with its standard delivery procedures. All freight, insurance, and other shipping expenses, as well as expenses for any special packing requested by Customer shall be prepaid by Blackboard and subsequently invoiced to Customer. Should Customer desire to expedite shipment of Cards or Supplies, Customer may be charged an additional 10 (ten) percent of the total purchase price for such expedited shipment.

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**3.4 Title and Risk of Loss.** Title to any product that Blackboard sells outright to Customer hereunder shall vest in Customer immediately upon shipment FOB Shipping Point. Risk of loss or damage to any product shall pass to Customer upon passage of title or upon shipment if title does not pass to Customer.

**4. LIMITED WARRANTY.**

Blackboard represents and warrants that the Cards and Supplies will be substantially free from manufacturer defects and if applicable, substantially conform to relevant ABA and ISO card standards in effect at the time of shipment to Customer, provided Blackboard has received all amounts owed under the Master Terms and its Schedule(s) and Customer is not in default of any part of the Agreement. Blackboard's sole obligation is limited to replacement or credit to Customer's account for the defective Cards or Supplies, at Blackboard's discretion, provided that Customer notifies Blackboard of the deficiency within thirty (30) days of receipt of Cards or Supplies. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**5. TERM.**

This Schedule shall commence on the Available Date and shall continue until the Master Terms is terminated.  
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD

Signature

Print Name and Title

Date:

Cleveland State University

Signature

GARY MESSAROS, DIRECTOR, Aux. Services

Print Name and Title

Date:

Cleveland State University



**BLACKBOARD LICENSE AND SERVICES AGREEMENT  
COVER PAGE**

The attached documents describe the relationship between Blackboard and the Customer identified below. The documents attached to this cover page will consist of the Master Terms dated September 26, 2002, which describe and set forth the general legal terms governing the relationship, and one (1) or more schedules describing and setting forth detail about that relationship, depending upon the particular software and/or services Blackboard will provide to the Customer.

This License and Services Agreement includes this cover page, the attached pricing summary and Master Terms, and all Schedules that are attached to such Master Terms and are separately executed by the Parties. This Agreement, including the attached Master Terms, will become effective when this cover page is executed by authorized representatives of both Parties.

CUSTOMER INFORMATION:			
Name/Company:	Cleveland State University	Principal Contact Person:	Rottier,Pete
Fax:		Phone:	216/687-2373
Address:	1860 East 22Nd Street, R1209 Cleveland, OH 44115 USA		
Billing Contact:	Garcia,Rowen	Title:	
Address:	Viking Card Office - MC 112 2121 Euclid Ave Cleveland, OH 44115 USA		
Phone:	216/875-9993	Email Address:	r.d.garcia31@csuohio.edu
Fax:			
Initial Term of Agreement:	3 years		

IN WITNESS WHEREOF, the parties hereto have executed this cover page as of the date written below.

BLACKBOARD	CUSTOMER: Cleveland State University
Signature <i>Tess Frazier</i> TESS FRAZIER- VICE PRESIDENT	Signature <i>Michael J. Droney</i> Print Name and Title MICHAEL J. DRONEY - VP FOR UNIVERSITY SYSTEM & IT
Date: 11/3/10	Date: 11/3/2010

Cleveland State University

## Cleveland State University Pricing Summary

Product Description	Product ID	Qty	Units	Initial Term Year 1
HST ADDL SVC HENA	AS-ASPADSU-HENA	1	YR	\$ 41,800
HOSTING SSL	AS-ASPSSL	1	YR	\$500
One Time Price Reduction:				(\$500)
CE HOSTING CO-PROD - R9	AS-ASPCOPRO	1	YR	\$ 0
HOSTING CD HENA < 8K	AS-ASPLS-HENA06	1	YR	\$ 58,600
HOSTING TEST	AS-ASPTEST	1	YR	\$13,000
One Time Price Reduction:				(\$6,500)
HST SETUP CD < 8K USERS NA	AS-SETASPAP-NA	1	EA	\$10,700
One Time Price Reduction:				(\$9,700)
HST SETUP TEST	AS-SETASPTEST	1	EA	\$1,000
One Time Price Reduction:				(\$1,000)
COURSE DELIV HENA 8-15K	AS-LS-HENA04	1	YR	\$72,500
One Time Price Reduction:				(\$72,500)
TOTAL:				\$ 107,900

