

2004-071

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Business Affairs

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson
Technology and Corporate Development Manager
University of Texas System TeleCampus

DATE: July 3 , 2002

Name of Contractor: Blackboard Inc.

Total Value of Contract: \$173,100

Purpose of Contract: Online courseware management system license and hosting

Beginning and Ending Dates of Contract: June 30 , 2002 , through June 30 , 2004

Note: One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES NO N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5. If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6. Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7. If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

	YES	NO	N/A	
8.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If the contract is for \$100,000 or more, have you complied with BPM 58 (http://www.utsystem.edu/bpm/58-06-00.htm) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.)
9.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Is the contract complete, with all pages, exhibits, schedules, etc., attached?
10.	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract?
11.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
12.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed: <u>Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.</u>
13.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you confirmed with the State Comptroller (http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.)

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BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2.100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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

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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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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 such termination, nor affect or impair the rights of either party arising under the Agreement prior to such termination or expiration, except as expressly provided herein.

6. FEES; PAYMENT

2002 - CONFIDENTIAL AND PROPRIETARY

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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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	Darcy Hardy
Title	Assistant Vice Chancellor for Academic Affairs
Address	University of Texas System, 210 West 6th Street, CTJ-Suite 2.100, Austin, TX 78701,
E-mail:	dhardy@utsystem.edu
Telephone number	512-499-4207

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

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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. EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1, BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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.

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

9.5 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.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.9 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.

9.10 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval of authorization of any government authority.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights In Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, *Texas Business Corporation Act*, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, *Texas*

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, *Texas Family Code*, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, *Texas Government Code*, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

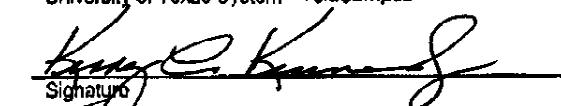
(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an als ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating top the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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


 Signature
 Print Name and Title
TESS FRAZIER
SENIOR DIRECTOR
 Date:

CUSTOMER
University of Texas System - TeleCampus


 Signature
 Print Name and Title
 Kerry L. Kennedy
 Executive Vice Chancellor for Business Affairs
 Date: 30 JUNE, 2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly Fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

Annual

$$45487 \div 12 \times 2 (\text{July-Aug}) 7881$$

$$22188 \div 12 \times 2 ("") 3698$$

ASP

$$\text{Set up} 15,000$$

$$3325 \times 2 (\text{July-Aug}) 6650$$

Licensing fees	10625
2001-2002 costs	43554

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

		Level of License and Support	Initial Term Annual Fees (USD)
Blackboard Learning System:			\$45,487
Community Portal System :			\$22,188
ASP Set Up Fee		\$15,000	
Monthly ASP Fee		\$3,325	
Total ASP			\$94,800
Total Learning Services			\$ 10,625
Total Fees Due:			\$173,100
Designated Server Site (Physical Location of the Software); Blackboard ASP site, per Schedule 2 hereto.	Database Version:	Operating System:	Hardware Model:
CUSTOMER'S- FTE: 3900			

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 install and use one installation copy and one non-production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's: students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 Copies. Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 Supported Interfaces. Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, . make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 Termination of Access to Content through Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 Terms of Use. The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 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 pursuant to the Support and Maintenance section herein.

1.10 Auto Reporting. Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 Expansion of Licensed Use. Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of Licensing Institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

Blackboard Band	Pricing
Fewer than 2,000	\$25,000 annually
2,000 to 3,999	\$32,500 annually
4,000 to 7,999	\$40,000 annually
8,000 to 14,999	\$47,500 annually
15,000 to 24,999	\$55,000 annually
25,000 to 49,999	\$62,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

Blackboard Band	Pricing
Fewer than 2,000	\$15,000 annually
2,000 to 3,999	\$17,500 annually
4,000 to 7,999	\$20,000 annually
8,000 to 14,999	\$22,500 annually
15,000 to 24,999	\$25,000 annually
25,000 to 49,999	\$27,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15261-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. Software Errors. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. Telephone Support. Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	rrobinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

3.5. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. Installation Assistance. In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD

5.1 Authority. Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2 Performance Warranty. Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER
Print Name and Title
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Print Name and Title
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed: 7/8/02

University of Texas - TeleCampus

**SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT**

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITES.

1.1 Provision of Services. Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 Provision of Hardware and Software. In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 Availability and Operational Specifications. The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 Managed Firewall Service. Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 Virtual Private Network. Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and License, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the Initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 Data Restoration Policy. For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 Customer Responsibilities. Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 Limited Content License. Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"). In whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 Virtual Private Network. Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154 :

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BLACKBOARD LEARNING SYSTEM™:

- \$15000 initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the Initial Term of the Master Term and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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EXHIBIT A
ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE

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 control 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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

Length of Unavailability	Service Credit**
up to 1 hour continuous unavailability	1 day of service fees credited (i.e., 1/30 monthly fees)
1 to 4 hours continuous unavailability	2 days of services fees credited (i.e., 1/15 monthly fees)
more than 4 hours continuous unavailability	30 days of services fees credited (i.e., 1 monthly fee)

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

**All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all Instructors.

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 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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB or RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF

2.1 Customer will reimburse Blackboard for (i) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (ii) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expense items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event: \$600
- 8-14 days before the scheduled event: \$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

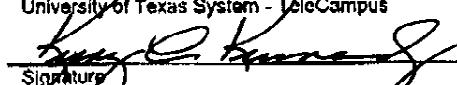
CUSTOMER
University of Texas System - TeleCampus

Signature

TESS FRAZIER
Print Name and Title
SENIOR DIRECTOR

Date:

Kerry L. Kennedy
Print Name and Title
Executive Vice Chancellor for Business Affairs
Date: 30 June, 2002



Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

	Level of License and Support	Initial Term Fees (USD)
Blackboard Conversion Tool License		N/A
Total Fees Due:		N/A

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, Instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A

3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 Support. Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD



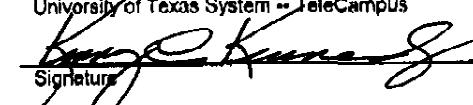
Signature

Print Name and Title

**TESS FRAZIER
SENIOR DIRECTOR**

Date:

University of Texas System -- TeleCampus


Signature

Print Name and Title

Korry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

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**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

	Level of License	Initial Term Fees (USD)	
Prometheus Software		\$ N/A	
Total Fees Due:		\$ N/A	
Designated Server Site (Physical Location of the Software): Prometheus ASP site	Database Version: Oracle	Operating System: Solaris 2.6	Hardware Model:

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recording of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc., Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include TutorNet Virtual Classroom, Oracle database and Apache.

3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2. Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3. Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4. Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) Intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	rrobinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jhholloway@utsystem.edu
Telephone number:	512-499-4207

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4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

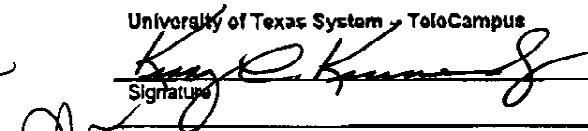
5. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

 Signature _____
 Print Name and Title _____
TESS FRAZIER
SENIOR DIRECTOR
 Date: _____

University of Texas System - TeleCampus

 Signature _____
 Print Name and Title _____
 Kerry L. Kennedy
 Executive Vice Chancellor for Business Affairs
 Date: 30 June, 2002

Date Signed: 7/8/02

NON-EXCLUSIVE MASTER SERVICES AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Non-Exclusive Master Services Agreement between University and Contractor ("Agreement") is made and entered into effective as of June 1, 2014 (the "Effective Date"), by and between The University of Texas System, an agency and institution of higher education established under the laws of the State of Texas ("University"), and Blackboard Co. ("Contractor"), Federal Tax Identification Number 35 2367692.

University and Contractor hereby agree as follows:

1. Term

The term of this Agreement shall commence on the Effective Date and terminate on the fifth anniversary of the Effective Date unless extended by mutual agreement of the parties as provided herein.

2. Contractor Services and Project Addenda

2.1 The categories of the services ("Services") that may be performed under this Agreement are set forth in Exhibit A, attached and incorporated for all purposes.

This Agreement is a non-exclusive contract between the University and Contractor. Pursuant to this Agreement, any one of the University's academic institutions, health institutions or System Administration ("Requesting Institution") may request the services of Contractor for a specific project with an established scope of services negotiated with the Contractor ("Project"). As used herein, the term "University" includes any Requesting Institution, unless the context clearly requires a different meaning. Prior to Contractor's commencement of any Project, the Contractor and the Requesting Institution must complete and enter into a Project Addendum (sample format attached hereto as Exhibit B), which shall contain a description of the Project, the terms of compensation to be paid Contractor, and a schedule for performance of all Services to be provided for the Project. All of the terms and conditions of this Agreement are incorporated into each Project Addendum for all purposes. In the event of any conflict between a Project Addendum and this Agreement, this Agreement will control provided however the Requesting Institution and Contractor may agree to language in a Project Addendum to specify or clarify the services to be provided or to provide University with more beneficial pricing than that set forth in this Agreement.

Contractor and a UT Institution can enter into a Project Addendum at any time during the Term. A Project Addendum will specify the term during which Contractor will perform Services. To the extent that this Agreement expires or terminates prior to the end of a Project Addendum, such Project Addendum will survive any such termination or expiration of the Agreement and the terms and conditions of this Agreement will continue to be incorporated for all purposes into that Project Addendum. Contractor understands and agrees that it will not receive any payment or other compensation under this Agreement unless it

enters into a Project Addendum and performs services in accordance with the terms and conditions of that Project Addendum and this Agreement.

- 2.2 CONTRACTOR UNDERSTANDS AND AGREES THAT THE UNIVERSITY HAS MADE NO REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTY THAT THE UNIVERSITY WILL REQUEST CONTRACTOR TO PERFORM ANY SERVICE AND THAT THE UNIVERSITY HAS AND DOES SPECIFICALLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, ASSURANCES OR GUARANTIES. THE UNIVERSITY AND THE UT INSTITUTIONS RESERVE THE RIGHT TO OBTAIN SERVICES FROM ANY OTHER PERSON OR ENTITY AT THEIR SOLE DISCRETION.
 - 2.3 The University and Contractor agree and acknowledge that the University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Services. Contractor accepts the relationship of trust and confidence established between it and the University by this Agreement. Contractor covenants with the University to use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of the University in accordance with the University's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services.
 - 2.4 Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained, credentialed, and experienced personnel to ensure satisfactory performance under this Agreement.
3. **Contractor's Obligations.**
- 3.1 Contractor will perform the Services in compliance with all applicable federal, state and local laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
 - 3.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Services in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Services to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.

- 3.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 3.4 Contractor warrants and agrees that the Services will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Services.
- 3.5 Contractor will, at its own cost, correct all material defects in the Services as soon as practical after Contractor becomes aware of the defects.
- 3.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Services to be duly registered and/or licensed under all applicable federal, state and local laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Services.
- 3.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company, then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 3.8 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (refer to Section 6) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. "Personnel" means any and all persons associated with Contractor who provide any Services or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors. Contractor represents and warrants that: (i) the Services will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement either because the

1) Work Material is an independent creation of Contractor or the Contractor has a license (or licenses) to use any elements of Work Material for which Contractor is not the independent creator; and 2) Contractor either hereby a) grants to University ownership of the Work Material or b) grants to University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use the Work Material in connection with the Work or with Contractors services in connection with the Work; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions or the Contractor has secured licenses thereto; (iv) the Work Material will not, infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of third party; and (v) the authorized use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

- 3.9** If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

4. Payment Obligations.

- 4.1** So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing University will pay Contractor for the performance of the Services as established in each Project Addendum. Contractor understands and agrees that payments under this Agreement will be based upon negotiated final terms as provided for in each specific Project Addendum. Contractor agrees and acknowledges that the fees hereunder may be subject to the withholding requirements of Section 3402(t) of the Internal Revenue Code. This Agreement is not valid for amounts over \$1,000,000 without the approval of the University of The University of Texas System Board of Regents.
- 4.2** The Contract Amount for each Project Addendum includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of Services.
- 4.3** University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code ("TAC")* Section 3.322.

5. Payment Terms.

- 5.1** Requesting Institution will pay any fees due to Contractor under a Project Addendum entered into in accordance with this Agreement in accordance with the Texas Prompt Payment Act ("Act"), Chapter 2251, Government Code. Pursuant to the Act, Contractor will submit to Requesting Institution an invoice covering the

services performed for University to that date, in compliance with **Exhibit C**, Baseline Pricing and the terms of the Project Addendum. Each invoice will be accompanied by documentation that the Requesting Institution may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If Requesting Institution approves the amount or any portion of the amount, Requesting Institution will promptly pay (each a "**Progress Payment**") to Contractor the amount approved so long as Contractor is not in default under this Agreement. Requesting Institution shall promptly pay Contractor all such amounts upon curing any such default. If University disapproves any invoice amount, Requesting Institution will give Contractor specific reasons for its disapproval in writing.

- 5.2 Within ten (10) days after final completion of the Services performed pursuant to a Project Addendum and acceptance of the Services by Requesting Institution or as soon thereafter as possible, Contractor will submit a final invoice ("**Final Invoice**") setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by Requesting Institution, Requesting Institution will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.
- 5.3 Notwithstanding any provision of this Agreement to the contrary, Requesting Institution will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement. Requesting Institution shall promptly pay Contractor all such amounts upon curing any such default.
- 5.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in each Project Addendum.
- 5.5 No payment made by Requesting Institution will (a) be construed to be final acceptance or approval of that part of the Services to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 5.6 Intentionally omitted.
- 5.7 Requesting Institution will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 5.8 Notwithstanding any other provision of this Agreement, Requesting Institution is entitled to a "**Prompt Payment Discount**" of N/A% off of each payment that Requesting Institution submits within N/A days after Requesting Institution's receipt of Contractor's invoice for that payment.
- 5.9 Section 51.012, *Texas Education Code*, authorizes Requesting Institution to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from Requesting Institution through electronic funds transfer

methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to Requesting Institution in writing at least thirty (30) days in advance of the effective date of the change.

6. Ownership.

- 6.1 All tools, software, programs drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 6.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 6.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Services or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 6.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 6.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

- 6.6 All tools software and/or programs owned by Contractor, or which have been licensed to Contractor by a third party that either: 1) existed prior to the effective date of this agreement and the Work; 2) are not related to the Work to Contractor's services in connection with the Work; or 3) were created by the Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work are collectively "Contractor IP." Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership to Contractor IP. Contractor hereby grants to University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use the Contractor IP in connection with the Work or with Contractors services in connection with the Work.
- 6.7 To the extent that particular Work Product comprises an improvement, enhancement or modification to preexisting Contractor IP, *whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property* (hereafter "Work Product Improvements to Contractor IP"), University grants to Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP.

7. Default and Termination.

- 7.1 In the event of a material failure by a party to perform in accordance with the terms of this Agreement ("default"), the non-defaulting party may terminate this Agreement and a non-defaulting party may terminate a Project Addendum upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.
- 7.2 University may, without cause, terminate this Agreement at any time upon giving 180 days' advance written notice to Contractor. A Requesting Institution may terminate a Project Addendum, without cause, at any time upon giving thirty (30) - days' written notice to Contractor, unless an earlier termination is established in a project Addendum. Upon termination pursuant to this Section, or pursuant to the terms of a Project Addendum, Contractor will be entitled to payment of an amount that will compensate Contractor for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

- 7.3** Termination under **Sections 7.1 or 7.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 7.4** Intentionally omitted.
- 7.5** In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

8. Indemnification

- 8.1** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**UNIVERSITY INDEMNITEES**") FROM AND AGAINST ALL THIRD PARTY DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON TO THE EXTENT ARISING OUT OF CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR IS LEGALLY LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY UNIVERSTIY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

PRIVACY AND INFORMATION SECURITY INDEMNITY. CONTRACTOR WILL INDEMNIFY AND DEFEND UNIVERSITY FROM AND AGAINST ANY THIRD PARTY CLAIMS, FINES, FEES, ASSESSMENTS, PENALTIES, LOSSES, LIABILITIES AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE OUTSIDE ATTORNEY'S FEES AND EXPENSES) TO THE EXTENT RESULTING FROM ANY FAILURE TO COMPLY WITH CONTRACTOR'S OBLIGATIONS REGARDING UNIVERSITY AND FERPA RECORDS.

- 8.2** IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN

THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- 8.3 UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR WHICH CONTRACTOR IS OBLIGATED TO INDEMNITY UNIVERSITY UNDER THIS SECTION 8, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Relationship of the Parties.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

10. Insurance.

- 10.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-VII or better, and in amounts not less than the following minimum limits of coverage:

- 10.1.1 Workers Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Services is to be performed for University.

- 10.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury

(including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

10.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

10.1.4 Errors and Omissions Insurance, including Cyber Liability, with limits of not less than \$3,000,000 per project (endorsed on the E&O policy) for each University Project Addendum that provides, at a minimum, coverage for:

- Liability for security or privacy breaches, including loss or unauthorized access to University Data;
- Costs associated with a privacy breach, including consumer notification, customer support, and costs of providing credit monitoring services;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Costs of restoring, updating or replacing data;
- Liability losses connected to network security, privacy, and media liability;
- "Insured versus insured" exclusion prohibited.

Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Errors and Omissions/Cyber Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

10.2 Contractor will deliver to University:

10.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Services by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

10.2.1.1 All insurance policies (with the exception of workers' compensation and employer's liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System, and each Requesting Institution as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its ongoing and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability and Errors and Omissions/Cyber Liability Additional Insured endorsements will be submitted with the Certificates of Insurance. Commercial General Liability, Errors and Omissions/Cyber Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

10.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and each Requesting Institution. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and the Requesting Institution. No policy will be canceled until after thirty (30) days' unconditional written notice to University. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 10**.

10.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Services by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

10.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Daniel Garza

Address: UT System Administration
601 Colorado St., P4100
Austin, TX 78701
Facsimile Number: 512-499-4215
Email Address: dgarza@utsystem.edu

- 10.3** The insurance policies required in this Agreement will be kept in force for the periods specified below:

10.3.1 Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Services on each Project Addendum has been fully performed and accepted by University in writing.

11. Miscellaneous.

11.1 Assignment and Subcontracting. Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the prior written consent of University and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University. If University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement and all Project Addenda without notice or opportunity to cure.

11.2 Texas Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

11.3 Tax Certification. If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

- 11.4 Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 11.5 Loss of Funding.** University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 11.6 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.
- 11.7 Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence").
- 11.8 Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 11.9 Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 11.10 Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 11.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor will receive from or on behalf of Requesting Institutions of University, records made confidential by the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"). Contractor's specific obligations as to records subject to FERPA (collectively FERPA Records) are addressed in Section 11.11.1 of the Agreement, as well as

in Exhibit E, FERPA Confidentiality & Security Addendum ("Exhibit E"). In addition, Contractor may (1) create, (2) receive from or on behalf of University and/or Requesting Institutions, or (3) have access to, other records or record systems (collectively, "**University Records**") that among other things, may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102). Contractor represents, warrants, and agrees that it will: (1) hold University Records and FERPA Records in strict confidence and will not use or disclose University or FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University and FERPA Records according to reasonable administrative, physical and technical standards that have been assessed and approved by University; (3) continually monitor its operations and take any action necessary to assure that University and FERPA Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply, as applicable with the rules, policies, and procedures regarding access to and use of University's and/or Requesting Institution's computer systems. At the request of University, Contractor agrees to provide University with advance notice of any changes that Contractor proposes to make to the administrative, physical and technical standards approved by University for use by Contractor to safeguard and maintain the confidentiality of University Records (including FERPA Records) sufficient to allow University to assess and approve such standards. In the event that Contractor is required to disclose any University Records that is subject to this Section 11.11, Contractor will notify University prior to such disclosure in order that University may take such action as may be available to prohibit disclosure of the University Records.

11.11.1 FERPA Compliance. Contractor agrees and understands that some of the information that it receives, creates and/or maintains from or on behalf of a Requesting Institution pursuant to a project Addendum constitute Education Records or Personally Identifiable Information from Education Records as defined by the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99) ("FERPA"), (collectively "FERPA Records"). Contractor further agrees that before it can access, create or maintain any Requesting Institution FERPA Records it will, in connection with each Project Addendum, execute and attach to each Project Addendum, FERPA Confidentiality & Security Addendum that tracks Exhibit E of this Agreement without deviation to ensure that Contractor complies with FERPA and Requesting Institution's FERPA policies. Contractor also agrees to comply with the requirements set forth in this Section 11 as to all FERPA Records with the exception of any requirements that conflict with Exhibit E. To the extent that the Exhibit E conflicts with any term contained in this Agreement or a Project Addendum, the terms of the Exhibit E will prevail.