Product Description	Product ID	Qty	Units	Initial Term Year 2	Initial Term Year 3
HST ADDL SVC HENA	AS-ASPADSU-HENA	1	YR	\$43,890	\$46,085
HOSTING CD HENA < 8K	AS-ASPLS-HENA06	1	YR	\$61,530	\$64,606
HOSTING TEST	AS-ASPTEST	1	YR	\$6,500	\$6,500
TOTAL:				\$111,920	\$117,191

Academic Suite-Sites Schedule of Fees Table

Designated Server Site (Physical Location of the Software): Blackboard	Database Version:	Operating System:	Hardware Model:
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Cleveland State University

**AMENDMENT FOR RELEASE 9**

**Blackboard:** Blackboard Inc.  
**Customer:** Cleveland State University, a state supported university and instrumentality of the State of Ohio  
**Agreement:** Blackboard Learning System CE Enterprise LTD License Software Schedule  
**Agreement Date:** June 23, 2009  
**Software:** Blackboard Learning System – CE Enterprise license

**Preamble**

This Amendment ("Amendment") amends the Agreement between Blackboard and Customer dated as of the Agreement Date and is effective as of the last signature date below. Customer currently licenses the Software from Blackboard and desires to make the following changes.

**Co-Production License.**

For two years from the date Customer goes live with Co-Production Software, Customer may operate one production copy of the Software (version 9.x) concurrently with one production copy of the Software (version 8.x or earlier) for no additional charge subject to the terms of the Agreement. After such two year period, if Customer wishes to continue to operate the Software with both concurrent copies in production, the then-current pricing for an annual co-production license shall apply. The annual fee shall renew each year unless Customer has notified Blackboard in writing prior to the end of the then current term that it has ceased using the co-production license.

Product Description	Quantity	Units	Total Price
Co-production license fee	2	YR	First two years waived

**Order Procedure**

Should Customer desire to license additional software products from Blackboard, Customer may do so by providing a duly authorized purchase order to Blackboard and such additional software products shall be deemed to be included in the term "Software" under the Agreement and Blackboard shall invoice Customer for payment of the additional fees in accordance with the Agreement.

All other terms and conditions remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the last date written below.

BLACKBOARD

Cleveland State University

Signature

Signature

Print Name and Title  
Tess Frazier, Vice President

Print Name and Title

Date 11/3/10

Date

11/3/2010

Cleveland State University

**BLACKBOARD MANAGED HOSTING SCHEDULE**

This Blackboard Managed Hosting Schedule ("Managed Hosting Schedule") is made as of the last date indicated below, by and between Blackboard and Cleveland State University a state supported university and instrumentality of the State of Ohio ("Customer") and is an addendum to the Blackboard License And Services Agreement between Blackboard and Customer, which includes, without limitation, the Master Terms dated September 26, 2002 and other Schedules incorporated therein. Capitalized terms used in this Schedule that are not otherwise defined in this Schedule shall have the meaning set forth in the Master Terms. In consideration of the foregoing promises, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