- 11.11.2 Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University and Requesting Institution within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University and Requesting Institution with all information requested by University and Requesting Institution regarding the impermissible use or disclosure.
- 11.11.3 Return of University Records.** With the exception of De-identified Student Data authorized by license agreement to be included in the cross-institutional database as described herein, Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University and FERPA Records created or received from or on behalf of Requesting Institution will be (1) returned to Requesting Institution, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide Requesting Institution with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to Requesting Institution in writing the destruction of University Records.
- 11.11.4 Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 11.11.5 Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 11.11.6 Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act ("TPIA")*, Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 11.11.7 Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or

obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

11.11.8 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

11.12 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

11.13 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

11.14 Notices. Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: UT System Administration
601 Colorado Street, P4100
Austin, TX 78701
Fax: 512-499-4215
Email: dgarza@utsystem.edu
Attention: Daniel Garza
Institute for Transformational Learning

If to Contractor: Tom Hollerbach
Blackboard Co
2905 San Gabriel St.
Suite 300
Austin, TX 78705
Email: th@blackboardco.com

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice

to University as follows:

Dr. Scott C. Kelley
Executive Vice Chancellor for Business Affairs
The University of Texas System
201 W. 7th, Suite 810
Austin, Texas 78701
Fax: (512) 499-4289
Email: LegalNotices@utsystem.edu

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

- 11.15 Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- 11.16 State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to reasonably cooperate with the Auditor in the conduct of the audit or investigation, including providing all applicable records reasonably requested. Contractor will include this provision in all contracts with subcontractors.
- 11.17 Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
- 11.18 Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 5.8, 8, 11.5, 11.9, 11.10, 11.11, 11.13, 11.16, 11.17, 11.19 and 11.21**.
- 11.19 Breach of Contract Claims.**
- 11.19.1** To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as

further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- 11.19.1.1** Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
- 11.19.1.2** If the parties are unable to resolve their disputes under **Section 11.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
- 11.19.1.3** Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.
- 11.19.2** The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

- 11.19.3** University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.
- 11.20 Undocumented Workers.** The *Immigration and Nationality Act* (8 United States Code 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 11.21 Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 11.22 Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at: <http://www.utsystem.edu/policy/policies/int160.htm>, University's Standards of Conduct Guide available at : <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide,

or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

11.23 Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. Exhibit E). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPSS"). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.

11.23.1 Changes to the HSP. If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 11.6** to replace the HSP with the revised subcontracting plan.

11.23.2 Expansion of the Services. If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under

this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

- 11.24 Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance.** Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

- 11.25 Debarment.** Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this

certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

- 11.26 Office of Inspector General Certification.** Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp.
- 11.27 Access to Documents.** To the extent applicable to this Agreement, in accordance with Section 1861(v)(l)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
- 11.28 Security Characteristics and Functionality of Proposer's Information Resources.** Contractor's response to RFP No. ITL01202014-R, Appendix Four, "Security Characteristics and Functionality of Contractor's Information Resources" ("Appendix Four Responses") dated December 6, 2013 are incorporated herein for all purposes and establishes specifications, representations, warranties and agreements related to the products and services Contractor is providing to University under this Agreement. These specifications, representations, warranties and agreements are binding on Contractor. Contractor agrees to perform the Work in compliance with its Appendix Four Responses, and will provide University prior written notice of a change to Contractor's data center or cloud computing subcontractor(s).

11.29 EIR Environment Specifications. Contractor's response to RFP No. ITL01202014-R Appendix Three ("Appendix Three Responses"), attached and incorporated for all purposes, establishes specifications, representations, warranties and agreements related to the environment specifications of EIR that Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements set forth in Appendix Three Responses are binding on Contractor. Contractor agrees to perform the Work in compliance with Appendix Three Responses.

11.30 Project Notification and Reports: Contractor will, upon execution of any Project Addendum (in the form of Exhibit B) under this Agreement, send a fully executed copy to the University at the following address, and directed to the following individual:

UT System Administration
601 Colorado Street, P4100
Austin, TX 78701
Fax: 512-499-4215
Email: dgarza@utsystem.edu
Attention: Daniel Garza
Institute for Transformational Learning

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

UNIVERSITY:

THE UNIVERSITY OF TEXAS SYSTEM

By: Scott Kelley

Name: Scott C. Kelley, Ed.D.

Title: Executive Vice Chancellor for
Business Affairs

SMW

9/17/14

CONTRACTOR:

By: Tom Hollerbach

Name: Tom Hollerbach

Title: Managing Director, COO

Attest: Tom Hollerbach

Corporate Secretary

Attachments:

EXHIBIT A – Scope of Services

EXHIBIT B – Project Addendum

EXHIBIT C – Baseline Pricing

EXHIBIT D – HUB Subcontracting Plan

EXHIBIT E – FERPA Confidentiality & Security Addendum

EXHIBIT A

SCOPE OF SERVICES

Contractor, upon the request of University or a Requesting Institution, will provide the following categories of services:

- Digital audio & video production
- Post-production
- Motion graphics & animations
- Graphic design and/or illustrations
- UI/UX design
- Digital rights clearance services
- General responsibilities

EXHIBIT B

FORM OF PROJECT ADDENDUM

This Addendum (the "Addendum") is in effect between _____, an agency and institution of higher education established under the laws of the State of Texas (the "Requesting Institution") and _____ ("Contractor"). This Addendum (the "Addendum") is attached to and incorporated into the previously executed Non-Exclusive Master Services Agreement (the "Agreement"), dated effective April __, 2014, in effect between The University of Texas System, an agency and institution of higher education organized under the laws of the State of Texas ("University"), and Contractor. This Addendum has an Addendum Effective Date (herein so called) of _____, 20__.

By entering into this Addendum the undersigned Requesting Institution and Contractor agree to the terms and conditions set forth in the Agreement. All of the terms and conditions of the Agreement are incorporated into this Addendum for all purposes. Unless otherwise specified in this Addendum, all defined terms used in this Addendum have the same meaning as assigned to those terms in the Agreement.

Project:

Subject to the terms of the Agreement, Contractor shall perform the following services:

[Designate services to be performed based on the list of services.]

Schedule:

Contractor will commence performance of the Project beginning on _____, 20__, and complete the Project no later than _____, 20__. Contractor shall deliver the Project in accordance with the following schedule of delivery dates:

[Specify each service and the corresponding delivery date.]

Expenses and Disbursements: Contractor may be reimbursed without mark-up for reasonable expenses (including meals, lodging, mileage and coach class airfare) validly incurred directly and solely in support of the Project and approved by Requesting Institution advance. Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, lodging, mileage, airfare and all other expenses related to travel. Further, Contractor agrees and acknowledges that Contractor will not be reimbursed by Requesting Institution for expenses that are prohibited or that exceed the allowable amounts set forth in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to Requesting Institution receipts, invoices, and other documentation as required by Requesting Institution.

Project Notification:

Contractor will, upon execution of any project addendum under this Agreement, send a fully executed copy of each project addendum to the attention of the University at the following address:

The University of Texas System

Phone: _____
Email: _____

Fees and Reimbursable Expenses and Disbursements

The Fee Cap for this Project is \$_____.

The Expense Cap for this Project is \$_____.

IN WITNESS WHEREOF, the Requesting Institution and Contractor have executed and delivered this Addendum to be effective as of the Addendum Effective Date.

[NAME OF REQUESTING INSTITUTION]

[NAME OF CONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C

BASELINE PRICING

2014 CY Baseline Pricing Per Institution

Key Personnel - \$200/hr
Offline Long and Short Format Editing - \$2250/day
News Crew Shoot Day (10 hours) - \$9000
Two Camera Shoot Day (10 Hours) - \$25,000 and up
Motion GFX – Priced per project
3D Animation – Priced per project

EXHIBIT D
HUB SUBCONTRACTING PLAN



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders contracts,**
- **32.7 percent for all special trade construction contracts,**
- **23.6 percent for professional services contracts,**
- **24.6 percent for all other services contracts, and**
- **21 percent for commodities contracts.**

-- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

Other Service HUB Goal – 24.6%

Commodities HUB Goal – 34%

Special Trades HUB Goal – 32.7%

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instructions for Option Four on the HSP Quick Check List. No other Good Faith Effort method will be accepted.
- Responses for Miscellaneous Services Agreements for indefinite duration/indefinite quantity – Two (2) part process:
 1. Submit a Letter of HUB Commitment (page 8) and a Good Faith Effort described in Option One.
 2. Submit a revised HSP prior to execution of each contract process as described in Option Four of Quick Check List.
- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP).
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

SECTION 1. RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Serious Fun Productions, LLC State of Texas VID #: N/A
Point of Contact: Tricia Bradley Phone #: 781-771-9686
E-mail Address: tricia@seriousfun.tv Fax #: 781-861-1115
- b. Is your company a State of Texas certified HUB? Yes No
- c. Requisition #: RFP ITL01202014 Bid Open Date: 01/21/2014
(mm/dd/yyyy)

Enter your company's name here: Serious Fun Productions Requisition #: ITL01202014

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
 - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)

- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/proc/hub/hub-subcontracting-plan>)

- c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - No (If No, continue to Item d, of this SECTION.)

- d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Serious Fun Productions, LLC Requisition #: ITL01202014

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

This RFP is a credentials presentation, so there is no specific project and no real budget to address. That said, we look forward to winning all or part of the production work and will amend our HUB plan to include HUB vendors.

SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report - PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentprt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Tricia Bradley Tricia Bradley Executive Producer 01/22/2014
Signature Printed Name Title Date
(mm/dd/yyyy)

- REMINDER:**
- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
 - If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

EXHIBIT E

(To be Attached to Each Project Addendum)

FERPA CONFIDENTIALITY & SECURITY ADDENDUM

This Confidentiality and Security Addendum ("Addendum") is made and entered into effective as of [](the "Effective Date") by and between The University of Texas [], an agency and institution of higher education established under the laws of the State of Texas ("Requesting Institution") and _____ ("Contractor"), (collectively "the Parties). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") which Contractor will create, receive and/or maintain on behalf of Requesting Institution pursuant to the Non-Exclusive Master Services Agreement dated ___, 2014("the Underlying Agreement").

1. **FERPA.** The Parties understand and agree that:

- a. As part of the Services that Contractor will provide pursuant to the Underlying Agreement , Contractor will is expected to receive, maintain and or create records or record systems from or on behalf of Requesting Institution that are subject to that are or contain personally identifiable information from Education Records subject to "FERPA" (collectively "FERPA Records) namely: information about students and faculty collected from existing Requesting Institution information technology systems, e.g. SIS, LMS, CRM, etc. Such FERPA Records include any data in any form whatsoever, including electronic, written and machine readable form.
- b. Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received and/or maintained by Contractor pursuant to this Agreement will remain the property of the Requesting Institution.

2. **FERPA Compliance.** As to all FERPA Records that Contractor may create, receive or maintain on behalf of Requesting Institution pursuant to the Underlying Agreement, Contractor is designated as a University Official with respect to such FERPA Records only to the extent to which Contractor is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement and understands and agrees to all of the following without reservation:

- (a) **Prohibition on Unauthorized Use or Disclosure of FERPA Records:** Contractor shall hold Requesting Institution's FERPA Records in strict confidence. Contractor shall not use or disclose FERPA Records received from or on behalf of Requesting Institution, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement, this Addendum, or a Project Addendum.

(b) Maintenance of the Security of FERPA Records: Contractor shall use the administrative, technical and physical security measures, including secure encryption approved by University in compliance with UT System Information and Resource Use & Security Policy, UTS 165, <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html> to preserve the confidentiality and security of all FERPA Records received from, or on behalf of Requesting Institution , its students or any third party pursuant to the Underlying Agreement.

(c) Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information: Contractor, within one day of discovery, shall report to Requesting Institution any use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by Requesting Institution. For purposes of this subsection (c), an unauthorized disclosure or use includes any access or use of an Education Record by a Contractor employee or agent that the employee or agent does not require to perform a Service or access by any employee or agent that does not involve the provision of such Services.

(d) Right to Audit: Upon reasonable notice, Requesting Institution maintains the right to audit, upon University's reasonable belief that Contractor is not in material compliance with the terms of this Addendum or Contractor's compliance with FERPA as to Requesting Institution's FERPA Records maintained by Contractor. Nothing herein shall be construed to include a right to computer hacking for security or vulnerability tests or for any other purpose. Any such audit conducted under this Section shall: (i) be limited to the Contractor's facilities, systems and operations relating to the FERPA Records; (ii) occur during normal business hours; and (iii) shall not interfere with Contractor's normal business operations. Further, prior to conducting any such audit, all individuals performing such audit shall sign a confidentiality agreement acceptable to both parties.

(e) Five Year Exclusion for Improper Disclosure of Education Records. Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from Requesting Institution's Education Records by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract

3. **Return of FERPA Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all FERPA Records created or received from or on behalf of Requesting Institution will be (1) returned to Requesting Institution, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any FERPA Records, Contractor will provide Requesting Institution with written notice of Contractor's intent to destroy FERPA Records. Within five (5) days after

destruction, Contractor will confirm to Requesting Institution in writing the destruction of FERPA Records.

4. **Disclosure.** Contractor will restrict disclosure of the FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by this Agreement, including requiring each subcontractor or agent to agree to such restrictions and obligations in writing.

5. **Termination.** This Addendum shall remain in effect until Requesting Institution ceases to obtain Services from Contractor or University that involve FERPA terminates this Addendum by giving Contractor _____ days' notice of its intent to terminate. Sections 2, 3, 4, and 6 shall survive termination of this Agreement.

6. **Breach.** In the event of a breach or threatened breach or intended breach of this Addendum by Contractor, the Requesting Institution, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.

7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in Travis County, Texas to enforce the terms of this Agreement.

8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

AGREED TO AND SIGNED BY THE PARTIES.

The University of Texas at []

By: _____

By: _____

Date: _____

Date: _____

2004-071-01AM
2005-016-01AM

#185

Account Services
JUN 27 2003
RECEIVED

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO:	The University of Texas System Office of Business Affairs
FROM:	UT TeleCampus
DATE:	June 18, 2003
Name of Contractor: Blackboard Learning System	
Contractor's Vendor Identification Number ¹ : 15220811788	
Total Value of Contract: \$107,000	
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):	
Fiscal Year	Amount
\$	\$
\$	\$
Account number from which contract will be funded ² : [REDACTED]	
Is the contractor a certified Historically Underutilized Business (HUB) firm? No	
Dollar value of work being subcontracted to HUB firms: \$ 0	
Purpose of Contract: Use of the Blackboard portal and platform for use in the Every Child/Every Advantage program.	
Beginning Date of Contract: June 20, 2003	
Ending Date of Contract: June 30, 2004	
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.	

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)*

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.) This is an Amendment to an agreement where all of those procedures were followed.

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$15,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was approval to enter into the contract obtained from the Governor's Budget Office by issuance of a finding of fact by that office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute? (See Texas Government Code Section 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):
(1) The nature of the previous employment with the agency:

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

(2) The date the employment was terminated: _____

(3) The annual rate of compensation for the employment at the time of termination: _____

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?
- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

⁴ The General Appropriations Act (77th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

- X 18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

*As an amendment to an original contract with Prometheus, the RFP process was followed two years ago. I interviewed Rob Robinson who headed the contract process at that time and found out that due diligence took place and these items have been addressed.

Thank you for completing this checklist.

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

Name:	Asian Pacific	Black	Hispanic	American- Indian	Woman Owned
1. _____	<input type="checkbox"/>				
2. _____	<input type="checkbox"/>				
3. _____	<input type="checkbox"/>				
4. _____	<input type="checkbox"/>				
5. _____	<input type="checkbox"/>				
6. _____	<input type="checkbox"/>				
7. _____	<input type="checkbox"/>				
8. _____	<input type="checkbox"/>				
9. _____	<input type="checkbox"/>				
10. _____	<input type="checkbox"/>				

2004-071-01 AM

Completed

The University of Texas TeleCampus

**AMENDMENT No. 1
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:
SITE: SCHEDULE OF FEES

	Initial Active User Capacity	Initial Bandwidth	Initial RAID storage	Initial Term Annual Fee (USD)
Blackboard Learning System™ License Every Child Every Advantage Program				\$32,500*
Blackboard Community Portal License Every Child Every Advantage Program				\$17,500*
Blackboard Learning System™ License University of Texas System Program				\$0**
Blackboard Community Portal License University of Texas System Program				\$0**
Blackboard ASP - Annual Use Fee University of Texas System Program				\$0
Blackboard ASP - One time Setup Fee Every Child Every Advantage Program				\$15,000
Blackboard ASP - Annual Use Fee* Every Child Every Advantage Program				\$42,000*
	10,000 (minimum)	512 kbps (minimum)	20 GB (minimum)	
Total Fees Due:				\$107,000

* These fees are annual.

** Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD

CUSTOMER: The University of Texas TeleCampus



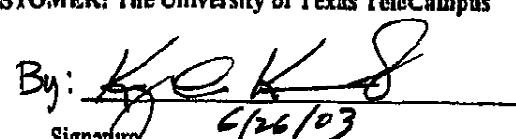
Signature

Teresa Frazier

Date:

20th of June, 2003

Teresa Frazier
Senior Director, Contracts

By: 
6/26/03

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:



Loyd, Loretta

From: Mills, Carrie
Sent: Friday, November 19, 2004 4:55 PM
To: Loyd, Loretta
Subject: FW: Attached Image
Attachments: 0138_001.pdf

This is amendment 3 and pertains to Embanet. Dr. Kelly has signed a new contract for Embanet. This contract is complete as well. Please note, there was supposed to be an amendment 2 but we would not agree to the terms that Blackboard wanted so amendment 2 never happened. This gets very confusing.

If he has questions, he can contact Robert Robinson at 4397.

Thanks,

Carrie Mills

From: canon@utsystem.edu [mailto:canon@utsystem.edu]
Sent: Friday, November 19, 2004 3:42 PM
To: Mills, Carrie
Subject: Attached Image

The University of Texas TeleCampus

**AMENDMENT No. 3
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL
AGREEMENT BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/12/04, 2004 (the "Effective Date").

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

BLACKBOARD, INC.

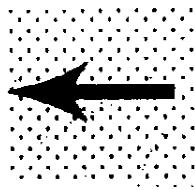

Signature
Todd Gibby

Date: 2-24-04

**CUSTOMER: The University of Texas
TeleCampus**


Signature
Philip R. Aldridge,
Interim Vice Chancellor for Business Affairs
Date: 2/27/04

RR



2004-071-01AM

*duplicate
copy*

The University of Texas TeleCampus

**AMENDMENT No. 1
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2002 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:

SITE: SCHEDULE OF FEES

	Initial Active User Capacity	Initial Bandwidth	Initial RAID storage	Initial Term Annual Fee (USD)
Blackboard Learning System™ License Every Child Every Advantage Program				\$32,500*
Blackboard Community Portal License Every Child Every Advantage Program				\$17,500*
Blackboard Learning System™ License University of Texas System Program				\$0**
Blackboard Community Portal License University of Texas System Program				\$0**
Blackboard ASP - Annual Use Fee University of Texas System Program				\$0
Blackboard ASP - One time Setup Fee Every Child Every Advantage Program				\$15,000
Blackboard ASP - Annual Use Fee* Every Child Every Advantage Program				\$42,000*
	10,000 (minimum)	512 kbps (minimum)	20 GB (minimum)	
Total Fees Due:				\$107,000

* These fees are annual.

** Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD



Signature
Todd Gibby

Date: 20th of June 2003

Teresa Frazier
Senior Director, Contracts

CUSTOMER: The University of Texas TeleCampus



By: 

Signature
Kerry Kennedy, Executive Vice Chancellor
Date: 6/26/03



2004-071

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

Rec'd UT System

JUL 03 2002

Business Affairs

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson
 Technology and Corporate Development Manager
University of Texas System TeleCampus

DATE: July 3, 2002Name of Contractor: Blackboard Inc.Total Value of Contract: \$173,100Purpose of Contract: Online courseware management system license and hostingBeginning and Ending Dates of Contract: June 30, 2002, through June 30, 2004

Note: One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES NO N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5. If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6. Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7. If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

	YES	NO	N/A	
8.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If the contract is for \$100,000 or more, have you complied with BPM 58 (http://www.utsystem.edu/bpm/58-06-00.htm) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.)
9.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Is the contract complete, with all pages, exhibits, schedules, etc., attached?
10.	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract?
11.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
12.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed: <u>Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.</u>
13.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you confirmed with the State Comptroller (http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.)

2004-071 -

#225

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BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System – TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2100 Austin TX 78701 ("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 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 those 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, 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; (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 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

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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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

5.4 Effect of Termination. Termination of the Agreement shall not relieve either party of any obligation or liability accrued heretofore 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 heretofore prior to such termination, nor affect or impair the rights of either party arising under the Agreement prior 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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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	Darcy Hardy
Title	Assistant Vice Chancellor for Academic Affairs
Address	University of Texas System, 210 West 6th Street, CTJ-Suite 2,100, Austin, TX 78701,
E-mail:	dhardy@utsystem.edu
Telephone number	512-499-4207

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

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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. EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1, BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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.

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

9.5 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.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.8 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.

9.10 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, materials 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.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, *Texas Business Corporation Act*, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, *Texas*

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, *Texas Family Code*, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, *Texas Government Code*, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an AIS ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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

CUSTOMER
University of Texas System - TeleCampus

Signature

TESS FRAZIER
SENIOR DIRECTOR

Date:

Signature

Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly Fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

Annual

$$45487 \div 12 \times 2 (\text{JUL-AUG}) 7881$$

$$22188 \div 12 \times 2 ("") 3698$$

ASP

$$\text{Set up} 15,000$$

$$3325 \times 2 (\text{JUL-AUG}) 6650$$

Learning Sets	<u>10625</u>
2001-2002	<u>43554</u>
costs	

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

		Level of License and Support	Initial Term Annual Fees (USD)
Blackboard Learning System:			\$45,487
Community Portal System :			\$22,188
ASP Set Up Fee		\$15,000	
Monthly ASP Fee		\$3,325	
Total ASP			\$94,800
Total Learning Services			\$ 10,625
Total Fees Due:			\$173,100
Designated Server Site (Physical Location of the Software); Blackboard ASP site, per Schedule 2 hereto.	Database Version:	Operating System:	Hardware Model:
CUSTOMER'S- FTE: 3900			

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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's: students resident in a degree- or certificate- granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 Copies. Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 Supported Interfaces. Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 Termination of Access to Content through Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 Terms of Use. The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 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 pursuant to the Support and Maintenance section herein.