**1. ADDITIONAL DEFINITIONS**

- 1.1 "Active User Capacity" means the number of Authorized End Users, at any particular time, permitted to be registered to access one (1) or more educational courses provided through the Hosted Software. As of the Schedule Effective Date (as defined below), the initial Active User Capacity will be equal to the number indicated on Exhibit A.
- 1.2 "Managed Hosting Services" means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated on Exhibit A to the Blackboard Managed Hosting Schedule.
- 1.3 "Authorized End User" will have the meaning set forth in the Software Schedule, as defined below.
- 1.4 "Available Date" means, for purposes of this Managed Hosting Schedule, the date upon which Customer receives notice from Blackboard that the Hosted Software is available for access by Customer's Authorized End Users.
- 1.5 "Hosted Software" means the Software licensed to Customer pursuant to the Software Schedule for which Blackboard is to provide the Managed Hosting Services.
- 1.6 "Test Copy Hosted Software" means the Test Copy Software licensed to Customer pursuant to the Software Schedule which Blackboard is hosting. Test Copy Hosted Software is to be used solely for the purposes of testing the Software and is not to be used for production purposes and unless otherwise indicated in Exhibit A of the Managed Hosting Schedule is not covered by Service Level specifications described in Exhibit B.
- 1.7 "Schedule Effective Date" means the later of: (i) the date on which this Managed Hosting Schedule has been executed by authorized representatives of both Parties; and (ii) the Effective Date of the Agreement.
- 1.8 "Software Schedule" means the Software Schedule that has been executed by Blackboard and Customer for which Customer seeks to have Blackboard provide Managed Hosting Services, and that is in effect during the term of this Managed Hosting Schedule.
- 1.9 "Staging Environment" means that hosted additional test copy of the licensed Blackboard Software used for Customer to test new updates/upgrades to the Software. The staging environment may not be used for production purposes.

**2. BLACKBOARD RESPONSIBILITIES**

- 2.1 Provision of Access to Hosted Software. Ten (10) business days upon signature of this contract, Blackboard will use reasonable efforts to make access to the features and functions of the Hosted Software available to Customer's Authorized End Users. Blackboard will specify to Customer procedures according to which Customer and/or its Authorized End Users may establish and obtain such access.]
- 2.2 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 Customer Content for purposes of access by the Hosted Software, provided that nothing in this Managed Hosting Schedule shall be construed to require Blackboard to provide, or bear any responsibility with respect to, the design, development, operation or maintenance of any Web site owned or operated by Customer, or with respect to any telecommunications or computer network hardware required by Customer to provide access from the Internet to any such Customer Web site. Nothing in this Managed Hosting Schedule shall be construed to grant to Customer 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 pursuant to Section 2.1. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Schedule, Customer 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 Customer Content. As between Customer and Blackboard, Customer retains ownership of the Customer Content. Blackboard shall maintain the confidentiality of all Customer Content that is stored on its servers in accordance with Section 4 of the Master Terms.
- 2.3 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 Managed Hosting Schedule remains in effect, the Managed Hosting Services provided pursuant to this Managed Hosting Schedule will: (i) be available and accessible as contemplated in this Managed Hosting Schedule twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Exhibit B; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit B. Exhibit B may be modified from time to time, upon notice to Customer and such modification shall not decrease the specifications or service credit provided under Exhibit B as attached hereto. Notwithstanding the foregoing, Blackboard will have no liability under this Section 2.3 to the extent any nonconformity with the standards set forth in Exhibit B arises, in whole or in part, from: (i) any use of the Hosted Software by Customer or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Customer or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to Section 2.1 of this Managed Hosting Schedule; 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. It is agreed and acknowledged that the service credits referred to in Exhibit B shall be Customer's remedy, and Blackboard's obligation, with respect to failures of the Managed Hosting Services to meet the technical specifications and performance parameters set forth in Exhibit B. Blackboard does not warrant or guarantee the Managed Hosting Services except as expressly stated in this Managed Hosting Schedule.
- 2.4 Data Restoration Policy. Blackboard will back-up and archive Customer Content at a secure location for the retention period(s) specified in Exhibit B. In the event that Customer requests recovery of any lost or damaged Customer Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Customer), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Customer 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 Customer; 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 Managed Hosting Services, Customer agrees to pay Blackboard its then-standard applicable rates for such restoration services.