1.10 Auto Reporting. Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 Expansion of Licensed Use. Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

Blackboard Band	Pricing
Fewer than 2,000	\$25,000 annually
2,000 to 3,999	\$32,500 annually
4,000 to 7,999	\$40,000 annually
8,000 to 14,999	\$47,500 annually
15,000 to 24,999	\$55,000 annually
25,000 to 49,999	\$62,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

Blackboard Band	Pricing
Fewer than 2,000	\$15,000 annually
2,000 to 3,999	\$17,500 annually
4,000 to 7,999	\$20,000 annually
8,000 to 14,999	\$22,500 annually
15,000 to 24,999	\$25,000 annually
25,000 to 49,999	\$27,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1 **Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. **Software Errors.** "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. **Telephone Support.** Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	rrobinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

3.5. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. Installation Assistance. In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD

5.1 Authority. Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2 Performance Warranty. Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER
Print Name and Title
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Print Name and Title
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

University of Texas - TeleCampus

**SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT**

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITIES.

1.1 **Provision of Services.** Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 **Provision of Hardware and Software.** In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 **Availability and Operational Specifications.** The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 **Managed Firewall Service.** Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 **Virtual Private Network.** Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and License, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the Initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 **Data Restoration Policy.** For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 **Customer Responsibilities.** Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 **Limited Content License.** Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"). In whole or in part, in any form, media, or technology, Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 **Virtual Private Network.** Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154 :

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BLACKBOARD LEARNING SYSTEM™:

- \$15000 initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

8.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

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

BLACKBOARD

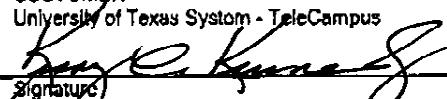


Signature	
TESS ERAZIER	
Print Name and Title	
SENIOR DIRECTOR	

Date:

CUSTOMER

University of Texas System - TeleCampus


Signature

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

University of Texas - TeloCampus

EXHIBIT A
ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE

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 customer's access list are allowed past a control 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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating to the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

Length of Unavailability	Service Credit**
up to 1 hour continuous unavailability	1 day of service fees credited (i.e., 1/30 monthly fees)
1 to 4 hours continuous unavailability	2 days of services fees credited (i.e., 1/15 monthly fees)
more than 4 hours continuous unavailability	30 days of services fees credited (i.e., 1 monthly fee)

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

**All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. Instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all instructors.

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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB or RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.

2.1 Customer will reimburse Blackboard for (i) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (ii) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expenses items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event: \$600
- 8-14 days before the scheduled event: \$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

[Signature]

Signature
Print Name and Title TESS FRAZIER
SENIOR DIRECTOR

Date: _____

CUSTOMER
University of Texas System - TeleCampus

[Signature]

Signature
Print Name and Title Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30-June, 2002

Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

Level of License and Support	Initial Term Fees (USD)
Blackboard Conversion Tool License	N/A
Total Fees Due:	N/A

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party Software in whole or in part from one computer to another over a network or enable any time-sharing 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A**3. TERM**

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

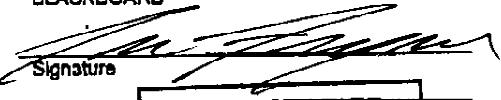
4.2. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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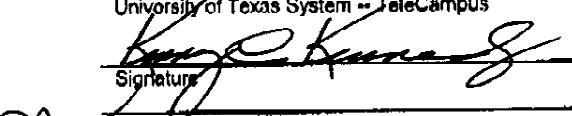
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD


Signature

Print Name and Title
Tessa Frazier
SENIOR DIRECTOR
Date:

University of Texas System -- TeleCampus


Signature

Print Name and Title
Korry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 June, 2002

Date Signed: 7/8/02

University of Texas - TeleCampus

**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

		Level of License	Initial Term Fees (USD)
Prometheus Software			\$ N/A
Total Fees Due:			\$ N/A
Designated Server Site (Physical Location of the Software): Prometheus ASP site	Database Version: Oracle	Operating System: Solaris 2.6	Hardware Model:

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc., Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include TutorNet Virtual Classroom, Oracle database and Apache.

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3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2. Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3. Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4. Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) Intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	robinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

University of Texas - TeleCampus

4.5. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7 Purchase of Additional Support and Maintenance Services. In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

4.8 Additional Services. Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

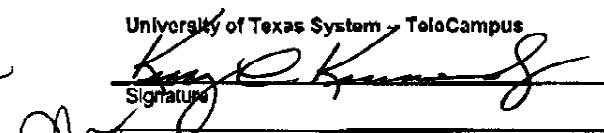
5. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

 Signature _____
 Print Name and Title _____
TESS FRAZIER
SENIOR DIRECTOR
 Date: _____

University of Texas System - TeleCampus

 Signature _____
 Print Name and Title _____
 Kerry L. Kennedy
 Executive Vice Chancellor for Business Affairs
 Date: 30 June, 2002

Date Signed: 7/8/02

2004-07-03 AM

(Original signed
01-02, 2004)

8

2004

~~HGT~~
**THE UNIVERSITY OF TEXAS SYSTEM
 OFFICE OF BUSINESS AFFAIRS
 CONTRACT PROCESSING CHECKLIST**

DRAFT

TO:	The University of Texas System Office of Business Affairs	
FROM:	UT TeleCampus	
DATE:	January 21, 2004	
Name of Contractor:	Blackboard	
Contractor's Vendor Identification Number ¹ :	52-20811788	
Total Value of Contract:	\$80,000.00	
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):		
Fiscal Year	Amount	
2003-2004	\$80,000	
	\$	
	\$	
Account number from which contract will be funded ² :		
Is the contractor a certified Historically Underutilized Business (HUB) firm? No		
Dollar value of work being subcontracted to HUB firms: \$ 0		
Purpose of Contract: provide funds to pay for technical support 24/7/365 for UTTC students		
Beginning Date of Contract: June 28, 2002 (original contract)		
Ending Date of Contract: May 31, 2004 (amendment)		
Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.		

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

4. If approval of the contract by the Board of Regents is required by Part One, Chapter 1, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Interim Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

PART 2: CONTRACTS FOR CONSULTING SERVICES — Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services and the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
 - b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
 - c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
 - d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
 - e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
 - f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):
(1) The nature of the previous employment with the agency:

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- (2) The date the employment was terminated: _____
- (3) The annual rate of compensation for the employment at the time of termination: _____

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

 17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)



b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?



c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:



d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:

(1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?

(2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?



f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?



g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

⁴ The General Appropriations Act (77th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?

i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

Thank you for completing this checklist.

Hubbard, Marta

From: Smith, Edwin
Sent: Thursday, January 29, 2004 1:30 PM
To: Hubbard, Marta
Cc: King, Monica
Subject: RE: Blackboard Amendment No3 DRAFT (2).doc

Marta, the forwarded version is acceptable and is approved as to form by the Office of General Counsel. Please let me know if you need any additional documentation from me.

Edwin M. Smith
Office of General Counsel
University of Texas System
512.499.4491

-----Original Message-----

From: Hubbard, Marta
Sent: Wednesday, January 21, 2004 3:21 PM
To: Smith, Edwin
Subject: Blackboard Amendment No3 DRAFT (2).doc

Edwin,
Blackboard has accepted this version. Does this work for UT?

Thanks.
Marta

The University of Texas TeleCampus

**AMENDMENT No. 3
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL
AGREEMENT BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/12/04, 2004 (the "Effective Date").

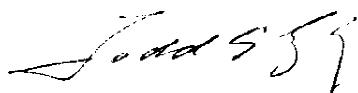
The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

BLACKBOARD, INC.



Signature
Todd Gibby

Date: 2-24-04

**CUSTOMER: The University of Texas
TeleCampus**



RR

Signature
Philip R. Aldridge,
Interim Vice Chancellor for Business Affairs

Date: 2/27/04

2004-071-01AM
2005-016-01AM

#185

Account Services
JUN 27 2003
RECEIVED

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO:	The University of Texas System Office of Business Affairs
FROM:	UT TeleCampus
DATE:	June 18, 2003
Name of Contractor: Blackboard Learning System	
Contractor's Vendor Identification Number ¹ : 15220811788	
Total Value of Contract: \$107,000	
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):	
<u>Fiscal Year</u>	<u>Amount</u>
\$	\$
\$	\$
Account number from which contract will be funded ² : [REDACTED]	
Is the contractor a certified Historically Underutilized Business (HUB) firm? No	
Dollar value of work being subcontracted to HUB firms: \$ 0	
Purpose of Contract: Use of the Blackboard portal and platform for use in the Every Child/Every Advantage program.	
Beginning Date of Contract: June 20, 2003	
Ending Date of Contract: June 30, 2004	
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.	

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?
-
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)*
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.) This is an Amendment to an agreement where all of those procedures were followed.
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- _____

-

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$15,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was approval to enter into the contract obtained from the Governor's Budget Office by issuance of a finding of fact by that office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute? (See Texas Government Code Section 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):
(1) The nature of the previous employment with the agency:

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

(2) The date the employment was terminated: _____

(3) The annual rate of compensation for the employment at the time of termination: _____

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)
- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?
- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

⁴ The General Appropriations Act (77th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

- X 18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

*As an amendment to an original contract with Prometheus, the RFP process was followed two years ago. I interviewed Rob Robinson who headed the contract process at that time and found out that due diligence took place and these items have been addressed.

Thank you for completing this checklist.

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

Name:	Asian Pacific	Black	Hispanic	American- Indian	Woman Owned
1. _____	<input type="checkbox"/>				
2. _____	<input type="checkbox"/>				
3. _____	<input type="checkbox"/>				
4. _____	<input type="checkbox"/>				
5. _____	<input type="checkbox"/>				
6. _____	<input type="checkbox"/>				
7. _____	<input type="checkbox"/>				
8. _____	<input type="checkbox"/>				
9. _____	<input type="checkbox"/>				
10. _____	<input type="checkbox"/>				

2004-071-01AM

Completed

The University of Texas TeleCampus

**AMENDMENT No. 1
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:

SITE: SCHEDULE OF FEES

	Initial Active User Capacity	Initial Bandwidth	Initial RAID storage	Initial Term Annual Fee (USD)
Blackboard Learning System™ License Every Child Every Advantage Program				\$32,500*
Blackboard Community Portal License Every Child Every Advantage Program				\$17,500*
Blackboard Learning System™ License University of Texas System Program				\$0**
Blackboard Community Portal License University of Texas System Program				\$0**
Blackboard ASP - Annual Use Fee University of Texas System Program				\$0
Blackboard ASP - One time Setup Fee Every Child Every Advantage Program				\$15,000
Blackboard ASP - Annual Use Fee* Every Child Every Advantage Program				\$42,000*
	10,000 (minimum)	512 kbps (minimum)	20 GB (minimum)	
Total Fees Due:				\$107,000

* These fees are annual.

** Customer receives, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD

CUSTOMER: The University of Texas TeleCampus



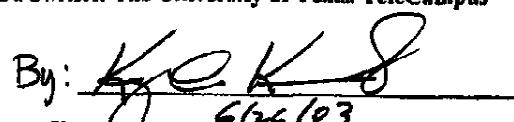
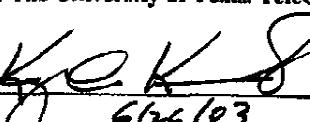
Signature

Teresa Frazier

Date:

20th of June, 2003

Teresa Frazier
Senior Director, Contracts


By: 

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:

6/26/03



Loyd, Loretta

From: Mills, Carrie
Sent: Friday, November 19, 2004 4:55 PM
To: Loyd, Loretta
Subject: FW: Attached Image
Attachments: 0138_001.pdf

This is amendment 3 and pertains to Embanet. Dr. Kelly has signed a new contract for Embanet. This contract is complete as well. Please note, there was supposed to be an amendment 2 but we would not agree to the terms that Blackboard wanted so amendment 2 never happened. This gets very confusing.

If he has questions, he can contact Robert Robinson at 4397.

Thanks,

Carrie Mills

From: canon@utsystem.edu [mailto:canon@utsystem.edu]
Sent: Friday, November 19, 2004 3:42 PM
To: Mills, Carrie
Subject: Attached Image

The University of Texas TeleCampus

**AMENDMENT No. 3
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL
AGREEMENT BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/21/04, 2004 (the "Effective Date").

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

BLACKBOARD, INC.



Signature
Todd Gibby

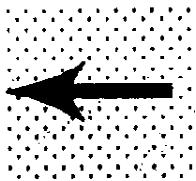
Date: 2-24-04

**CUSTOMER: The University of Texas
TeleCampus**



Signature
Philip R. Aldridge,
Interim Vice Chancellor for Business Affairs
Date: 2/21/04

RK



2004-07-01AM

*duplicate
copy*

The University of Texas TeleCampus

**AMENDMENT No. 1
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:

SITE: SCHEDULE OF FEES

	Initial Active User Capacity	Initial Bandwidth	Initial RAID storage	Initial Term Annual Fee (USD)
Blackboard Learning System™ License Every Child Every Advantage Program				\$32,500*
Blackboard Community Portal License Every Child Every Advantage Program				\$17,500*
Blackboard Learning System™ License University of Texas System Program				\$0**
Blackboard Community Portal License University of Texas System Program				\$0**
Blackboard ASP - Annual Use Fee University of Texas System Program				\$0
Blackboard ASP - One time Setup Fee Every Child Every Advantage Program				\$15,000
Blackboard ASP - Annual Use Fee* Every Child Every Advantage Program				\$42,000*
	10,000 (minimum)	512 kbps (minimum)	20 GB (minimum)	
Total Fees Due:				\$107,000

* These fees are annual.

** Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWIM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD



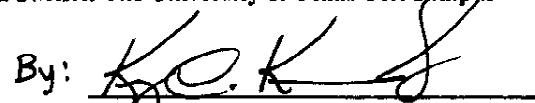
Signature

Teresa Frazier

Date: 20th of June, 2003

Teresa Frazier
Senior Director, Contracts

CUSTOMER: The University of Texas TeleCampus



By: Kerry Kennedy

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:

6/26/03



2004-071

Rec'd UT System

JUL 05 2002

Business Affairs

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson
Technology and Corporate Development Manager
University of Texas System TeleCampus

DATE: July 3 , 2002

Name of Contractor: Blackboard Inc.

Total Value of Contract: \$173,100

Purpose of Contract: Online courseware management system license and hosting

Beginning and Ending Dates of Contract: June 30 , 2002 , through June 30 , 2004

Note: One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES NO N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5. If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6. Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7. If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

	YES	NO	N/A	
8.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If the contract is for \$100,000 or more, have you complied with BPM 58 (http://www.utsystem.edu/bpm/58-06-00.htm) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.)
9.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Is the contract complete, with all pages, exhibits, schedules, etc., attached?
10.	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract?
11.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
12.	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed: Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.
13.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you confirmed with the State Comptroller (http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.)

2004-071 -

#225

University of Texas • TeleCampus

BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System – TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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

University of Texas - TeleCampus

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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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

6. FEES; PAYMENT

2002 - CONFIDENTIAL AND PROPRIETARY

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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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	Darcy Hardy
Title	Assistant Vice Chancellor for Academic Affairs
Address	University of Texas System, 210 West 6th Street, CTJ-Suite 2,100, Austin, TX 78701,
E-mail:	dhardy@utsystem.edu
Telephone number	512-499-4207

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

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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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1, BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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.

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

9.5 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.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension or performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.9 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.

9.10 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval of authorization of any government authority.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1898 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, Texas Family Code, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, Texas Government Code, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

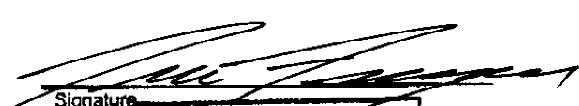
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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

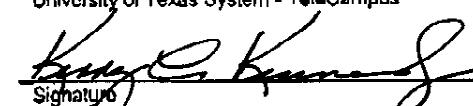
(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an AIS ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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


 Signature _____
 Print Name and Title **TESS FRAZIER**
SENIOR DIRECTOR
 Date: _____

CUSTOMER
University of Texas System - TeleCampus


 Signature _____
 Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 JUNE, 2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

$$\begin{array}{rcl} \text{Annual} \\ 45487 \div 12 \times 2 (\text{Jul}, \text{Aug}) & 7881 \\ 22188 \div 12 \times 2 (") & 3698 \end{array}$$

$$\begin{array}{rcl} \text{ASP} \\ \text{Set up} & 15,000 \\ 3325 \times 2 (\text{Jul}, \text{Aug}) & 6650 \end{array}$$

$$\begin{array}{rcl} \text{Learning Sess} & 10625 \\ \hline 2001-2002 & 43554 \\ \text{costs} & \end{array}$$

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

	Level of License and Support	Initial Term Annual Fees (USD)	
Blackboard Learning System:		\$45,487	
Community Portal System :		\$22,188	
ASP Set Up Fee	\$15,000		
Monthly ASP Fee	\$3,325		
Total ASP		\$94,800	
Total Learning Services		\$ 10,625	
Total Fees Due:		\$173,100	
Designated Server Site (Physical Location of the Software); Blackboard ASP site, per Schedule 2 hereto.	Database Version:	Operating System:	
		Hardware Model:	
CUSTOMER'S- FTE: 3900			

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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's: students resident in a degree- or certificate- granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 Copies. Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 Supported Interfaces. Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 Termination of Access to Content through Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 Terms of Use. The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 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 pursuant to the Support and Maintenance section herein.

1.10 Auto Reporting. Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 Expansion of Licensed Use. Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

Blackboard Band	Pricing
Fewer than 2000	\$25,000 annually
2,000 to 3,999	\$32,500 annually
4,000 to 7,999	\$40,000 annually
8,000 to 14,999	\$47,500 annually
15,000 to 24,999	\$55,000 annually
25,000 to 49,999	\$62,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

Blackboard Band	Pricing
Fewer than 2000	\$15,000 annually
2,000 to 3,999	\$17,500 annually
4,000 to 7,999	\$20,000 annually
8,000 to 14,999	\$22,500 annually
15,000 to 24,999	\$25,000 annually
25,000 to 49,999	\$27,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. Software Errors. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. Telephone Support. Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-789-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	robinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	m.anderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	k.logan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	j.holloway@utsystem.edu
Telephone number:	512-499-4207

3.5. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. Installation Assistance. In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. 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 support services are billable to Customer at Blackboard's then-existing service rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD

5.1 Authority. Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2 Performance Warranty. Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

University of Texas - TeleCampus

SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITES.

1.1 Provision of Services. Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 Provision of Hardware and Software. In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 Availability and Operational Specifications. The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 Managed Firewall Service. Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 Virtual Private Network. Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and License, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the Initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 Data Restoration Policy. For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 Customer Responsibilities. Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 Limited Content License. Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"). In whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 Virtual Private Network. Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154 :

University of Texas - TeleCampus

BLACKBOARD LEARNING SYSTEM™:

- \$15000 initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT, BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

8.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title
TESS FRAZIER
SENIOR DIRECTOR

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date:

Date Signed:

7/8/02

University of Texas - TeleCampus

EXHIBIT A
ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE

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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

Length of Unavailability	Service Credit**
up to 1 hour continuous unavailability	1 day of service fees credited (i.e., 1/30 monthly fees)
1 to 4 hours continuous unavailability	2 days of service fees credited (i.e., 1/15 monthly fees)
more than 4 hours continuous unavailability	30 days of services fees credited (i.e., 1 monthly fee)

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

**All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. Instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all instructors.

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 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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 26th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB of RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.

2.1 Customer will reimburse Blackboard for (I) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (II) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expense items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event=\$600
- 8-14 days before the scheduled event=\$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title

Print Name and Title

SENIOR DIRECTOR

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date:

Date: 30 June, 2002

Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

	Level of License and Support	Initial Term Fees (USD)
Blackboard Conversion Tool License		N/A
Total Fees Due:		N/A

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, Instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A

3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2 **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD

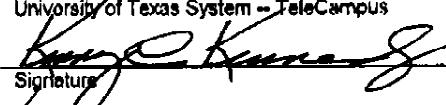


Signature

Date:

Print Name and Title
TESS FRAZIER
SENIOR DIRECTOR

University of Texas System - TeleCampus


Signature

Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 June, 2002

Date Signed: 7/8/02

University of Texas - TeleCampus

**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

		Level of License	Initial Term Fees (USD)
Prometheus Software			\$ N/A
Total Fees Due:			\$ N/A
Designated Server Site (Physical Location of the Software): Prometheus ASP site	Database Version: Oracle	Operating System: Solaris 2.6	Hardware Model:

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc, Box 200164 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include Tutorsoft Virtual Classroom, Oracle database and Apache.