## Cleveland State University

**2.5 Data Archiving and Cleanup Policy.** Blackboard will undertake commercially reasonable efforts to accommodate Customer's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Customer'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 database query. Blackboard will make reasonable efforts to perform up to four (4) data archiving and cleanup related tickets per Customer 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 Customer requires Blackboard to batch archive data on to a hard-drive and ship to Customer, Blackboard will charge \$200 for the cost of each of 200 GB hard-drive required. The hard-drive can be shipped back to Managed Hosting at the time of next task for reuse.

**2.6 Additional Storage and Bandwidth Policy.** As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Customer's storage and bandwidth usage. In the event Customer has exceeded Initial Storage and/or Initial Bandwidth in a sustained period of sixty (60) days or more, Blackboard will provide a report to Customer concerning the current storage and bandwidth usage. In the event Customer has not purchased additional storage and/or bandwidth within thirty (30) days of receiving the report, Blackboard reserves the right to charge Customer additional fees at then-standard applicable rates.

**2.7 Migration Policy.** In the event Customer requests an Update/Upgrade of the Hosted Software, Blackboard and Customer shall engage in commercially reasonable migration planning. In the event that the migration planning requires an expanded or new hardware environment not covered by the then-current Hosted Software environment (defined here as "Migration"), Customer shall pay a Migration Set Up fee as mutually negotiated. Blackboard will be obligated to perform no more than one successful test migration per a six (6)-month period. If Customer requires more than one Migration test or more than one Migration within a six-month period, it must execute a copy of Blackboard's Professional Services Agreement for the services.

**2.8 Additional Managed Hosting Services.** In the event that Customer desires to receive Managed Hosting 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, Customer may submit a written and executed purchase order requesting such additional Managed Hosting Services. Subject to Customer's payment of all applicable fees required by Section 4, and further subject to all applicable provisions of this Agreement, including, without limitation, the Master Terms and this Managed Hosting Schedule, Blackboard agrees to make such additional Managed Hosting Services available to Customer for so long as this Managed Hosting Schedule 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 Customer with respect to any purchase orders that are not accepted.

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

### 3. CUSTOMER RESPONSIBILITIES.

**3.1 General Usage Limitations.** Customer acknowledges that use and operation of the Hosted Software by Customer and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding the Software Schedule, for so long as this Managed Hosting Schedule remains in effect, Customer may not install, host or operate the Hosted Software, nor may Customer or its Authorized End Users otherwise use the Hosted Software, except as hosted and made available by Blackboard under this Agreement. In the event that Customer has installed the Hosted Software upon any computer server(s) prior to the Schedule Effective Date (as defined below), Customer agrees promptly to remove the Hosted Software from such computer server(s). Customer agrees that it may not cause or permit any third parties to access the Hosted Software other than Authorized End Users, nor may Authorized End Users in excess of the then-current Active User Capacity access and use the Hosted Software at any time, provided that the Active User Capacity may be modified in accordance with Section 2.6. Customer shall refrain from, and shall ensure that Authorized End Users refrain from, using the Managed Hosting Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Managed Hosting Services or the resources available through the Managed Hosting Services. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Customer warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

**3.2 Customer Content.** Customer represents and warrants that (i) Customer owns or has sufficient rights in and to the Customer Content, including, without limitation, personal, educational and financial information contained within the Customer Content, in order to use, and permit use of, the Customer Content as contemplated in this Managed Hosting Schedule and to grant the license granted in Section 2.2; and (ii) the Customer 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. Customer also acknowledges that Customer Content may be accessed by Blackboard's support or Managed Hosting personnel outside of the country of the hosted facility, and hereby authorizes such access. Blackboard only provides access to the Hosted Software; Blackboard does not operate or control the information, services, opinions or other content of the Internet. Blackboard does not monitor and shall have no liability or responsibility whatsoever for the Customer Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. Except with respect to infringement of Customer's intellectual property rights or Blackboard's breach of this Agreement, Customer agrees that it shall make no claim whatsoever against Blackboard relating to the Customer Content or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet, and Customer shall indemnify and hold Blackboard harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related, directly or indirectly, to such Customer Content.