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3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2 Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3 Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4 Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	robinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

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4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

5. **LIMITED WARRANTY BY CUSTOMER**

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

Signature

TESS FRAZIER
Print Name and Title
SENIOR DIRECTOR

Date:

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Print Name and Title
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

2004-071-04AM

#118

2005

Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

JAN 05 2005

Business Affairs

TO:	The University of Texas System Office of Business Affairs									
FROM:	UT TeleCampus									
DATE:	January 4, 2005									
Name of Contractor:	Blackboard, Inc.									
Contractor's Vendor Identification Number ¹ :	522081178									
Total Value of Contract:	\$35,000									
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Fiscal Year</th> <th style="text-align: center;">Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">20004-2005</td> <td style="text-align: center;">\$35,000</td> </tr> <tr> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table>		Fiscal Year	Amount	20004-2005	\$35,000	\$	\$	\$	\$
Fiscal Year	Amount									
20004-2005	\$35,000									
\$	\$									
\$	\$									
Account number from which contract will be funded ² :										
Is the contractor a certified Historically Underutilized Business (HUB) firm?	N/A									
Dollar value of work being subcontracted to HUB firms:	\$ N/A									
Purpose of Contract:	Allow Blackboard to pay Embanet									
Beginning Date of Contract:	June 28, 2002 original contract – September 1, 2004 for Amendment #4									
Ending Date of Contract:	June 28, 2004 with automatic renewal terms of one year as long as UTTC uses Blackboard, but December 31, 2004 for Amendment #4									
Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>										
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.										

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

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¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
-
-
-

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question



14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)



15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

PART 2: CONTRACTS FOR CONSULTING SERVICES — Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?

17. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.

- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)

- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

Acct. & Purch.- Svcs.

FEB 17 2005

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⁴ The General Appropriations Act (78th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons?
 -
 -
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U.T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS



- 19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

❖❖❖ Thank you for completing this checklist. ❖❖❖

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

Name:	Asian Pacific	Black	Hispanic	American- Indian	Woman Owned
1. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Hubbard, Marta

From: Smith, Edwin
Sent: Thursday, February 10, 2005 2:17 PM
To: Hubbard, Marta
Subject: RE: BlackBoard Amendment #4

Marta, I had just looked over it today and the amendment is fine, e.g. approved as to form. I am in the middle of getting a new secretary and may not be able to get out a letter for a day or two. Is this email sufficient for you? Edwin.

From: Hubbard, Marta
Sent: Thursday, February 10, 2005 1:56 PM
To: Hubbard, Marta; Smith, Edwin
Subject: RE: BlackBoard Amendment #4
Importance: High

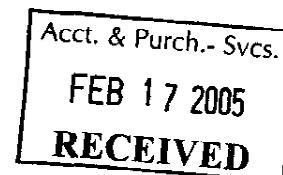
Edwin,
Any comments?
Marta

From: Hubbard, Marta
Sent: Friday, February 04, 2005 2:58 PM
To: Smith, Edwin
Subject: BlackBoard Amendment #4
Importance: High

Edwin,
I am attaching an Amendment #4 for the Blackboard contract. This amendment makes it possible for the UTTC to make the last payment to Blackboard. Blackboard has had a contract with Embanet to provide technical support to our students 24/7/365, but the original agreement didn't cover through December 2004. We went through the RFP process to get an agreement with a company to provide this service directly, but a decision was not made in time for the Fall semester. Please review the amendment and let me know whether it covers all of the bases.

Thanks.
Marta

Marta E. Hubbard, Manager
Program Support Services
UT TeleCampus
Immediate Past President, TxDLA
702 Colorado Street, Suite 4.100
Austin, TX 78701-2901
512/499-4212
512/499-4715 fax
<http://www.telecampus.utsystem.edu>



01/05/2005 13:23 FAX 2024634863

BLACKBOARD

002

The University of Texas TeleCampus

**AMENDMENT No. 4
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL
AGREEMENT BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of September 1, 2004 (the "Effective Date") and ends December 31, 2004.

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice not to exceed \$35,000. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 4, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

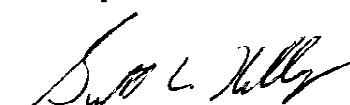
BLACKBOARD, INC.

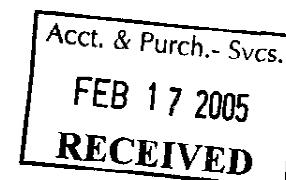


Signature
Todd Gibby

Date: 11/11/04

**CUSTOMER: The University of Texas
TeleCampus**


 Signature
 Scott C. Kelley
 Executive Vice Chancellor for Business Affairs
 Date:



2004-071-02RN

~~H92~~

2005

Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

NOV 23 2004

Business Affairs

TO:	The University of Texas System Office of Business Affairs	
FROM:	Dawn Jones, Institute for Public School Initiatives	
DATE:	November 23, 2004	
Name of Contractor: Blackboard Inc.		
Contractor's Vendor Identification Number ¹ : 15220811788		
Total Value of Contract: \$7,000		
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):		
Fiscal Year	Amount	
	\$	
	\$	
	\$	
Account number from which contract will be funded ² : [REDACTED]		
Is the contractor a certified Historically Underutilized Business (HUB) firm? No		
Dollar value of work being subcontracted to HUB firms: \$ -0-		
Purpose of Contract: Extension of period of platform/hosting services for TRACK		
Beginning Date of Contract: December 1, 2004		
Ending Date of Contract: January 31, 2005		
Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.		

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
-
- _____
-
- _____
-

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

-
14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)
-
15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
-

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
17. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.html>)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
-
-
-

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

⁴ The General Appropriations Act (78th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
 - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
 - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

- 
- 19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

Thank you for completing this checklist.



THE UNIVERSITY OF TEXAS SYSTEM
601 COLORADO STREET AUSTIN, TEXAS 78701-2982

Institute for Public School Initiatives
Telephone 512/499-4712 Fax 512/322-3798

November 23, 2004

Blackboard Inc.
1899 L Street, NW, 5th Floor
Washington, DC 20036

To Whom It May Concern:

In accordance with the original agreement between The University of Texas System ("UT System") and Blackboard Inc. ("Blackboard") dated June 30, 2002 ("Agreement") and in accordance with the amendment to said agreement dated June 20, 2003 ("Amendment No. 1"), UT System hereby exercises its option to renew an additional two (2) month term of hosting services specifically related to the TRACK project. The option to renew the Agreement for additional periods of time remains in effect.

The two (2) month renewal period shall begin December 1, 2004 and end January 31, 2005, at a cost of \$3,500 per month, for a total not to exceed \$7,000. Blackboard shall invoice UT System for the services provided. Invoices should be directed to

Institute for Public School Initiatives
601 Colorado Street, 3rd Floor
Austin, Texas 78701
Attn: Dawn Jones

Additionally, please note that all future notices and communications, including delivery of written notices pursuant to Section 2251.054, *Texas Government Code*, shall be made to UT System as follows:

Mr. Scott C. Kelley
Executive Vice Chancellor for Business Affairs
201 West 7th Street, 2nd Floor
Austin, Texas 78701
Fax: 512/499-4289
Email: LegalNotices@utsystem.edu

With copies to:

Institute for Public School Initiatives
702 Colorado Street, 5th Floor
Austin, Texas 78701
Attention: Executive Director

UT TeleCampus
702 Colorado Street, 4th Floor
Austin, Texas 78701
Attention: Dr. Darcy Hardy

Sincerely,



Scott C. Kelley
Executive Vice Chancellor for Business Affairs

cc: Dr. Kelly Raley, IPSI
Dr. Darcy Hardy, UT TeleCampus

University of Texas - TeleCampus

BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2.100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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

University of Texas - TeleCampus

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 Non-disclosure and Nonuse. Each party receiving Confidential Information, including but not limited to, materials containing Confidential Information shall (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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 such termination, nor affect or impair the rights of either party arising under the Agreement prior to such termination or expiration, except as expressly provided herein.

6. FEES; PAYMENT

2002 - CONFIDENTIAL AND PROPRIETARY

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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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 or 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	Darcy Hardy
Title	Assistant Vice Chancellor for Academic Affairs
Address	University of Texas System, 210 West 6th Street, CTJ-Suite 2.100, Austin, TX 78701,
E-mail:	dhardy@utsystem.edu
Telephone number	512-499-4207

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

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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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1. BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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 Term 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.

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

9.5 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.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may recover.

9.8 Dispute Resolution Clause; Mandated by Chapter 2280, Texas Government Code. To the extent that Chapter 2280, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2280 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2280, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.9 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.

9.10 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, materials 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.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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 prevail over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, Texas Family Code, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, Texas Government Code, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an aie ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

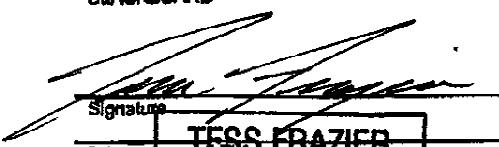
- (1) providing equivalent access for effective use by both visual and nonvisual means;
- (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and

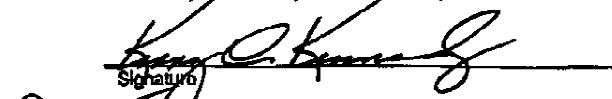
(3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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

BLACKBOARD


 Signature
 Print Name and Title
TESS FRAZIER
SENIOR DIRECTOR
 Date:

CUSTOMER
 University of Texas System - TeleCampus


 Signature
 Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
 Date: 20 JUNE, 2002

Date Signed: 7/8/02

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

	Level of License and Support	Initial Term Annual Fees (USD)
Blackboard Learning System:		\$45,487
Community Portal System :		\$22,188
ASP Set Up Fee	\$15,000	
Monthly ASP Fee	\$3,325	
Total ASP		\$94,800
Total Learning Services		\$ 10,625
Total Fees Due:		\$173,100
Designated Server Site (Physical Location of the Software): Blackboard ASP site, per Schedule 2 hereto.	Database Version:	Operating System:
		Hardware Model:
CUSTOMER'S FTE: 3900		

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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's students residing in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 **Copies.** Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 **Supported Interfaces.** Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 **Third Party Software/Content.** Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 **Termination of Access to Content through Third Party Software.** Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercially reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 **Terms of Use.** The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 **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 pursuant to the Support and Maintenance section herein.

1.10 **Auto Reporting.** Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 **Expansion of Licensed Use.** Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

Blackboard Band	Pricing
Fewer than 2,000	\$25,000 annually
2,000 to 3,999	\$32,500 annually
4,000 to 7,999	\$40,000 annually
8,000 to 14,999	\$47,500 annually
15,000 to 24,999	\$55,000 annually
25,000 to 49,999	\$62,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

Blackboard Band	Pricing
Fewer than 2,000	\$15,000 annually
2,000 to 3,999	\$17,500 annually
4,000 to 7,999	\$20,000 annually
8,000 to 14,999	\$22,500 annually
15,000 to 24,999	\$25,000 annually
25,000 to 49,999	\$27,500 annually

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc., Box 200164 Pittsburgh, PA 15261-0164. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1. Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. Software Errors. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. Telephone Support. Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-8264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	robinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logan
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

3.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. **Installation Assistance.** In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER.

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD.

5.1. **Authority.** Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2. **Performance Warranty.** Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

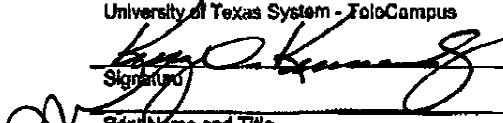
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD


Signature
Print Name and Title
TESS FRAZIER
SENIOR DIRECTOR
Date:

CUSTOMER

University of Texas System - TeleCampus


Signature
Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 JUNE 2002

Date Signed:

7/8/02

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SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus, having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITIES.

1.1 **Provision of Services.** Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 **Provision of Hardware and Software.** In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 **Availability and Operational Specifications.** The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 **Managed Firewall Services.** Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 **Virtual Private Network.** Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and Licensee, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 **Data Restoration Policy.** For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/Import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 **Customer Responsibilities.** Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 **Limited Content License.** Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"), in whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 **Virtual Private Network.** Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154:

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BLACKBOARD LEARNING SYSTEM™:

- \$15000 Initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 Gb at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successors and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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Informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

8.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title

Print Name and Title

TESS FRAZIER
SENIOR DIRECTOR

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date:

Date: 30 JUNE, 2002

Date Signed: 7/8/02

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EXHIBIT A
ASP SERVICES SPECIFICATIONS-AS OF THE AVAILABLE DATE

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 control 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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

Length of Unavailability	Service Credit*
up to 1 hour continuous unavailability	1 day of service fees credited (i.e., 1/30 monthly fees)
1 to 4 hours continuous unavailability	2 days of service fees credited (i.e., 1/15 monthly fees)
more than 4 hours continuous unavailability	30 days of service fees credited (i.e., 1 monthly fee)

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

**All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
 - Monitoring and event notification procedures are standardized, and are described in a separate document.

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. Instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all instructors.

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 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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB of RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.

2.1 Customer will reimburse Blackboard for (I) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (II) international telephone charges. ALL payments shall be sent to Blackboard Inc., Box 200154 Pittsburgh, PA 15251-0154. Expenses items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event: \$600
- 8-14 days before the scheduled event: \$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

TESS FRAZIER

Print Name and Title

SENIOR DIRECTOR

Date:

Signature

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 28-June, 2002

Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

	Level of License and Support	Initial Term Fees (USD)
Blackboard Conversion Tool License		N/A
Total Fees Due:		N/A

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, Instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A**3. TERM**

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD

Signature

Print Name and Title

TESS FRAZIER
SENIOR DIRECTOR

Date:

University of Texas System - TeleCampus

Signature

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

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**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

		Level of License	Initial Term Fees (USD)
Prometheus Software			\$ N/A
Total Fees Due:			\$ N/A
Designated Server Site (Physical Location of the Software): Prometheus ASP site	Database Version: Oracle	Operating System: Solaris 2.6	Hardware Model:

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus Software"). Pursuant to its agreements with those third parties, Blackboard hereby grants to Customer a non-exclusive, nontransferable license to load and/or operate and use the Third Party Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all procurements, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc. Box 200164 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include Tutorsoft Virtual Classroom, Oracle database and Apache.

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3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for on-site support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2 Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3 Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-6264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4 Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) Intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

Name:	Rob Robinson
Title:	Associate Director
E-mail:	robinson@utsystem.edu
Telephone number:	512-499-4207
Name:	Michael Anderson
Title:	Opportunity Manager
E-mail:	manderson@utsystem.edu
Telephone number:	512-499-4207
Name:	Kristin Logen
Title:	Systems Analyst
E-mail:	klogan@utsystem.edu
Telephone number:	512-499-4207
Name:	Jimmy Holloway
Title:	Network Analyst
E-mail:	jholloway@utsystem.edu
Telephone number:	512-499-4207

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4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all Instructors.

4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

5. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

Signature

TESS FRAZIER
SENIOR DIRECTOR

Print Name

Title

Date:

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Print Name and Title

Date: 06 June, 2002

Date Signed: 7/8/02

-016-
2005-01-022004-071-01RN 2005
Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

SEP 23 2004
Business Affairs

TO:	The University of Texas System Office of Business Affairs									
FROM:	UT TeleCampus									
DATE:	September 22, 2004									
Name of Contractor:	Blackboard, Inc.									
Contractor's Vendor Identification Number ¹ :	522081178									
Total Value of Contract:	\$97,000 for one year renewal									
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding-bottom: 5px;">Fiscal Year</th> <th style="text-align: center; padding-bottom: 5px;">Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding-top: 5px;">2004-2005</td> <td style="text-align: center; padding-top: 5px;">\$97,000</td> </tr> <tr> <td style="text-align: center; padding-top: 5px;">\$</td> <td style="text-align: center; padding-top: 5px;">\$</td> </tr> <tr> <td style="text-align: center; padding-top: 5px;">\$</td> <td style="text-align: center; padding-top: 5px;">\$</td> </tr> </tbody> </table>		Fiscal Year	Amount	2004-2005	\$97,000	\$	\$	\$	\$
Fiscal Year	Amount									
2004-2005	\$97,000									
\$	\$									
\$	\$									
Account number from which contract will be funded ² :										
Is the contractor a certified Historically Underutilized Business (HUB) firm?	N/A									
Dollar value of work being subcontracted to HUB firms:	\$ N/A									
Purpose of Contract:	Online courseware management system license and hosting									
Beginning Date of Contract:	June 20, 2002 original contract – July 1, 2004 for renewal									
Ending Date of Contract:	June 20, 2005 with automatic renewal terms of one year as long as UTTC uses Blackboard									
Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>renewal</i>										
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.										

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Acc'tg & Purch. Svcs.
SEP 23 2004
RECEIVED

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

if Blackboard went out of business, UTTC
Courses would not have a platform on
which to run

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services and the contract exceeds \$250,000, has it been approved by the Board of Regents?
17. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 – <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the Texas Register after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS — If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:
-
-
-

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

⁴ The General Appropriations Act (78th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.
- _____
- _____
- _____
- _____

~*~ Thank you for completing this checklist. ~*~

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

Name:	Asian Pacific	Black	Hispanic	American-Indian	Woman Owned
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

UT TeleCampus

expand your options • learn online • www.uttc.org

The University of Texas System
702 Colorado Street
Austin, TX 78701

September 22, 2004

Blackboard
1899 L Street, NW, 5th Floor
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University: Mr. Scott C. Kelley
Executive Vice Chancellor for Business Affairs
601 Colorado Street
Austin, Texas 78701
Fax (512) 499-4289
Email: LcgalNotices@utsystem.edu

With copy to: UT TeleCampus
UT System Administration
702 Colorado Street
Austin, Texas 78701
Attention: Dr. Darcy Hardy

The yearly fees during the one (1) year renewal period, starting on July 1, 2004 and ending on June 30, 2005 will equal a total of \$97,000. It is divided as described in Schedule 1 and Schedule 2 -- an annual fee equal to \$35,000 for the Blackboard Learning System, an annual fee equal to \$20,000 for the Community Portal, and an annual fee equal to \$42,000 for the Blackboard Learning System/Community ASP.

Sincerely,

Randy Walker
for
Scott C. Kelley
Executive Vice Chancellor
For Business Affairs

c: Darcy Hardy
Rob Robinson
Marta Hubbard
Carrie Mills

Acct. & Purch.- Svcs.
SEP 23 2004
RECEIVED

HAT

2004-07-03 AM

Original signed
01-02, #225

8

2004

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

D:

TO:	The University of Texas System Office of Business Affairs	
FROM:	UT TeleCampus	
DATE:	January 21, 2004	
Name of Contractor:	Blackboard	
Contractor's Vendor Identification Number ¹ :	5Z-20811788	
Total Value of Contract:	\$80,000.00	
Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):		
Fiscal Year	Amount	
2003-2004	\$80,000	
	\$	
	\$	
Account number from which contract will be funded ² : [REDACTED]		
Is the contractor a certified Historically Underutilized Business (HUB) firm? No		
Dollar value of work being subcontracted to HUB firms: \$ 0		
Purpose of Contract: provide funds to pay for technical support 24/7/365 for UTTC students		
Beginning Date of Contract: June 28, 2002 (original contract)		
Ending Date of Contract: May 31, 2004 (amendment)		
Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.		

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Interim Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- _____
- _____
- _____

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
-
16. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):
(1) The nature of the previous employment with the agency:

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- (2) The date the employment was terminated: _____
- (3) The annual rate of compensation for the employment at the time of termination: _____

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:

- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?

- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?

- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

⁴ The General Appropriations Act (77th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

• Yes No N/A

h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?

i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

~~~~~ Thank you for completing this checklist. ~~~~



**Hubbard, Marta**

**From:** Smith, Edwin  
**Sent:** Thursday, January 29, 2004 1:30 PM  
**To:** Hubbard, Marta  
**Cc:** King, Monica  
**Subject:** RE: Blackboard Amendment No3 DRAFT (2).doc

Marta, the forwarded version is acceptable and is approved as to form by the Office of General Counsel. Please let me know if you need any additional documentation from me.

*Edwin M. Smith*  
*Office of General Counsel*  
*University of Texas System*  
*512.499.4491*

-----Original Message-----

**From:** Hubbard, Marta  
**Sent:** Wednesday, January 21, 2004 3:21 PM  
**To:** Smith, Edwin  
**Subject:** Blackboard Amendment No3 DRAFT (2).doc

Edwin,  
Blackboard has accepted this version. Does this work for UT?

Thanks.  
Marta

The University of Texas TeleCampus

**AMENDMENT No. 3  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL  
AGREEMENT BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/27/04, 2004 (the "Effective Date").

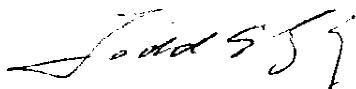
The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

**BLACKBOARD, INC.**



Signature  
Todd Gibby

Date: 2-24-04

**CUSTOMER: The University of Texas  
TeleCampus**

  
RR

Signature  
Philip R. Aldridge,  
Interim Vice Chancellor for Business Affairs  
Date: 2/27/04

2004-071-01AM  
2005-016-01AM

#185  
Account Services  
JUN 27 2003  
RECEIVED

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

|                                                                                                                                                                                   |                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs |
| FROM:                                                                                                                                                                             | UT TeleCampus                                             |
| DATE:                                                                                                                                                                             | June 18, 2003                                             |
| Name of Contractor: Blackboard Learning System                                                                                                                                    |                                                           |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                           |
| Total Value of Contract: \$107,000                                                                                                                                                |                                                           |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                           |
| Fiscal Year                                                                                                                                                                       | Amount                                                    |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
| Account number from which contract will be funded <sup>2</sup> :                                                                                                                  |                                                           |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No                                                                                                  |                                                           |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                                                                                       |                                                           |
| Purpose of Contract: Use of the Blackboard portal and platform for use in the Every Child/Every Advantage program.                                                                |                                                           |
| Beginning Date of Contract: June 20, 2003                                                                                                                                         |                                                           |
| Ending Date of Contract: June 30, 2004                                                                                                                                            |                                                           |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                           |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

- X      1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
- X         2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

<sup>2</sup> Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPPC HUB Program Manager.)\*

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPPC HUB Program Manager.) This is an Amendment to an agreement where all of those procedures were followed.

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

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**Yes No N/A**

**If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question**

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

**PART 2: CONTRACTS FOR CONSULTING SERVICES** — Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$15,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was approval to enter into the contract obtained from the Governor's Budget Office by issuance of a finding of fact by that office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute? (See Texas Government Code Section 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):  
(1) The nature of the previous employment with the agency:

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

(2) The date the employment was terminated:

---

(3) The annual rate of compensation for the employment at the time of termination:

---

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/qvtoc.html>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
- 
- 
- 

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:

- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?

- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?

- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?

- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

<sup>4</sup> The General Appropriations Act (77<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

---

#### PART 4: ALL CONTRACTS

- X   18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

\*As an amendment to an original contract with Prometheus, the RFP process was followed two years ago. I interviewed Rob Robinson who headed the contract process at that time and found out that due diligence took place and these items have been addressed.

---

♪♪♪ Thank you for completing this checklist. ♪♪♪

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific         | Black                    | Hispanic                 | American-<br>Indian      | Woman<br>Owned           |
|-----------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> |

2004-071-01AM

Completed

The University of Texas TeleCampus

**AMENDMENT No. 1  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1  
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

**1. The following Schedule of Fees is hereby added to Schedule 1:**

**SITE: SCHEDULE OF FEES**

|                                                                            | Initial Active User Capacity | Initial Bandwidth     | Initial RAID storage | Initial Term Annual Fee (USD) |
|----------------------------------------------------------------------------|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License<br>Every Child Every Advantage Program |                              |                       |                      | \$32,500*                     |
| Blackboard Community Portal License<br>Every Child Every Advantage Program |                              |                       |                      | \$17,500*                     |
| Blackboard Learning System™ License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard Community Portal License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard ASP - Annual Use Fee<br>University of Texas System Program      |                              |                       |                      | \$0                           |
| Blackboard ASP - One-time Setup Fee<br>Every Child Every Advantage Program |                              |                       |                      | \$15,000                      |
| Blackboard ASP - Annual Use Fee*<br>Every Child Every Advantage Program    |                              |                       |                      | \$42,800*                     |
|                                                                            | 10,000<br>(minimum)          | 512 kbps<br>(minimum) | 20 GB<br>(minimum)   |                               |
| <b>Total Fees Due:</b>                                                     |                              |                       |                      | <b>\$107,800</b>              |

\* These fees are annual.

\*\* Customer receives, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

**2. The following language is hereby added to the end of Section 1.1 of Schedule 1:**

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of such Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

**3. The following language is hereby added to Schedule 1 as Section 1.12:**

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

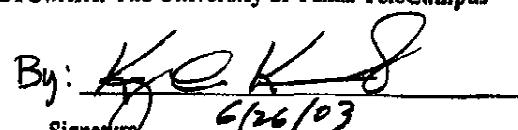
**BLACKBOARD**

  
Signature  
Teresa Frazier

Date: 20th of June, 2003

Teresa Frazier  
Senior Director, Contracts

**CUSTOMER: The University of Texas TeleCampus**

By:   
Signature  
Kerry Kennedy

Kerry Kennedy, Executive Vice Chancellor  
Date:

  
TBR

## Loyd, Loretta

---

**From:** Mills, Carrie  
**Sent:** Friday, November 19, 2004 4:55 PM  
**To:** Loyd, Loretta  
**Subject:** FW: Attached Image  
**Attachments:** 0138\_001.pdf

This is amendment 3 and pertains to Embanet. Dr. Kelly has signed a new contract for Embanet. This contract is complete as well. Please note, there was supposed to be an amendment 2 but we would not agree to the terms that Blackboard wanted so amendment 2 never happened. This gets very confusing.

---

If he has questions, he can contact Robert Robinson at 4397.

Thanks,

*Carrie Mills*

---

**From:** canon@utsystem.edu [mailto:[canon@utsystem.edu](mailto:canon@utsystem.edu)]  
**Sent:** Friday, November 19, 2004 3:42 PM  
**To:** Mills, Carrie  
**Subject:** Attached Image

The University of Texas TeleCampus

**AMENDMENT No. 3  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL  
AGREEMENT BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/12/04, 2004 (the "Effective Date").

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

**BLACKBOARD, INC.**



Signature  
Todd Gibby

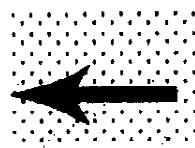
Date: 2-24-04

**CUSTOMER: The University of Texas  
TeleCampus**



*RR*

Signature  
Philip R. Aldridge,  
Interim Vice Chancellor for Business Affairs  
Date: 2/27/04



2004-071-01AM

*duplicate  
copy*

The University of Texas TeleCampus

**AMENDMENT No. 1  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1  
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

**1. The following Schedule of Fees is hereby added to Schedule 1:**

**SITE: SCHEDULE OF FEES**

|                                                                            | Initial Active User Capacity | Initial Bandwidth     | Initial RAID storage | Initial Term Annual Fee (USD) |
|----------------------------------------------------------------------------|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License<br>Every Child Every Advantage Program |                              |                       |                      | \$32,500*                     |
| Blackboard Community Portal License<br>Every Child Every Advantage Program |                              |                       |                      | \$17,500*                     |
| Blackboard Learning System™ License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard Community Portal License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard ASP - Annual Use Fee<br>University of Texas System Program      |                              |                       |                      | \$0                           |
| Blackboard ASP - One time Setup Fee<br>Every Child Every Advantage Program |                              |                       |                      | \$15,000                      |
| Blackboard ASP - Annual Use Fee*<br>Every Child Every Advantage Program    |                              |                       |                      | \$42,000*                     |
|                                                                            | 10,000<br>(minimum)          | 512 kbps<br>(minimum) | 20 GB<br>(minimum)   |                               |
| <b>Total Fees Due:</b>                                                     |                              |                       |                      | <b>\$107,000</b>              |

\* These fees are annual.

\*\* Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

**2. The following language is hereby added to the end of Section 1.1 of Schedule 1:**

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

**3. The following language is hereby added to Schedule 1 as Section 1.12:**

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

**2.4 Usage Reports.** Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

**BLACKBOARD**



Signature

Teresa Frazier

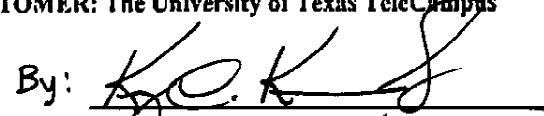
Date:

20th of June, 2003

Teresa Frazier  
Senior Director, Contracts

**CUSTOMER: The University of Texas TeleCampus**

By:



6/26/03

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:



2004-071

Rec'd UT System

JUL 03 2002

Business Affairs

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson  
Technology and Corporate Development Manager  
University of Texas System TeleCampus

DATE: July 3 , 2002

Name of Contractor: Blackboard Inc.

Total Value of Contract: \$173,100

Purpose of Contract: Online courseware management system license and hosting

Beginning and Ending Dates of Contract: June 30 , 2002 , through June 30 , 2004

**Note:** One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES    NO    N/A

1.    If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2.    If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3.    If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4.    If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5.    If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6.   Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7.    If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

|     | YES                                 | NO                                  | N/A                                                                                                                                                                                                                                                                                                                                                                    |
|-----|-------------------------------------|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | If the contract is for \$100,000 or more, have you complied with BPM 58 ( <a href="http://www.utsystem.edu/bpm/58-06-00.htm">http://www.utsystem.edu/bpm/58-06-00.htm</a> ) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.)                                       |
| 9.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Is the contract complete, with all pages, exhibits, schedules, etc., attached?                                                                                                                                                                                                                                                                                         |
| 10. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract?                                                                                                                                                                                                                                                |
| 11. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?                                                                                                             |
| 12. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed:<br><u>Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.</u>                                                                                         |
| 13. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Have you confirmed with the State Comptroller ( <a href="http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html">http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html</a> ) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.) |



2004-071 -

#225

University of Texas • TeleCampus

**BLACKBOARD MASTER TERMS**

These Blackboard Master Terms ("Master Terms"), made this 30<sup>th</sup> day of JUNE, 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 University of Texas System – TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2.100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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

## University of Texas - TeleCampus

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 Non-disclosure and Nonuse.** Each party receiving Confidential Information, including but not limited to, materials containing Confidential Information shall (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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

#### 6. FEES; PAYMENT

2002 - CONFIDENTIAL AND PROPRIETARY

**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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

**6.4 Taxes.** The fees hereunder do not include 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. 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             | Darcy Hardy                                                                         |
| Title            | Assistant Vice Chancellor for Academic Affairs                                      |
| Address          | University of Texas System, 210 West 6th Street, CTJ-Suite 2,100, Austin, TX 78701, |
| E-mail:          | dhardy@utsystem.edu                                                                 |
| Telephone number | 512-499-4207                                                                        |

#### 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

## University of Texas - TeleCampus

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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1. BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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.** To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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.

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

**9.5 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.

**9.6 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.

**9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

**9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code.** To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension or performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

**9.9 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.

**9.10 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 of authorization of any government authority.

**9.11 U.S. Government Sales.** If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

**9.12 Export Control.** Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

**9.13 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.

**9.14 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 shall 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.

**9.15 Miscellaneous.**

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, *Texas Business Corporation Act*, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

*Government Code*, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, *Texas Family Code*, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, *Texas Government Code*, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

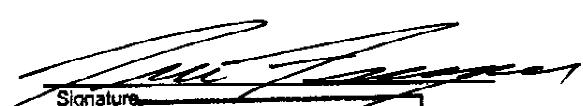
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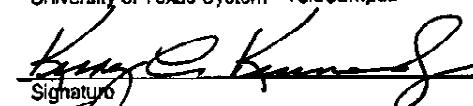
(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an AIS ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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

  
 Signature \_\_\_\_\_  
 Print Name and Title **TESS FRAZIER**  
**SENIOR DIRECTOR**  
 Date: \_\_\_\_\_

  
 Signature \_\_\_\_\_  
 Print Name and Title  
 Kerry L. Kennedy  
 Executive Vice Chancellor for Business Affairs  
 Date: 30 JUNE, 2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly Fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

$$\begin{array}{l} \text{Annual} \\ 45487 \div 12 \times 2 (\text{jul-y}) 7881 \\ 22188 \div 12 \times 2 (" ) 3498 \end{array}$$

$$\begin{array}{ll} \text{ASP} & \\ \text{Set up} & 15,000 \\ 3325 \times 2 (\text{jul-y}) & 6650 \end{array}$$

$$\begin{array}{r} \text{Learning Sess} \quad 10625 \\ \hline 2001-2002 43554 \\ \text{costs} \end{array}$$

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1  
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES**

|                                                                                                            | Level of License and Support | Initial Term Annual Fees (USD)    |
|------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------------|
| <b>Blackboard Learning System:</b>                                                                         |                              | \$45,487                          |
| <b>Community Portal System :</b>                                                                           |                              | \$22,188                          |
| <b>ASP Set Up Fee</b>                                                                                      | \$15,000                     |                                   |
| <b>Monthly ASP Fee</b>                                                                                     | \$3,325                      |                                   |
| <b>Total ASP</b>                                                                                           |                              | \$94,800                          |
| <b>Total Learning Services</b>                                                                             |                              | \$ 10,625                         |
| <b>Total Fees Due:</b>                                                                                     |                              | \$173,100                         |
| Designated Server Site (Physical Location of the Software);<br>Blackboard ASP site, per Schedule 2 hereto, | Database Version:            | Operating System: Hardware Model: |
| CUSTOMER'S- FTE: 3900                                                                                      |                              |                                   |

**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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's; students resident in a degree- or certificate- granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

**1.2 Copies.** Customer may make one (1) copy of the Software for backup and archival purposes.

**1.3 Supported Interfaces.** Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

**1.4 Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, . make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

**1.5 Third Party Software/Content.** Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

**1.6 Termination of Access to Content through Third Party Software.** Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

**1.7 Terms of Use.** The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

**1.8 Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

**1.9 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 pursuant to the Support and Maintenance section herein.

**1.10 Auto Reporting.** Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

**1.11 Expansion of Licensed Use.** Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

**LEARNING SYSTEM**

| Blackboard Band  | Pricing           |
|------------------|-------------------|
| Fewer than 2000  | \$25,000 annually |
| 2,000 to 3,999   | \$32,500 annually |
| 4,000 to 7,999   | \$40,000 annually |
| 8,000 to 14,999  | \$47,500 annually |
| 15,000 to 24,999 | \$55,000 annually |
| 25,000 to 49,999 | \$62,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

**COMMUNITY PORTAL SYSTEM:**

| Blackboard Band  | Pricing           |
|------------------|-------------------|
| Fewer than 2000  | \$15,000 annually |
| 2,000 to 3,999   | \$17,500 annually |
| 4,000 to 7,999   | \$20,000 annually |
| 8,000 to 14,999  | \$22,500 annually |
| 15,000 to 24,999 | \$25,000 annually |
| 25,000 to 49,999 | \$27,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

**2. FEES**

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. All Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

**3. SUPPORT AND MAINTENANCE**

**3.1 Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

**3.2 Software Errors.** "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

**3.3 Telephone Support.** Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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**3.4. Error Resolution.**

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

|                   |                        |
|-------------------|------------------------|
| Name:             | Rob Robinson           |
| Title:            | Associate Director     |
| E-mail:           | rrobinson@utsystem.edu |
| Telephone number: | 512-499-4207           |
| Name:             | Michael Anderson       |
| Title:            | Opportunity Manager    |
| E-mail:           | manderson@utsystem.edu |
| Telephone number: | 512-499-4207           |
| Name:             | Kristin Logan          |
| Title:            | Systems Analyst        |
| E-mail:           | klogan@utsystem.edu    |
| Telephone number: | 512-499-4207           |
| Name:             | Jimmy Holloway         |
| Title:            | Network Analyst        |
| E-mail:           | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207           |

**3.5. Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

**3.6. Installation Assistance.** In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

**3.7. 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

**4. LIMITED WARRANTY BY CUSTOMER**

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

**5. LIMITED WARRANTY BY BLACKBOARD**

**5.1. Authority.** Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

**5.2. Performance Warranty.** Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER  
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Print Name and Title

Kerry L. Kennedy  
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

University of Texas - TeleCampus

**SCHEDULE 2  
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT**

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

**1. BLACKBOARD RESPONSIBILITES.**

**1.1 Provision of Services.** Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

**1.2 Provision of Hardware and Software.** In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

**1.3 Availability and Operational Specifications.** The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

**1.4 Managed Firewall Service.** Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

**1.5 Virtual Private Network.** Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and License, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the initial Term of this Agreement for the fees set forth in Section 3 below.

**1.6 Data Restoration Policy.** For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the lost server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

**2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.**

**2.1 Customer Responsibilities.** Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

**2.2 Limited Content License.** Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"). In whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

**2.3 Virtual Private Network.** Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

**3. FEES.**

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154:

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**BLACKBOARD LEARNING SYSTEM™:**

- \$15000 Initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95<sup>th</sup> percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

**VIRTUAL PRIVATE NETWORK\***

- \$1500 set-up fee
- \$1000 a month

\*VPN is a Customer option in accordance with Section 1.5 herein.

**DATA RESTORATION POLICY**

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

**PROMETHEUS HOSTING**

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

**TEST AND DEVELOPMENT HOSTING**

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

**4. TAXES.**

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

**5. TERM; TERMINATION.**

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

**6. DEFAULT.**

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

**7. CUSTOMER WARRANTY AND INDEMNIFICATION.**

7.1 **Customer Warranty.** Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 **Customer Indemnification.** To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorney's fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

**8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.**

8.1 **Disclaimer of Warranty.** THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 **Indemnification.** If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

**8.3 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

**8.4 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

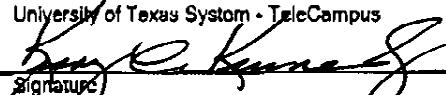
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD

  
 Signature: **TESS FRAZIER**  
 Print Name and Title: **SENIOR DIRECTOR**  
 Date:

CUSTOMER

University of Texas System - TeleCampus

  
 Signature:

Print Name and Title  
 Kary L. Kennedy  
 Executive Vice Chancellor for Business Affairs  
 Date: 30 JUNE, 2002

Date Signed: 7/8/02

## University of Texas - TeleCampus

**EXHIBIT A**  
**ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE**

**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 control 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.

**NETWORK:**

- Redundant internal connections through a minimum of three separate walls.

**VIRTUAL PRIVATE NETWORK:**

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

**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.

**INITIAL ACCESS DATE:**

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

**ACCESSIBILITY/SERVICE CREDIT:**

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes\*. Unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

| Length of Unavailability                    | Service Credit**                                          |
|---------------------------------------------|-----------------------------------------------------------|
| up to 1 hour continuous unavailability      | 1 day of service fees credited (i.e., 1/30 monthly fees)  |
| 1 to 4 hours continuous unavailability      | 2 days of service fees credited (i.e., 1/15 monthly fees) |
| more than 4 hours continuous unavailability | 30 days of service fees credited (i.e., 1 monthly fee)    |

**\*Critical Processes:**

Web Server  
 Java Application Server  
 Database Server

\*\*All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

**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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

**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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

#### **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.

#### **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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

#### **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.

#### **TECHNICAL SUPPORT**

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. Instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions, instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all Instructors.

#### **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 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.

#### **CLIENT RESPONSIBILITIES**

- • The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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**BLACKBOARD LEARNING SOLUTIONS SCHEDULE**

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28<sup>th</sup>, 2002. 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 Agreement.

**TOTAL DAYS OF LEARNING SERVICES: 5\*****TOTAL COST OF LEARNING SERVICES: \$10,625**

\*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

**1. BLACKBOARD LEARNING SOLUTIONS**

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB or RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

**2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.**

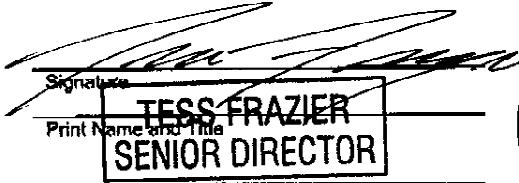
2.1 Customer will reimburse Blackboard for (I) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (II) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expense items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event=\$600
- 8-14 days before the scheduled event=\$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

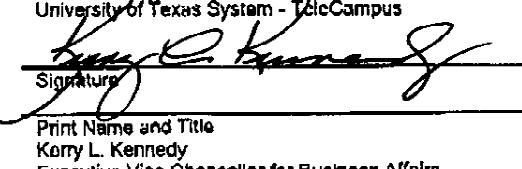


Signature \_\_\_\_\_

|                      |
|----------------------|
| Print Name and Title |
| TESS FRAZIER         |
| SENIOR DIRECTOR      |

Date: \_\_\_\_\_

CUSTOMER  
University of Texas System - TeleCampus

  
 Signature \_\_\_\_\_

Print Name and Title  
Korry L. Kennedy  
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

## University of Texas - TeleCampus

## CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

|                                    | Level of License and Support | Initial Term Fees (USD) |
|------------------------------------|------------------------------|-------------------------|
| Blackboard Conversion Tool License |                              | N/A                     |
| Total Fees Due:                    |                              | N/A                     |

## 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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, Instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party Software in whole or in part from one computer to another over a network or enable any time-sharing 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 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 pursuant to the Support and Maintenance section herein.

## 2. FEES. N/A

## 3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

## 4. SUPPORT AND MAINTENANCE

4.1 Support. Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2 Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD

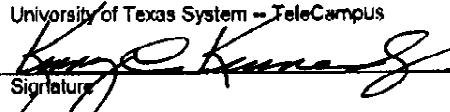


Signature

Print Name and Title  
**Tessa Frazier**  
**SENIOR DIRECTOR**

Date:

University of Texas System - TeleCampus

  
Signature

Print Name and Title  
Karry L. Kennedy  
Executive Vice Chancellor for Business Affairs  
Date: 30 June, 2002

Date Signed: 7/8/02

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**SCHEDULE  
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES**

|                                                                                    |                             | Level of License                 | Initial Term Fees (USD) |
|------------------------------------------------------------------------------------|-----------------------------|----------------------------------|-------------------------|
| <b>Prometheus Software</b>                                                         |                             |                                  | \$ N/A                  |
| <b>Total Fees Due:</b>                                                             |                             |                                  | \$ N/A                  |
| Designated Server Site (Physical Location of the Software):<br>Prometheus ASP site | Database Version:<br>Oracle | Operating System:<br>Solaris 2.6 | Hardware Model:         |

**1. LICENSE**

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

**2. FEES**

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

\* Other Third Party Software Products may include TutorNet Virtual Classroom, Oracle database and Apache.

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3 TERM

**3. TERM**  
This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

#### **4 MAINTENANCE AND OTHER SERVICES**

**4.1 Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

efforts to pass on any rights or benefits such third party may be willing to provide to Customer at its discretion. 4.2. **Software Errors.** "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

**4.3. Telephone Support.** Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

## Resolve the software error in 44 Error Resolution

**4.4. Error Resolution.**  
(a) **Severity Code 1.** Severity Code 1 Implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3**. Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will

(e) **Out-of-Scope**. A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

**Please list Customer's technical contacts to receive the Maintenance and Support Services:**

|                   |                                                                    |
|-------------------|--------------------------------------------------------------------|
| Name:             | Rob Robinson                                                       |
| Title:            | Associate Director                                                 |
| E-mail:           | <a href="mailto:rrobinson@utsystem.edu">rrobinson@utsystem.edu</a> |
| Telephone number: | 512-499-4207                                                       |
| Name:             | Michael Anderson                                                   |
| Title:            | Opportunity Manager                                                |
| E-mail:           | <a href="mailto:manderon@utsystem.edu">manderon@utsystem.edu</a>   |
| Telephone number: | 512-499-4207                                                       |
| Name:             | Kristin Logan                                                      |
| Title:            | Systems Analyst                                                    |
| E-mail:           | <a href="mailto:klogan@utsystem.edu">klogan@utsystem.edu</a>       |
| Telephone number: | 512-499-4207                                                       |
| Name:             | Jimmy Holloway                                                     |
| Title:            | Network Analyst                                                    |
| E-mail:           | <a href="mailto:jholloway@utsystem.edu">jholloway@utsystem.edu</a> |
| Telephone number: | 612-409-4207                                                       |

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4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all Instructors.

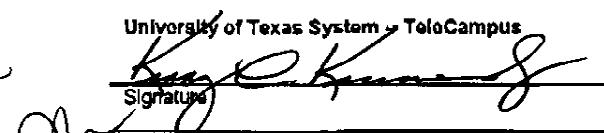
4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

#### 5. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

**BLACKBOARD**  
  
 Signature  
 Print Name and Title  
**TESS FRAZIER**  
**SENIOR DIRECTOR**  
 Date:

**University of Texas System - TeleCampus**  
  
 Signature  
 Print Name and Title  
 Kerry L. Kennedy  
 Executive Vice Chancellor for Business Affairs  
 Date: 30 June, 2002

Date Signed: 7/8/02

2004-071-05AM

Rec'd UT System 2006

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

JUN 09 2006

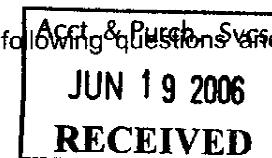
Business Affairs

b

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs <u>#243</u> |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|--|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                         |  |
| DATE:                                                                                                                                                                             | May 31, 2006                                                          |  |
| Departmental Contract Administrator: Marta Hubbard                                                                                                                                |                                                                       |  |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                                       |  |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                                       |  |
| Total Value of Contract: \$13,175                                                                                                                                                 |                                                                       |  |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                                       |  |
| Fiscal Year                                                                                                                                                                       | Amount                                                                |  |
| 2005-2006                                                                                                                                                                         | \$13,175                                                              |  |
|                                                                                                                                                                                   | \$                                                                    |  |
|                                                                                                                                                                                   | \$                                                                    |  |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                                       |  |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                                       |  |
| Dollar value of work being subcontracted to HUB firms: \$0                                                                                                                        |                                                                       |  |
| Purpose of Contract: Modify existing schedule to include Blackboard ASP Staging Environment Services for a period of 3 months                                                     |                                                                       |  |
| Beginning Date of Contract: June 10, 2006 for amendment – Original contract – June 20, 2002                                                                                       |                                                                       |  |
| Ending Date of Contract: September 14, 2006 -- Automatic renewal terms as long as UTTC uses Blackboard                                                                            |                                                                       |  |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input type="checkbox"/> No <input type="checkbox"/>                                         |                                                                       |  |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                                       |  |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A