### 4. FEES

**4.1** In consideration for provision of the Managed Hosting Services, Customer shall, during the Initial Term (as defined below) pay to Blackboard: (i) an annual fee in an amount set forth in the Pricing Summary with respect to the particular Managed Hosting Services provided under this Managed Hosting Schedule, which fees shall be due and payable within forty-five (45) days of the date of Blackboard's invoice as well as (ii) any other fees otherwise required by this Managed Hosting Schedule (for additional services, additional bandwidth, or additional users). In the event that Customer requests additional Managed Hosting Services as contemplated in Section 2.8, applicable fees shall be due and payable from and after the month during which such additional services are first made available. All fees payable under this Managed Hosting Schedule shall be non-cancelable and non-refundable.

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4.2 Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Customer's account becomes more than sixty (60) days past due. The act of suspending Managed Hosting Services does not, in itself, constitute a termination or suspension of this Agreement nor does such suspension of Service alleviate Customer's obligation to pay past, current, or future charges incurred hereunder. Once Customer pays in full the past due fees, Blackboard may resume services.

4.3 With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Managed Hosting Schedule, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Except as otherwise required by this paragraph, all amounts payable under this Managed Hosting Schedule shall be subject to applicable provisions of the Master Terms.

5. TERM

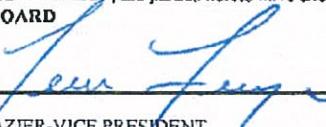
This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of three (3) years (the "Initial Term") or otherwise specified in Exhibit A. Thereafter, Customer has the option to renew the Schedule for successive one (1)-year periods (each, a "Renewal Term") provided that upon receipt of a renewal notice from Blackboard, Customer remits a signed purchase order and remits the License Fee within thirty (30) days of receipt of an invoice from Blackboard. Either Party may provide notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as applicable.

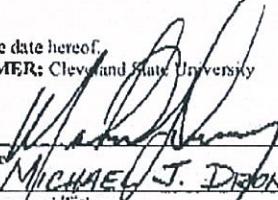
6. Blackboard shall use reasonable efforts to notify Customer in the event it becomes an excluded individual from a government health care program.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof.

BLACKBOARD

CUSTOMER: Cleveland State University

Signature   
TESS FRAZIER-VICE PRESIDENT  
Print Name and Title  
Date: 11/3/10

Signature   
MICHAEL J. DRONEY  
Print Name and Title  
VP FOR UNIVERSITY SYSTEMS & IT  
Date: 11/3/2010

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**EXHIBIT A**  
**MANAGED HOSTING SPECIFICATIONS**

**+ Blackboard Learn™ for Course Delivery:**

- Set Up Fee for each solution includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Initial Term Annual Fee for each solution includes service for up to 8,000 Users\* and 250 GB of storage and 1 Mbps of bandwidth measured using the 95<sup>th</sup> percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Additional storage and bandwidth for each solution are separately charged.
- Additional Service units for each solution for 7,500 additional Users\*, additional \$12 kbps bandwidth and 50 GB additional storage are separately charged. (Storage and Bandwidth should be adjusted to reflect the Schedule)

\*A user is defined as any account in the database regardless of enrollments

**+ Blackboard Non-Production Test Environment per solution:**

- Initial Term is a minimum of twelve (12) months and renew automatically for successive 12-month terms (each, a "Renewal Term"), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Term or the current Renewal Term.
- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
- Initial Term Fee includes 9 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Customer 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 Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.

**+ Secure Socket Layer – annual fee that is separately charged per solution**

- 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 Customer 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, Customer must have SSL software enabled.
- As an optional service, Blackboard offers Software-based Secure Socket Layer (SSL) to Customer for added security to Customer's data transmission. Customer must have Blackboard Learning Systems 6.1 or higher version in order to take advantage of this Service. Blackboard will obtain an SSL certificate from a certificate authority and set up the service for the Customer at the then-standard applicable rates.