1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by [BPM 48](http://www.utsystem.edu/BPM/48.htm) (<http://www.utsystem.edu/BPM/48.htm>)?
- 
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

Information Services as required by Section 23 of the Information Resources Use and Security Policy?

3. If the contract is for the purchase or development of an electronic system that will use social security numbers, have you obtained the approval of the System Administration SSN Coordinator as required by section 3.6.4.2 of Business Procedures Memorandum 66?

4. a. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

- b. If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with BPM 48?

5. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit, as required by Texas Government Code Section 321.020? ([http://www.capitol.state.tx.us/statutes/gv\\_toc.htm](http://www.capitol.state.tx.us/statutes/gv_toc.htm))

6. If approval of the contract by the Board of Regents is required by Series 10501, Section 2.1 and Section 3, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

7. If the answer to Question 5 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

8. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Series 10501, Section 5.1(b), Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)

9. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

10. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-05.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with BPM 58 and the HUB Action Plan, please contact the Senior Director for HUB Programs in the Office of HUB Development.)

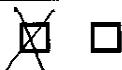
11. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

12. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

13. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor:

Yes No N/A

*"No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract."*



14. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
  
  15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- \_\_\_\_\_
- \_\_\_\_\_

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.



16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)
  
17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.



18. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.



- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 – <http://www.utsystem.edu/BPM/43.htm>.) (Please attach a copy of the signed form.)



- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)



- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the Texas Register after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

---

(2) The date the employment was terminated:

---

(3) The annual rate of compensation for the employment at the time of termination:

---



---

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

---

19. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
- 
- 

<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

**PART 4: ALL CONTRACTS**

20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

 Thank you for completing this checklist. 

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific         | Black                    | Hispanic                 | American-<br>Indian      | Woman<br>Owned           |
|-----------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> |

**OFFICE OF GENERAL COUNSEL**  
**THE UNIVERSITY OF TEXAS SYSTEM**  
201 West 7th Street  
Austin, Texas 78701-2902  
TELEPHONE (512) 499-4491  
FAX (512) 499-3414

EDWIN M. SMITH  
*Attorney*

May 9, 2006

**MEMORANDUM**

TO: Marta Hubbard  
FROM: Edwin M. Smith *EMS*  
SUBJECT: University of Texas at Austin  
Blackboard Learning System – Community Portal  
Schedule 1 and the ASP Schedule 2 Agreements  
(OGC# 92393)

---

I have reviewed the proposed Amendment No. 5 to the Blackboard Learning System/Community Portal Schedule 1 and the ASP Schedule 2 Agreements Dated June 30, 2002 between Blackboard Inc. and The University of Texas – Telecampus. Amendment No. 5 is approved as to legal form. However, please take note of the automatic renewal terms and the 30 day notice required in order to not renew.

Let me know if you have any questions.

Enclosures

EMS/cj

cc: Barry D. Burgdorf  
Jim Phillips



VOID IF EXECUTED AFTER: JUNE 30, 2006

Customer: University of Texas - Telecampus



## AMENDMENT No. 5

**TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1 AND  
THE ASP SCHEDULE 2 AGREEMENTS DATED JUNE 30, 2002 BETWEEN BLACKBOARD  
INC. AND UNIVERSITY OF TEXAS - TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 and the ASP Schedule 2 Agreements dated June 30, 2002 ("Schedule") between Blackboard, Inc. ("Blackboard") and University of Texas - Telecampus ("Customer") is made as of \_\_\_\_\_, 2006.

The purpose of this amendment is to modify the existing Schedules to include the Blackboard ASP Staging Environment Services for a period of three (3) months, June 15, 2006 to September 14, 2006.

The parties hereby agree to the following terms and conditions:

1. Blackboard Learning System/Community Portal Schedule 1, Section SCHEDULE OF FEES is hereby modified to include:

**SCHEDULE OF FEES**

| Product Description                                       | Initial Active User Capacity | Initial Bandwidth | Initial storage | Initial Term Annual Fees (USD) |
|-----------------------------------------------------------|------------------------------|-------------------|-----------------|--------------------------------|
| <b>Blackboard ASP – Staging Environment – Setup Fee</b>   | <b>\$5000 set up</b>         |                   |                 | <b>\$5,000</b>                 |
| <b>Blackboard ASP – Staging Environment – monthly fee</b> |                              |                   |                 | <b>\$8,175</b>                 |
| <b>Total Fees Due:</b>                                    |                              |                   |                 | <b>\$13,175</b>                |

2. Blackboard ASP Schedule 2, Section 3, entitled FEES is hereby modified to include:

## + Blackboard Staging Environment

- Initial Term is a minimum of three (3) months and renews automatically for successive 6-month terms (each, a "Renewal Term"), unless either Party provides notice of its desire not to renew no less than thirty (30) days prior to the end of the Initial-Term or then-current Renewal Term.
- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
- Initial Term Fee includes 20 GB of storage and 512 kbps of bandwidth measured using the 95<sup>th</sup> percentile calculation (as defined above) delivered via 100 Mbps Internet uplink and Managed Firewall Service.
- The Staging Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
- The Staging Environment is designed for Customer to test and approve new update/upgrade software and changes in software configuration before implementing such software in a production environment. It may not be used for production purposes.

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT

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

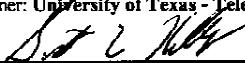
BLACKBOARD

Signature:   
**TESS FRAZIER – VICE PRESIDENT**

Print Name and Title

Date: *6/13/06*

Customer: University of Texas - Telecampus

Signature:   
**Scott Kelly, Exec Vice Chan Bus Affairs**

Print Name and Title

Date: *6/13/06*

2004-071-06AM

Rec'd UT System

2007

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

DEC 15 2006

Business Affairs

7

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs #100 |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                  |          |
| DATE:                                                                                                                                                                             | December 15, 2006                                              |          |
| Departmental Contract Administrator: Marta Hubbard                                                                                                                                |                                                                |          |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                                |          |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                                |          |
| Total Value of Contract: \$10,900                                                                                                                                                 |                                                                |          |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                                |          |
|                                                                                                                                                                                   | Fiscal Year                                                    | Amount   |
|                                                                                                                                                                                   | 2006-2007                                                      | \$10,900 |
|                                                                                                                                                                                   | \$                                                             | \$       |
|                                                                                                                                                                                   | \$                                                             | \$       |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                                |          |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                                |          |
| Dollar value of work being subcontracted to HUB firms: \$0                                                                                                                        |                                                                |          |
| Purpose of Contract Renewal letter                                                                                                                                                |                                                                |          |
| Beginning Date of Contract: October 1, 2006 for renewal – Original contract – June 20, 2002                                                                                       |                                                                |          |
| Ending Date of Contract: Automatic renewal terms as long as UTTC uses Blackboard                                                                                                  |                                                                |          |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                              |                                                                |          |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                                |          |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as required by Section 23 of the Information Resources Use and Security Policy?

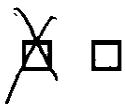
<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

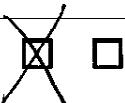
Yes No N/A

3. If the contract is for the purchase or development of an electronic system that will use social security numbers, have you obtained the approval of the System Administration SSN Coordinator as required by section 3.6.4.2 of Business Procedures Memorandum 66?
- 
4. a. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?  
b. If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with BPM 48?
- 
5. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit, as required by Texas Government Code Section 321.020? (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- 
6. If approval of the contract by the Board of Regents is required by Series 10501, Section 2.1 and Section 3, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
- 
7. If the answer to Question 5 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 
8. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Series 10501, Section 5.1(b), Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)
- 
9. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 
10. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-05.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with BPM 58 and the HUB Action Plan, please contact the Senior Director for HUB Programs in the Office of HUB Development.)
- 
11. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
- 
12. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 
13. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-

Yes No N/A

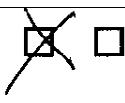


14. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?



15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- 

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.



16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)



17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

18. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.



- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 — <http://www.utsystem.edu/BPM/M3.htm>.) (Please attach a copy of the signed form.)



- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)



- c. Was an invitation to present offers posted in the Texas Register a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm.>)

e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm.>) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm.>):

(1) The nature of the previous employment with the agency:

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(2) The date the employment was terminated:

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(3) The annual rate of compensation for the employment at the time of termination:

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**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

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19. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm.>)

b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

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<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

**PART 4: ALL CONTRACTS**

20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

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☺☺ Thank you for completing this checklist. ☺☺

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name: | Asian Pacific            | Black                               | Hispanic                            | American-Indian          | Woman Owned              |
|-------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| 1.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 5.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 6.    | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 7.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 8.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9.    | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 10.   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |

VOID IF EXECUTED AFTER: December 29, 2006

Customer: University of Texas - Telecampus

**Blackboard****AMENDMENT No. 6**

**TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1 AND  
THE ASP SCHEDULE 2 AGREEMENTS DATED JUNE 30, 2002 BETWEEN BLACKBOARD  
INC. AND UNIVERSITY OF TEXAS - TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 and the ASP Schedule 2 Agreements dated June 30, 2002 ("Schedule") between Blackboard, Inc. ("Blackboard") and University of Texas - Telecampus ("Customer") is made as of \_\_\_\_\_, 2006.

The purpose of this amendment is to modify the existing Schedules to extend the Blackboard ASP Staging Environment Services for a period of four (4) months, September 16, 2006 to January 15, 2007.

The parties hereby agree to the following terms and conditions:

1. Blackboard Learning System/Community Portal Schedule 1, Section SCHEDULE OF FEES is hereby modified to include:

**SCHEDULE OF FEES**

| Product Description                    | Initial Active User Capacity | Initial Bandwidth | Initial storage | Initial Term Annual Fees (USD) |
|----------------------------------------|------------------------------|-------------------|-----------------|--------------------------------|
| Blackboard ASP – Staging Environment – |                              |                   |                 | \$10,900                       |
|                                        |                              |                   |                 |                                |
| <b>Total Fees Due:</b>                 |                              |                   |                 | <b>\$10,900</b>                |

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT

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

BLACKBOARD

Signature

TESS FRAZIER – VICE PRESIDENT

Print Name and Title

Date:

Customer: University of Texas

Signature

Scott C. Kelley

Print Name and Title **Executive Vice Chancellor  
for Business Affairs**

Date:

**DEC 15 2006**

2004-071-07AM

2007

Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

DEC 15 2006

Business Affairs

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs <i>REC'D</i> |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|----------|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                          |          |
| DATE:                                                                                                                                                                             | December 15, 2006                                                      |          |
| Departmental Contract Administrator: Marta Hubbard                                                                                                                                |                                                                        |          |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                                        |          |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                                        |          |
| Total Value of Contract: \$13,000                                                                                                                                                 |                                                                        |          |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                                        |          |
|                                                                                                                                                                                   | Fiscal Year                                                            | Amount   |
|                                                                                                                                                                                   | 2006-2007                                                              | \$13,000 |
|                                                                                                                                                                                   | \$                                                                     | \$       |
|                                                                                                                                                                                   | \$                                                                     | \$       |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                                        |          |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                                        |          |
| Dollar value of work being subcontracted to HUB firms: \$0                                                                                                                        |                                                                        |          |
| Purpose of Contract Renewal letter                                                                                                                                                |                                                                        |          |
| Beginning Date of Contract: October 1, 2006 for renewal – Original contract – June 20, 2002                                                                                       |                                                                        |          |
| Ending Date of Contract: Automatic renewal terms as long as UTTC uses Blackboard                                                                                                  |                                                                        |          |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                              |                                                                        |          |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                                        |          |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as required by Section 23 of the Information Resources Use and Security Policy?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If the contract is for the purchase or development of an electronic system that will use social security numbers, have you obtained the approval of the System Administration SSN Coordinator as required by section 3.6.4.2 of Business Procedures Memorandum 66?
- 
4. a. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?  
b. If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with BPM 48?
- 
5. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit, as required by Texas Government Code Section 321.020? (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- 
6. If approval of the contract by the Board of Regents is required by Series 10501, Section 2.1 and Section 3, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
- 
7. If the answer to Question 5 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 
8. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Series 10501, Section 5.1(b), Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)
- 
9. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 
10. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-05.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with BPM 58 and the HUB Action Plan, please contact the Senior Director for HUB Programs in the Office of HUB Development.)
- 
11. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
- 
12. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 
13. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

Yes No N/A

14. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- 

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

18. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.

- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>) (Please attach a copy of the signed form.)

- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- c. Was an invitation to present offers posted in the Texas Register a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

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(2) The date the employment was terminated:

---

(3) The annual rate of compensation for the employment at the time of termination:

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### PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

19. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

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<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "Independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U.T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

**PART 4: ALL CONTRACTS**

20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

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Thank you for completing this checklist.

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name: | Asian Pacific            | Black                    | Hispanic                            | American-Indian          | Woman Owned              |
|-------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|
| 1.    | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 5.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 6.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 7.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 8.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 9.    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| 10.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |

VOID IF EXECUTED AFTER: December 29, 2006

Customer: University of Texas - Telecampus



Blackboard

**AMENDMENT No. 7  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1 AND  
THE ASP SCHEDULE 2 AGREEMENTS DATED JUNE 30, 2002 BETWEEN BLACKBOARD  
INC. AND UNIVERSITY OF TEXAS - TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 and the ASP Schedule 2 Agreements dated June 30, 2002 ("Schedule") between Blackboard, Inc. ("Blackboard") and University of Texas - Telecampus ("Customer") is made as of \_\_\_\_\_, 2006.

The purpose of this amendment is to modify the existing Schedules to include the Blackboard ASP Test Environment Services for a period of twelve (12) months, January 16, 2007 to January 15, 2008.

The parties hereby agree to the following terms and conditions:

1. Blackboard Learning System/Community Portal Schedule 1, Section SCHEDULE OF FEES is hereby modified to include:

**SCHEDULE OF FEES**

| Product Description                        | Initial Active User Capacity | Initial Bandwidth | Initial storage | Initial Term Annual Fees (USD) |
|--------------------------------------------|------------------------------|-------------------|-----------------|--------------------------------|
| Blackboard ASP – Test Environment – Set Up |                              |                   |                 | \$1,000                        |
| Price Reduction                            |                              |                   |                 | <-\$1,000>                     |
| Blackboard ASP – Test Environment          |                              |                   |                 | \$13,000                       |
| <b>Total Fees Due:</b>                     |                              |                   |                 | <b>\$13,000</b>                |

2. Blackboard ASP Schedule 2, Section 3, entitled FEES is hereby modified to include:

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

- 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 then-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.

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT

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

BLACKBOARD

Signature  
TESS FRAZIER – VICE PRESIDENT

Print Name and Title

Date: 12/10/06

Customer: University of Texas

Signature

Print Name and Title  
**Scott C. Kelley**

Date:  
[REDACTED]

DEC 15 2006

-016-

2004-071-0IRN 2005  
Rec'd UT System

~~2005-071-0201~~  
**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

SEP 23 2004

Business Affairs

TO: The University of Texas System Office of Business Affairs

FROM: UT TeleCampus

DATE: September 22, 2004

Name of Contractor: Blackboard, Inc.

Contractor's Vendor Identification Number<sup>1</sup>: 522081178

Total Value of Contract: \$97,000 for one year renewal

Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):

| Fiscal Year | Amount   |
|-------------|----------|
| 2004-2005   | \$97,000 |
|             | \$       |
|             | \$       |

Account number from which contract will be funded<sup>2</sup>: [REDACTED]

Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A

Dollar value of work being subcontracted to HUB firms: \$ N/A

Purpose of Contract: Online courseware management system license and hosting

Beginning Date of Contract: June 20, 2002 original contract – July 1, 2004 for renewal

Ending Date of Contract: June 20, 2005 with automatic renewal terms of one year as long as UTTC uses Blackboard

Is this contract an amendment, renewal, or modification of an existing contract? Yes  No  *renewal***Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.****PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:Yes  No  N/A 

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?

2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Acct. & Purchasing Services  
encumbrance will assist you with  
SEP 23 2004  
**RECEIVED**

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

if Blackboard went out of business, UTTC  
courses would not have a platform on  
which to run

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES — Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services and the contract exceeds \$250,000, has it been approved by the Board of Regents?
17. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the Texas Register after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63, or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

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- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
  - 
  - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
  
- 
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U.T. System?
  
- 
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
  
- 
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
  
- 
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

#### PART 4: ALL CONTRACTS

19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

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Thank you for completing this checklist.

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian Pacific                       | Black                    | Hispanic                 | American-Indian          | Woman Owned              |
|-----------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. _____  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

# UT TeleCampus

expand your options • learn online • [www.uttc.org](http://www.uttc.org)

The University of Texas System  
702 Colorado Street  
Austin, TX 78701

September 22, 2004

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

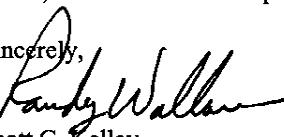
Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University:                   Mr. Scott C. Kelley  
Executive Vice Chancellor for Business Affairs  
601 Colorado Street  
Austin, Texas 78701  
Fax (512) 499-4289  
Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to:                   UT TeleCampus  
UT System Administration  
702 Colorado Street  
Austin, Texas 78701  
Attention: Dr. Darcy Hardy

The yearly fees during the one (1) year renewal period, starting on July 1, 2004 and ending on June 30, 2005 will equal a total of \$97,000. It is divided as described in Schedule 1 and Schedule 2 -- an annual fee equal to \$35,000 for the Blackboard Learning System, an annual fee equal to \$20,000 for the Community Portal, and an annual fee equal to \$42,000 for the Blackboard Learning System/Community ASP.

Sincerely,

  
for  
Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c:                   Darcy Hardy  
Rob Robinson  
Marta Hubbard  
Carrie Mills

Acct. & Purch.- Svcs.  
SEP 23 2004  
**RECEIVED**

2004-071-03AM

Original signed  
01-02, #225

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2004

*Hox*

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

C:

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--|
| FROM:                                                                                                                                                                             | UT TeleCampus                                             |  |
| DATE:                                                                                                                                                                             | January 21, 2004                                          |  |
| Name of Contractor:                                                                                                                                                               | Blackboard                                                |  |
| Contractor's Vendor Identification Number <sup>1</sup> :                                                                                                                          | <b>52-20811788</b>                                        |  |
| Total Value of Contract:                                                                                                                                                          | \$80,000.00                                               |  |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                           |  |
| Fiscal Year                                                                                                                                                                       | Amount                                                    |  |
| 2003-2004                                                                                                                                                                         | \$80,000                                                  |  |
|                                                                                                                                                                                   | \$                                                        |  |
|                                                                                                                                                                                   | \$                                                        |  |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                           |  |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No                                                                                                  |                                                           |  |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                                                                                       |                                                           |  |
| Purpose of Contract: provide funds to pay for technical support 24/7/365 for UTTC students                                                                                        |                                                           |  |
| Beginning Date of Contract: June 28, 2002 (original contract)                                                                                                                     |                                                           |  |
| Ending Date of Contract: May 31, 2004 (amendment)                                                                                                                                 |                                                           |  |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                              |                                                           |  |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                           |  |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by [BPM 48](http://www.utsystem.edu/BPM/48.htm) (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by [BPM 48](http://www.utsystem.edu/BPM/48.htm) (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

<sup>2</sup> Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?
- 
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
- 
5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OFCP HUB Program Manager.)
- 
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OFCP HUB Program Manager.)
- 
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
- 
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
- 
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Interim Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
- 
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

**PART 2: CONTRACTS FOR CONSULTING SERVICES** – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services and the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):  
(1) The nature of the previous employment with the agency:

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- (2) The date the employment was terminated:
- (3) The annual rate of compensation for the employment at the time of termination:

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.



a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/qvtoc.html>.)



b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?



c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:

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d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?



e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:



(1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?

(2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?



f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?



g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

<sup>4</sup> The General Appropriations Act (77<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?

i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

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#### PART 4: ALL CONTRACTS

18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

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Thank you for completing this checklist.



**Hubbard, Marta**

**From:** Smith, Edwin  
**Sent:** Thursday, January 29, 2004 1:30 PM  
**To:** Hubbard, Marta  
**Cc:** King, Monica  
**Subject:** RE: Blackboard Amendment No3 DRAFT (2).doc

Marta, the forwarded version is acceptable and is approved as to form by the Office of General Counsel. Please let me know if you need any additional documentation from me.

*Edwin M. Smith*  
*Office of General Counsel*  
*University of Texas System*  
*512.499.4491*

-----Original Message-----

**From:** Hubbard, Marta  
**Sent:** Wednesday, January 21, 2004 3:21 PM  
**To:** Smith, Edwin  
**Subject:** Blackboard Amendment No3 DRAFT (2).doc

Edwin,  
Blackboard has accepted this version. Does this work for UT?

Thanks.  
Marta

The University of Texas TeleCampus

**AMENDMENT No. 3  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL  
AGREEMENT BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/27/04, 2004 (the "Effective Date").

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

**BLACKBOARD, INC.**



Signature  
Todd Gibby

Date: 2-24-04

**CUSTOMER: The University of Texas  
TeleCampus**

*RR*



Signature  
Philip R. Aldridge,  
Interim Vice Chancellor for Business Affairs  
Date: 2/27/04

2004-071-01AM  
2005-016-01AM

#185

|                  |
|------------------|
| Account Services |
| JUN 27 2003      |
| RECEIVED         |

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

|                                                                                                                                                                                   |                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs |
| FROM:                                                                                                                                                                             | UT TeleCampus                                             |
| DATE:                                                                                                                                                                             | June 18, 2003                                             |
| Name of Contractor: Blackboard Learning System                                                                                                                                    |                                                           |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                           |
| Total Value of Contract: \$107,000                                                                                                                                                |                                                           |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                           |
| <u>Fiscal Year</u>                                                                                                                                                                | <u>Amount</u>                                             |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                           |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No                                                                                                  |                                                           |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                                                                                       |                                                           |
| Purpose of Contract: Use of the Blackboard portal and platform for use in the Every Child/Every Advantage program.                                                                |                                                           |
| Beginning Date of Contract: June 20, 2003                                                                                                                                         |                                                           |
| Ending Date of Contract: June 30, 2004                                                                                                                                            |                                                           |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                           |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

- X      1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
- X         2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

<sup>2</sup> Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

---

4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

---

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

---

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

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7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)\*

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8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.) This is an Amendment to an agreement where all of those procedures were followed.

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9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

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10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

---

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

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12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

---

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

**PART 2: CONTRACTS FOR CONSULTING SERVICES** – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$15,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was approval to enter into the contract obtained from the Governor's Budget Office by issuance of a finding of fact by that office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute? (See Texas Government Code Section 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):  
 (1) The nature of the previous employment with the agency:

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

(2) The date the employment was terminated:

---

(3) The annual rate of compensation for the employment at the time of termination:

---

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)
- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?
- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:  


---


---


---
- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

<sup>4</sup> The General Appropriations Act (77<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

---

#### PART 4: ALL CONTRACTS

- X   18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

\*As an amendment to an original contract with Prometheus, the RFP process was followed two years ago. I interviewed Rob Robinson who headed the contract process at that time and found out that due diligence took place and these items have been addressed.

~~~ Thank you for completing this checklist. ~~~

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name: | Asian
Pacific | Black | Hispanic | American-
Indian | Woman
Owned |
|-----------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____ | <input type="checkbox"/> |
| 2. _____ | <input type="checkbox"/> |
| 3. _____ | <input type="checkbox"/> |
| 4. _____ | <input type="checkbox"/> |
| 5. _____ | <input type="checkbox"/> |
| 6. _____ | <input type="checkbox"/> |
| 7. _____ | <input type="checkbox"/> |
| 8. _____ | <input type="checkbox"/> |
| 9. _____ | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> |

2004-071-01AM

Completed

The University of Texas TeleCampus

**AMENDMENT No. 1
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:

SITE: SCHEDULE OF FEES

| | Initial Active User Capacity | Initial Bandwidth | Initial RAID storage | Initial Term Annual Fee (USD) |
|---|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License
Every Child Every Advantage Program | | | | \$32,500* |
| Blackboard Community Portal License
Every Child Every Advantage Program | | | | \$17,500* |
| Blackboard Learning System™ License
University of Texas System Program | | | | \$0** |
| Blackboard Community Portal License
University of Texas System Program | | | | \$0** |
| Blackboard ASP - Annual Use Fee
University of Texas System Program | | | | \$0 |
| Blackboard ASP - One time Setup Fee
Every Child Every Advantage Program | | | | \$15,000 |
| Blackboard ASP - Annual Use Fee*
Every Child Every Advantage Program | | | | \$42,000* |
| | 10,000
(minimum) | 512 kbps
(minimum) | 20 GB
(minimum) | |
| Total Fees Due: | | | | \$107,000 |

* These fees are annual.

** Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD

CUSTOMER: The University of Texas TeleCampus



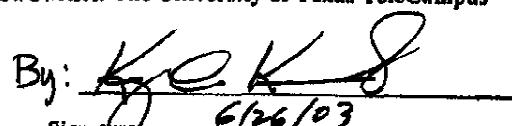
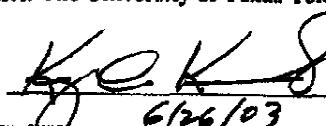
Signature

Todd Gibby

Date:

20th of June, 2003

Teresa Frazier
Senior Director, Contracts


By:  6/26/03

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:



Loyd, Loretta

From: Mills, Carrie
Sent: Friday, November 19, 2004 4:55 PM
To: Loyd, Loretta
Subject: FW: Attached Image
Attachments: 0138_001.pdf

This is amendment 3 and pertains to Embanet. Dr. Kelly has signed a new contract for Embanet. This contract is complete as well. Please note, there was supposed to be an amendment 2 but we would not agree to the terms that Blackboard wanted so amendment 2 never happened. This gets very confusing.

If he has questions, he can contact Robert Robinson at 4397.

Thanks,

Carrie Mills

From: canon@utsystem.edu [mailto:canon@utsystem.edu]
Sent: Friday, November 19, 2004 3:42 PM
To: Mills, Carrie
Subject: Attached Image

The University of Texas TeleCampus

**AMENDMENT No. 3
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL
AGREEMENT BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/27/04, 2004 (the "Effective Date").

The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

BLACKBOARD, INC.



Signature
Todd Gibby

Date: 2-24-04

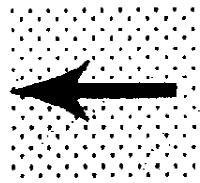
**CUSTOMER: The University of Texas
TeleCampus**



Signature
Philip R. Aldridge,
Interim Vice Chancellor for Business Affairs

Date: 2/27/04

RR



2004-071-01AM

*duplicate
copy*

The University of Texas TeleCampus

AMENDMENT No. 1

TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.
AND UNIVERSITY OF TEXAS, TELECAMPUS

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

1. The following Schedule of Fees is hereby added to Schedule 1:

SITE: SCHEDULE OF FEES

| | Initial Active User Capacity | Initial Bandwidth | Initial RAID storage | Initial Term Annual Fee (USD) |
|--|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License
Every Child Every Advantage Program | | | | \$32,500* |
| Blackboard Community Portal License
Every Child Every Advantage Program | | | | \$17,500* |
| Blackboard Learning System™ License
University of Texas System Program | | | | \$0** |
| Blackboard Community Portal License
University of Texas System Program | | | | \$0** |
| Blackboard ASP - Annual Use Fee
University of Texas System Program | | | | \$0 |
| Blackboard ASP - One time Setup Fee
Every Child Every Advantage Program | | | | \$15,000 |
| Blackboard ASP - Annual Use Fee*
Every Child Every Advantage Program | | | | \$42,000* |
| | 10,000
(minimum) | 512 kbps
(minimum) | 20 GB
(minimum) | |
| Total Fees Due: | | | | \$107,000 |

* These fees are annual.

** Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

2. The following language is hereby added to the end of Section 1.1 of Schedule 1:

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

3. The following language is hereby added to Schedule 1 as Section 1.12:

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

BLACKBOARD



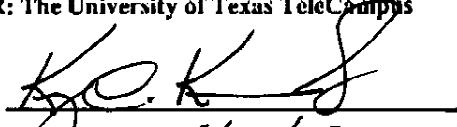
Signature

Teresa Frazier

Date: 20th of June 2003

Teresa Frazier
Senior Director, Contracts

CUSTOMER: The University of Texas TeleCampus

By: 

Signature
Kerry Kennedy, Executive Vice Chancellor

Date:

6/26/03



2004-071

| |
|------------------|
| Rec'd UT System |
| JUL 03 2002 |
| Business Affairs |

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson
Technology and Corporate Development Manager
University of Texas System TeleCampus

DATE: July 3, 2002

Name of Contractor: Blackboard Inc.

Total Value of Contract: \$173,100

Purpose of Contract: Online courseware management system license and hosting

Beginning and Ending Dates of Contract: June 30, 2002, through June 30, 2004

Note: One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES NO N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5. If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6. Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7. If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

| | YES | NO | N/A | |
|-----|-------------------------------------|-------------------------------------|--------------------------|--|
| 8. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the contract is for \$100,000 or more, have you complied with BPM 58 (http://www.utsystem.edu/bpm/58-06-00.htm) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.) |
| 9. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Is the contract complete, with all pages, exhibits, schedules, etc., attached? |
| 10. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract? |
| 11. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate? |
| 12. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed:
<u>Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.</u> |
| 13. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have you confirmed with the State Comptroller (http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.) |

2004-071 -

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University of Texas • TeleCampus

BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System – TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2.100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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

University of Texas - TeleCampus

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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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 such termination, nor affect or impair the rights of either party arising under the Agreement prior to such termination or expiration, except as expressly provided herein.

6. FEES; PAYMENT

2002 - CONFIDENTIAL AND PROPRIETARY

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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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 | Darcy Hardy |
| Title | Assistant Vice Chancellor for Academic Affairs |
| Address | University of Texas System, 210 West 6th Street, CTJ-Suite 2,100, Austin, TX 78701, |
| E-mail: | dhardy@utsystem.edu |
| Telephone number | 512-499-4207 |

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

University of Texas - TeleCampus

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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1, BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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.

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

9.5 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.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.9 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.

9.10 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval of authorization of any government authority.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights In Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1898 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, Texas Family Code, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, Texas Government Code, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

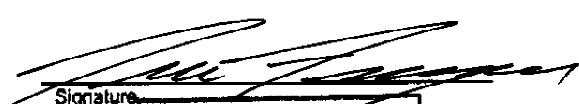
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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

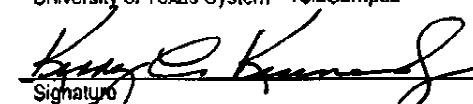
(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an als ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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


 Signature _____
 Print Name and Title **TESS FRAZIER**
SENIOR DIRECTOR
 Date: _____

CUSTOMER
University of Texas System - TeleCampus


 Signature _____
 Print Name and Title **Kerry L. Kennedy**
Executive Vice Chancellor for Business Affairs
 Date: 30 JUNE, 2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly Fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

Annual

$$45487 \div 12 \times 2 (\text{Jul - Aug}) 7581$$

$$22188 \div 12 \times 2 ("") 3698$$

ASP

$$\text{Set up} 15,000$$

$$3325 \times 2 (\text{Jul - Aug}) 6650$$

Lamining Sew 10625

2001-2002 43554
costs

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

| | Level of License and Support | Initial Term Annual Fees (USD) | |
|--|------------------------------|--|--|
| Blackboard Learning System: | | \$45,487 | |
| Community Portal System : | | \$22,188 | |
| ASP Set Up Fee | \$15,000 | | |
| Monthly ASP Fee | \$3,325 | | |
| Total ASP | | \$94,800 | |
| Total Learning Services | | \$ 10,625 | |
| Total Fees Due: | | \$173,100 | |
| Designated Server Site (Physical Location of the Software);
Blackboard ASP site, per Schedule 2 hereto. | Database Version: | Operating System: Hardware Model: | |
| CUSTOMER'S- FTE: 3900 | | | |

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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's: students resident in a degree- or certificate- granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 Copies. Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 Supported Interfaces. Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 Intellectual Property Restrictions. Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, . make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 Termination of Access to Content through Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 Terms of Use. The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 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 pursuant to the Support and Maintenance section herein.

1.10 Auto Reporting. Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 Expansion of Licensed Use. Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

| Blackboard Band | Pricing |
|------------------|-------------------|
| Fewer than 2,000 | \$25,000 annually |
| 2,000 to 3,999 | \$32,500 annually |
| 4,000 to 7,999 | \$40,000 annually |
| 8,000 to 14,999 | \$47,500 annually |
| 15,000 to 24,999 | \$55,000 annually |
| 25,000 to 49,999 | \$62,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

| Blackboard Band | Pricing |
|------------------|-------------------|
| Fewer than 2,000 | \$15,000 annually |
| 2,000 to 3,999 | \$17,500 annually |
| 4,000 to 7,999 | \$20,000 annually |
| 8,000 to 14,999 | \$22,500 annually |
| 15,000 to 24,999 | \$25,000 annually |
| 25,000 to 49,999 | \$27,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1 **Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. **Software Errors.** "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. **Telephone Support.** Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

| | |
|-------------------|------------------------|
| Name: | Rob Robinson |
| Title: | Associate Director |
| E-mail: | rrobinson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Michael Anderson |
| Title: | Opportunity Manager |
| E-mail: | manderson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Kristin Logan |
| Title: | Systems Analyst |
| E-mail: | klogan@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Jimmy Holloway |
| Title: | Network Analyst |
| E-mail: | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207 |

3.5. Maintenance. Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. Installation Assistance. In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD

5.1 Authority. Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2 Performance Warranty. Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

University of Texas - TeleCampus

SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITES.

1.1 Provision of Services. Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 Provision of Hardware and Software. In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 Availability and Operational Specifications. The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 Managed Firewall Service. Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 Virtual Private Network. Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and Licensee, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the Initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 Data Restoration Policy. For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 Customer Responsibilities. Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 Limited Content License. Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"), in whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 Virtual Private Network. Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154 :

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BLACKBOARD LEARNING SYSTEM™:

- \$15000 Initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

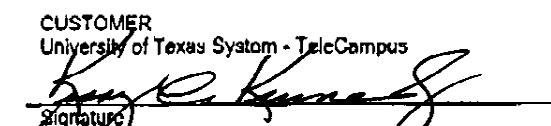
8.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

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

BLACKBOARD

Signature: **TESS FRAZIER**
Print Name and Title: **SENIOR DIRECTOR**
Date:

CUSTOMER
University of Texas System - TeleCampus

Signature:
Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 JUNE, 2002

Date Signed: 7/8/02

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EXHIBIT A
ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE

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 control 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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

| Length of Unavailability | Service Credit** |
|---|--|
| up to 1 hour continuous unavailability | 1 day of service fees credited (i.e., 1/30 monthly fees) |
| 1 to 4 hours continuous unavailability | 2 days of services fees credited (i.e., 1/15 monthly fees) |
| more than 4 hours continuous unavailability | 30 days of services fees credited (i.e., 1 monthly fee) |

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

**All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all instructors.

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 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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients are assigned a URL that reads <http://institutionname.blackboard.com>. The institution is allowed to pick the "Institutionname". However, any redirects to other URLs are the responsibility of the client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB or RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.

2.1 Customer will reimburse Blackboard for (i) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (ii) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expenses items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event=\$600
- 8-14 days before the scheduled event=\$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title

Print Name and Title

TESS FRAZIER
SENIOR DIRECTORKerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date:

Date: 30 June, 2002

Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

| | Level of License and Support | Initial Term Fees (USD) |
|------------------------------------|------------------------------|-------------------------|
| Blackboard Conversion Tool License | | N/A |
| Total Fees Due: | | N/A |

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A

3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2 **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD



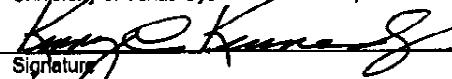
Signature

Print Name and Title

**TESS FRAZIER
SENIOR DIRECTOR**

Date:

University of Texas System - TeleCampus


Signature

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

University of Texas - TeleCampus

**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

| | Level of License | Initial Term Fees (USD) | |
|--|-----------------------------|----------------------------------|-----------------|
| Prometheus Software | | \$ N/A | |
| Total Fees Due: | | \$ N/A | |
| Designated Server Site (Physical Location of the Software):
Prometheus ASP site | Database Version:
Oracle | Operating System:
Solaris 2.6 | Hardware Model: |

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subactions (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include Tutorsoft Virtual Classroom, Oracle database and Apache.

University of Texas - ToloCampus

3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2 Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3 Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4 Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

| | |
|-------------------|------------------------|
| Name: | Rob Robinson |
| Title: | Associate Director |
| E-mail: | robinson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Michael Anderson |
| Title: | Opportunity Manager |
| E-mail: | manderson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Kristin Logan |
| Title: | Systems Analyst |
| E-mail: | klogan@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Jimmy Holloway |
| Title: | Network Analyst |
| E-mail: | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207 |

University of Texas - TeleCampus

4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

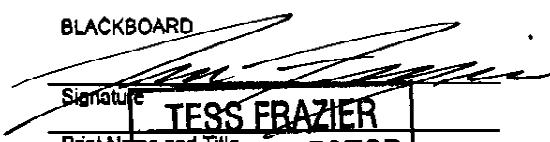
4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

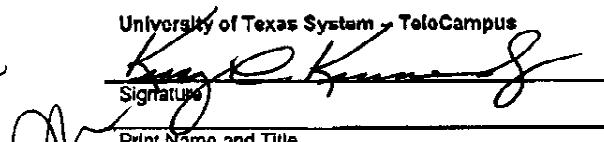
4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

5. **LIMITED WARRANTY BY CUSTOMER**

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

Signature: _____
Print Name and Title: **TESS FRAZIER**
Title: **SENIOR DIRECTOR**
Date: _____

University of Texas System - TeleCampus

Signature: _____
Print Name and Title: _____
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 June, 2002

Date Signed: 7/8/02

2004-071-02RN

~~H92~~

2005

Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

NOV 23 2004

Business Affairs

| | | |
|---|---|--|
| TO: | The University of Texas System Office of Business Affairs | |
| FROM: | Dawn Jones, Institute for Public School Initiatives | |
| DATE: | November 23, 2004 | |
| Name of Contractor: Blackboard Inc. | | |
| Contractor's Vendor Identification Number ¹ : 15220811788 | | |
| Total Value of Contract: \$7,000 | | |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years): | | |
| Fiscal Year Amount | | |
| | \$ | |
| | \$ | |
| | \$ | |
| Account number from which contract will be funded ² : [REDACTED] | | |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No | | |
| Dollar value of work being subcontracted to HUB firms: \$ -0- | | |
| Purpose of Contract: Extension of period of platform/hosting services for TRACK | | |
| Beginning Date of Contract: December 1, 2004 | | |
| Ending Date of Contract: January 31, 2005 | | |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | | |
| Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs. | | |

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- _____
- _____
- _____

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

-
14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)
-
15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
-

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
-
17. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 – <http://www.utsystem.edu/BPM/43.htm>)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

³ Consulting services are the services of **studying or advising** a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS — If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
-
-
-

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

⁴ The General Appropriations Act (78th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
 - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
 - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

- 
19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

Thank you for completing this checklist.



THE UNIVERSITY OF TEXAS SYSTEM
601 COLORADO STREET AUSTIN, TEXAS 78701-2982

Institute for Public School Initiatives
Telephone 512/499-4712 Fax 512/322-3798

November 23, 2004

Blackboard Inc.
1899 L Street, NW, 5th Floor
Washington, DC 20036

To Whom It May Concern:

In accordance with the original agreement between The University of Texas System ("UT System") and Blackboard Inc. ("Blackboard") dated June 30, 2002 ("Agreement") and in accordance with the amendment to said agreement dated June 20, 2003 ("Amendment No. 1"), UT System hereby exercises its option to renew an additional two (2) month term of hosting services specifically related to the TRACK project. The option to renew the Agreement for additional periods of time remains in effect.