\*95<sup>th</sup> Percentile calculation – 95<sup>th</sup> 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*

**Additional Storage and Bandwidth Annual Fees are separately charged**

**\*User is defined as a person enrolled in one or more active courses, or part of one or more organization.**

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**EXHIBIT B**  
**MANAGED HOSTING SERVICES SPECIFICATIONS- As of the Available Date**

**NOTE:** CUSTOMER ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT B CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE MANAGED HOSTING SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE MASTER TERMS, 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 Customer 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 Managed Hosting Schedule, provided that the Master Terms and the relevant Software Schedule have been executed, and provided that Customer has provided to Blackboard a URL and any other information required by Blackboard. Blackboard shall provide Customer 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 Customer to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Managed Hosting Schedule.

**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 Managed Hosting 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 Managed Hosting Services during such period; unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the control of Blackboard. In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. The aggregate maximum number of service credits to be issued by Blackboard to Customer 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 and shall be Customer's sole remedy for failure to meet the foregoing service levels:

<u>Length of Unavailability (per calendar month)</u>	<u>Service Credit</u>
1 to 4 hours of aggregate unavailability below 99.7%	1 day of service fees credited (i.e., 1/30 monthly fees)
4 to 48 hours of aggregate unavailability below 99.7%	2 days of services fees credited (i.e., 1/15* monthly fees)
48 to 96 hours of aggregate unavailability below 99.7%	5 days of service fees credited (i.e., 1/6 * monthly 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 Managed Hosting 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 in accordance with the procedures outlined in the most recent Managed Hosting Disaster Recovery Planning Document. 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 Customer's designated technical contact via email. This notice will include the reason for the system outage and estimated time for restoration of Managed Hosting Services if Blackboard knows this information when it gives this notice.

Following recovery from any particular system outage, Blackboard will provide Customer 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 Managed Hosting Services, Blackboard will investigate the problem and determine if a system outage exists. If a system outage exists, Blackboard will provide Customer 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 Customer.

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**MONITORING AND PERFORMANCE**

Blackboard will make network performance reports available to the customer via [www.beyond.blackboard.com](http://www.beyond.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 Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Customer with the following report:

**Specific System Outage Details:**

- Time of outage
- Length of outage
- Affected areas
- Reason for outage
- Customer contact notified (if any)
- Remedy to prevent outage reoccurrence (if any)

Customer acknowledges and agrees that any of the foregoing reports shall constitute Blackboard's Confidential Information for purposes of this Agreement.

**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 Customer 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 Managed Hosting environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the Managed Hosting 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 Customer-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 1/2°F, plus or minus 2 1/2°F, with humidity of 45%.

**Server Setup:**

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

**CUSTOMER RESPONSIBILITIES.** Blackboard is not responsible for management and actual use of the features and function of the Hosted Software. Customer bears all responsibility for such management and actual use, including, without limitation;

- The Customer 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 Customers 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 Customer and not Blackboard. For example, if the Customer 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 Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

**BUILDING BLOCKS POLICY.** If Customer has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to implement a Building Block, Blackboard recommends the following steps before installing a Building Block on a production system: 1) apply and thoroughly test all Building Blocks in Customer's test/development environment prior to implementing the Building Block in the production environment; and 2) before requesting an update/upgrade to Blackboard on Customer's production environment, Customer contacts the vendor of the Building Block or check the Building Blocks Catalog to ensure that Customer has the latest version prior to upgrading Customer's Hosted Software. If an issue arises with Customer's Hosted Software, Managed Hosting Service Support will work with Customer to troubleshoot the problem. If Managed Hosting Service Support isolates the problem as related to one or several Building Blocks, Managed Hosting may need to disable the Building Block to further troubleshoot the issue or to restore overall service.