The two (2) month renewal period shall begin December 1, 2004 and end January 31, 2005, at a cost of \$3,500 per month, for a total not to exceed \$7,000. Blackboard shall invoice UT System for the services provided. Invoices should be directed to

Institute for Public School Initiatives
601 Colorado Street, 3rd Floor
Austin, Texas 78701
Attn: Dawn Jones

Additionally, please note that all future notices and communications, including delivery of written notices pursuant to Section 2251.054, *Texas Government Code*, shall be made to UT System as follows:

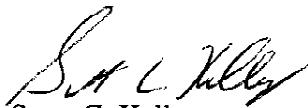
Mr. Scott C. Kelley
Executive Vice Chancellor for Business Affairs
201 West 7th Street, 2nd Floor
Austin, Texas 78701
Fax: 512/499-4289
Email: LegalNotices@utsystem.edu

With copies to:

Institute for Public School Initiatives
702 Colorado Street, 5th Floor
Austin, Texas 78701
Attention: Executive Director

UT TeleCampus
702 Colorado Street, 4th Floor
Austin, Texas 78701
Attention: Dr. Darcy Hardy

Sincerely,



Scott C. Kelley
Executive Vice Chancellor for Business Affairs

cc: Dr. Kelly Raley, IPSI
Dr. Darcy Hardy, UT TeleCampus

University of Texas - TeleCampus

BLACKBOARD MASTER TERMS

These Blackboard Master Terms ("Master Terms"), made this 30th day of JUNE, 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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2100 Austin TX 78701 ("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 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 those 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, 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; (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 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

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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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

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 such termination, nor affect or impair the rights of either party arising under the Agreement prior to such termination or expiration, except as expressly provided herein.

6. FEES; PAYMENT

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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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

6.4 Taxes. The fees hereunder do not include 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. 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 | Darcy Hardy |
| Title | Assistant Vice Chancellor for Academic Affairs |
| Address | University of Texas System, 210 West 6th Street, CTJ-Suite 2.100, Austin, TX 78701. |
| E-mail: | dhardy@utsystem.edu |
| Telephone Number | 512-499-4207 |

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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1. BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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

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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 Term 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.

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

9.5 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 effect the right of the waiving party to enforce any other provision or right herein.

9.6 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.

9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.8 Dispute Resolution Clause; Mandated by Chapter 2280, Texas Government Code. To the extent that Chapter 2280, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2280 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2280, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

9.9 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.

9.10 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval of authorization of any government authority.

9.11 U.S. Government Sales. If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

9.12 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

9.13 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.

9.14 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.

9.15 Miscellaneous.

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, Texas Family Code, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, Texas Government Code, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

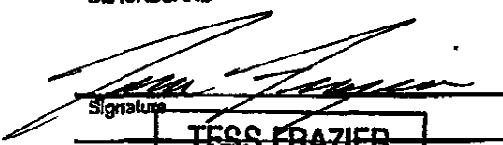
(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an aie ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- (1) providing equivalent access for effective use by both visual and nonvisual means;
- (2) presenting information, including

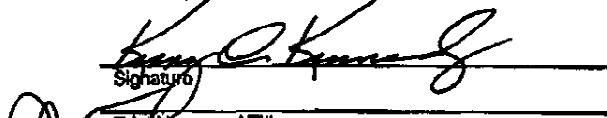
prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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

BLACKBOARD


 Signature _____
 Print Name and Title _____
Tess Frazier
SENIOR DIRECTOR
 Date: _____

CUSTOMER
 University of Texas System - TeleCampus


 Signature _____
 Print Name and Title _____
Kenny L. Kennedy
Executive Vice Chancellor for Business Affairs
 Date: 00 JUNE, 2002

Date Signed: 7/8/02

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES

| | | Level of Licensee and Support | Initial Term Annual Fees (USD) |
|--|-------------------|-------------------------------|--------------------------------|
| Blackboard Learning System: | | | \$45,467 |
| Community Portal System : | | | \$22,168 |
| ASP Set Up Fee | | \$15,000 | |
| Monthly ASP Fee | | \$3,325 | |
| Total ASP | | | \$34,325 |
| Total Learning Services | | | \$ 10,625 |
| Total Fees Due: | | | \$73,100 |
| Designated Server Site (Physical Location of the Software):
Blackboard ASP site, per Schedule 2 hereto. | Database Version: | Operating System: | Hardware Model: |
| CUSTOMER'S FTE: 3900 | | | |

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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

1.2 **Copies.** Customer may make one (1) copy of the Software for backup and archival purposes.

1.3 **Supported Interfaces.** Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

1.4 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

1.5 **Third Party Software/Content.** Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

1.6 **Termination of Access to Content through Third Party Software.** Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercially reasonable efforts to replace terminated functionality with substantially similar functionality.

1.7 **Terms of Use.** The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.8 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.9 **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 pursuant to the Support and Maintenance section herein.

1.10 **Auto Reporting.** Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

1.11 **Expansion of Licensed Use.** Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

LEARNING SYSTEM

| Blackboard Band | Pricing |
|------------------|-------------------|
| Fewer than 2,000 | \$25,000 annually |
| 2,000 to 3,999 | \$32,500 annually |
| 4,000 to 7,999 | \$40,000 annually |
| 8,000 to 14,999 | \$47,500 annually |
| 15,000 to 24,999 | \$55,000 annually |
| 25,000 to 49,999 | \$62,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

COMMUNITY PORTAL SYSTEM:

| Blackboard Band | Pricing |
|------------------|-------------------|
| Fewer than 2,000 | \$15,000 annually |
| 2,000 to 3,999 | \$17,500 annually |
| 4,000 to 7,999 | \$20,000 annually |
| 8,000 to 14,999 | \$22,500 annually |
| 15,000 to 24,999 | \$25,000 annually |
| 25,000 to 49,999 | \$27,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) % of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

2. FEES

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15261-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

3. SUPPORT AND MAINTENANCE

3.1 **Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

3.2. **Software Errors.** "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

3.3. **Telephone Support.** Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution outlined below.

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3.4. Error Resolution.

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software Errors may be fixed in the next scheduled Upgrade or Update or made available on Blackboard's Web site. Blackboard will resolve Severity Code 3 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

| | |
|-------------------|------------------------|
| Name: | Rob Robinson |
| Title: | Associate Director |
| E-mail: | robinson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Michael Anderson |
| Title: | Opportunity Manager |
| E-mail: | manderson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Kristin Logan |
| Title: | Systems Analyst |
| E-mail: | klogan@utsystem.edu |
| Telephone number: | 512-499-4207 |
| Name: | Jimmy Holloway |
| Title: | Network Analyst |
| E-mail: | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207 |

3.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

3.6. **Installation Assistance.** In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.7. **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

4. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5. LIMITED WARRANTY BY BLACKBOARD

5.1. **Authority.** Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

5.2. **Performance Warranty.** Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT
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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

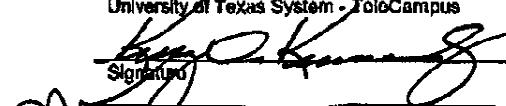
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD


Signature _____
Print Name and Title _____
JESS FRAZIER
SENIOR DIRECTOR
Date: _____

CUSTOMER

University of Texas System - TeleCampus


Signature _____
Print Name and Title _____
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs
Date: 30 JUNE, 2002

Date Signed:

7/8/02

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SCHEDULE 2
BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus, having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

1. BLACKBOARD RESPONSIBILITIES.

1.1 Provision of Services. Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

1.2 Provision of Hardware and Software. In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

1.3 Availability and Operational Specifications. The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

1.4 Managed Firewall Service. Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

1.5 Virtual Private Network. Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and Licensee, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the initial Term of this Agreement for the fees set forth in Section 3 below.

1.6 Data Restoration Policy. For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/Import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.

2.1 Customer Responsibilities. Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

2.2 Limited Content License. Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"), in whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

2.3 Virtual Private Network. Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

3. FEES.

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154:

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BLACKBOARD LEARNING SYSTEM™:

- \$15000 initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95th percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 Gb at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

VIRTUAL PRIVATE NETWORK*

- \$1500 set-up fee
- \$1000 a month

*VPN is a Customer option in accordance with Section 1.5 herein.

DATA RESTORATION POLICY

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

PROMETHEUS HOSTING

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

TEST AND DEVELOPMENT HOSTING

- Customer may, during the Initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

4. TAXES.

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

5. TERM; TERMINATION.

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

6. DEFAULT.

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7. CUSTOMER WARRANTY AND INDEMNIFICATION.

7.1 Customer Warranty. Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

7.2 Customer Indemnification. To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successors and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.

8.1 Disclaimer of Warranty. THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.2 Indemnification. If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

8.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE ASP SERVICES FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title

Print Name and Title

TESS FRAZIER
SENIOR DIRECTOR

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date:

Date: 30 JUNE, 2002

Date Signed:

7/8/02

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EXHIBIT A
ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE

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 control 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.

NETWORK:

- Redundant Internet connections through a minimum of three separate walls.

VIRTUAL PRIVATE NETWORK:

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

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.

INITIAL ACCESS DATE:

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

ACCESSIBILITY/SERVICE CREDIT:

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

| Length of Unavailability | Service Credit* |
|---|--|
| up to 1 hour continuous unavailability | 1 day of service fees credited (i.e., 1/30 monthly fees) |
| 1 to 4 hours continuous unavailability | 2 days of services fees credited (i.e., 1/15 monthly fees) |
| more than 4 hours continuous unavailability | 30 days of services fees credited (i.e., 1 monthly fee) |

***Critical Processes:**

Web Server
 Java Application Server
 Database Server

"All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

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. For no additional fees, during the initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

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.

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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

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.

TECHNICAL SUPPORT

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all instructors.

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 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.

CLIENT RESPONSIBILITIES

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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BLACKBOARD LEARNING SOLUTIONS SCHEDULE

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28th, 2002. 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 Agreement.

TOTAL DAYS OF LEARNING SERVICES: 5***TOTAL COST OF LEARNING SERVICES: \$10,625**

*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

1. BLACKBOARD LEARNING SOLUTIONS

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB of RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.

2.1 Customer will reimburse Blackboard for (i) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (ii) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expenses items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event=\$600
- 8-14 days before the scheduled event=\$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

Signature

TESS FRAZIER
Print Name and Title
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Kerry L. Kennedy
Print Name and Title
Executive Vice Chancellor for Business Affairs
Date: 30-June, 2002

Date Signed: 7/8/02

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CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

| | Level of License and Support | Initial Term Fees (USD) |
|------------------------------------|------------------------------|-------------------------|
| Blackboard Conversion Tool License | | N/A |
| Total Fees Due: | | N/A |

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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party Software in whole or in part from one computer to another over a network or enable any time-sharing 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

2. FEES. N/A

3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

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

BLACKBOARD

Signature

Print Name and Title

TESS FRAZIER
SENIOR DIRECTOR

Date:

University of Texas System -- TeleCampus

Signature

Print Name and Title

Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 30 June, 2002

Date Signed: 7/8/02

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**SCHEDULE
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES

| | | Level of License | Initial Term Fees (USD) |
|--|-----------------------------|----------------------------------|-------------------------|
| Prometheus Software | | | \$ N/A |
| Total Fees Due: | | | \$ N/A |
| Designated Server Site (Physical Location of the Software):
Prometheus ASP site | Database Version:
Oracle | Operating System:
Solaris 2.6 | Hardware Model: |

1. LICENSE

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortium students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus Software"). Pursuant to its agreements with those third parties, Blackboard hereby grants to Customer a non-exclusive, nontransferable license to load and/or operate and use the Third Party Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all procurements, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recording of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

2. FEES

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non-refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc., Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

* Other Third Party Software Products may include Tutorsoft Virtual Classroom, Oracle database and Apache.

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3. TERM

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

4. MAINTENANCE AND OTHER SERVICES

4.1 Support. Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

4.2 Software Errors. "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

4.3 Telephone Support. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-6264. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

4.4 Error Resolution.

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

| | |
|-------------------|------------------------|
| Name: | Rob Robinson |
| Title: | Associate Director |
| E-mail: | robinson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Michael Anderson |
| Title: | Opportunity Manager |
| E-mail: | manderson@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Kristin Logan |
| Title: | Systems Analyst |
| E-mail: | klogan@utsystem.edu |
| Telephone number: | 512-499-4207 |
| | |
| Name: | Jimmy Holloway |
| Title: | Network Analyst |
| E-mail: | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207 |

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4.5. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

4.7. **Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

4.8. **Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

5. LIMITED WARRANTY BY CUSTOMER

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD

Signature

TESS FRAZIER
SENIOR DIRECTOR

Print Name and Title

Date:

University of Texas System - TeleCampus

Signature

Print Name and Title
Kerry L. Kennedy
Executive Vice Chancellor for Business Affairs

Date: 06 June, 2002

Date Signed: 7/8/02

-016-
2005-06-02 R2004-071-0IRN 2005
Rec'd UT System

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

SEP 23 2004

Business Affairs

TO: The University of Texas System Office of Business Affairs

FROM: UT TeleCampus

DATE: September 22, 2004

Name of Contractor: Blackboard, Inc.

Contractor's Vendor Identification Number¹: 522081178

Total Value of Contract: \$97,000 for one year renewal

Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):

| Fiscal Year | Amount |
|-------------|----------|
| 2004-2005 | \$97,000 |
| | \$ |
| | \$ |

Account number from which contract will be funded²: [REDACTED]

Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A

Dollar value of work being subcontracted to HUB firms: \$ N/A

Purpose of Contract: Online courseware management system license and hosting

Beginning Date of Contract: June 20, 2002 original contract – July 1, 2004 for renewal

Ending Date of Contract: June 20, 2005 with automatic renewal terms of one year as long as UTTC uses Blackboard

Is this contract an amendment, renewal, or modification of an existing contract? Yes No *renewal*

Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?

2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Acct & Purch. Svcs
SEP 23 2004
RECEIVED

Yes No N/A

3. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
4. If the answer to Question 3 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
5. If the contract is a System-wide contract for the benefit of all or a majority of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected institutions as required by Part Two, Chapter XI, § 2.2, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

if Blackboard went out of business, UTTC
Courses would not have a platform on
which to run

Yes No N/A

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

15. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

PART 2: CONTRACTS FOR CONSULTING SERVICES — Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

16. If your contract is for consulting services and the contract exceeds \$250,000, has it been approved by the Board of Regents?
17. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

(2) The date the employment was terminated:

(3) The annual rate of compensation for the employment at the time of termination:

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

18. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has not been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

⁴ The General Appropriations Act (78th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
 -
 - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
 - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
-
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U.T. System?
-
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
-
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
-
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

19. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

Thank you for completing this checklist.

HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name: | Asian Pacific | Black | Hispanic | American-Indian | Woman Owned |
|-----------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. _____ | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

UT TeleCampus

expand your options • learn online • www.uttc.org

The University of Texas System

702 Colorado Street

Austin, TX 78701

September 22, 2004

Blackboard
1899 L Street, NW, 5th Floor
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

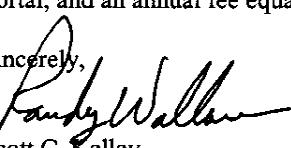
Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University: Mr. Scott C. Kelley
Executive Vice Chancellor for Business Affairs
601 Colorado Street
Austin, Texas 78701
Fax (512) 499-4289
Email: LegalNotices@utsystem.edu

With copy to: UT TeleCampus
UT System Administration
702 Colorado Street
Austin, Texas 78701
Attention: Dr. Darcy Hardy

The yearly fees during the one (1) year renewal period, starting on July 1, 2004 and ending on June 30, 2005 will equal a total of \$97,000. It is divided as described in Schedule 1 and Schedule 2 -- an annual fee equal to \$35,000 for the Blackboard Learning System, an annual fee equal to \$20,000 for the Community Portal, and an annual fee equal to \$42,000 for the Blackboard Learning System/Community ASP.

Sincerely,


for
Scott C. Kelley
Executive Vice Chancellor
For Business Affairs

c: Darcy Hardy
Rob Robinson
Marta Hubbard
Carrie Mills

Acct. & Purch.- Svcs.
SEP 23 2004
RECEIVED

Hay

2004-07-03 AM

(Original signed
01-02-2004)

8

2004

**THE UNIVERSITY OF TEXAS SYSTEM
OFFICE OF BUSINESS AFFAIRS
CONTRACT PROCESSING CHECKLIST**

TO: The University of Texas System Office of Business Affairs

FROM: UT TeleCampus

DATE: January 21, 2004

Name of Contractor: Blackboard

Contractor's Vendor Identification Number¹: **52-20811788**

Total Value of Contract: \$80,000.00

Account Services

2004

REC'D

Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):

| Fiscal Year | Amount |
|-------------|----------|
| 2003-2004 | \$80,000 |
| \$ | \$ |
| \$ | \$ |

Account number from which contract will be funded²: [REDACTED]

Is the contractor a certified Historically Underutilized Business (HUB) firm? No

Dollar value of work being subcontracted to HUB firms: \$ 0

Purpose of Contract: provide funds to pay for technical support 24/7/365 for UTTC students

Beginning Date of Contract: June 28, 2002 (original contract)

Ending Date of Contract: May 31, 2004 (amendment)

Is this contract an amendment, renewal, or modification of an existing contract? Yes No

Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.

PART 1: ALL CONTRACTS – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?

2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

¹ For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

² Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?
-
4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
-
5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
-
6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
-
7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)
-
8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.)
-
9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
-
10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
-
11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-
12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Interim Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
-
13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
-
- _____

If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.³ If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):
(1) The nature of the previous employment with the agency:

³ Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- (2) The date the employment was terminated: _____
- (3) The annual rate of compensation for the employment at the time of termination: _____

PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS – If your contract involves the use of contract workers,⁴ please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)

b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:

d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?

e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:

(1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?

(2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?

f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?

g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

⁴ The General Appropriations Act (77th Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?

i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

PART 4: ALL CONTRACTS

18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

~~~~~ Thank you for completing this checklist. ~~~~



**Hubbard, Marta**

**From:** Smith, Edwin  
**Sent:** Thursday, January 29, 2004 1:30 PM  
**To:** Hubbard, Marta  
**Cc:** King, Monica  
**Subject:** RE: Blackboard Amendment No3 DRAFT (2).doc

Marta, the forwarded version is acceptable and is approved as to form by the Office of General Counsel. Please let me know if you need any additional documentation from me.

*Edwin M. Smith*  
*Office of General Counsel*  
*University of Texas System*  
*512.499.4491*

-----Original Message-----

**From:** Hubbard, Marta  
**Sent:** Wednesday, January 21, 2004 3:21 PM  
**To:** Smith, Edwin  
**Subject:** Blackboard Amendment No3 DRAFT (2).doc

Edwin,  
Blackboard has accepted this version. Does this work for UT?

Thanks.  
Marta

The University of Texas TeleCampus

**AMENDMENT No. 3  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL  
AGREEMENT BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/27/04, 2004 (the "Effective Date").

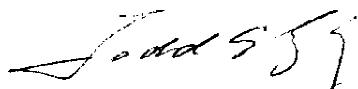
The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

**BLACKBOARD, INC.**



Signature  
Todd Gibby

Date: 2-24-04

**CUSTOMER: The University of Texas  
TeleCampus**

RR



Signature  
Philip R. Aldridge,  
Interim Vice Chancellor for Business Affairs  
Date: 2/27/04

2004-071-01AM  
2005-016-01AM

#185

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

Account Services  
JUN 27 2003  
RECEIVED

|                                                                                                                                                                                   |                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs |
| FROM:                                                                                                                                                                             | UT TeleCampus                                             |
| DATE:                                                                                                                                                                             | June 18, 2003                                             |
| Name of Contractor: Blackboard Learning System                                                                                                                                    |                                                           |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                           |
| Total Value of Contract: \$107,000                                                                                                                                                |                                                           |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                           |
| <u>Fiscal Year</u>                                                                                                                                                                | <u>Amount</u>                                             |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
|                                                                                                                                                                                   | \$                                                        |
| Account number from which contract will be funded <sup>2</sup> :                                                                                                                  |                                                           |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No                                                                                                  |                                                           |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                                                                                       |                                                           |
| Purpose of Contract: Use of the Blackboard portal and platform for use in the Every Child/Every Advantage program.                                                                |                                                           |
| Beginning Date of Contract: June 20, 2003                                                                                                                                         |                                                           |
| Ending Date of Contract: June 30, 2004                                                                                                                                            |                                                           |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                           |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

- X      1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
- X         2. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Account Services can provide you with that number. If a contractor does not have a VID, please request the Accounts Payable Supervisor (499-4579) to fax the Payee Information Form to the contractor.

<sup>2</sup> Account Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of the requisite approval?

---

4. If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?

---

5. If the answer to Question 4 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

---

6. Does the contract comply with the purchasing procedures required by the applicable System or component institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

---

7. If the contract is for \$100,000 or more, have you complied with HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the System HUB Coordinator or the OPFC HUB Program Manager.)\*

---

8. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-00.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract? (For questions about compliance with BPM 58, please contact the System HUB Coordinator or OPFC HUB Program Manager.) This is an Amendment to an agreement where all of those procedures were followed.

---

9. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

---

10. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

---

11. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

---

12. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

---

13. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

**Yes No N/A**

**If the contract is with another state agency, stop here and go to Part 4 of this checklist. Otherwise, please go to the next question**

Yes No N/A

14. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gvtoc.html>) require such verification for purchases of goods or services.)

**PART 2: CONTRACTS FOR CONSULTING SERVICES** – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

15. If your contract is for consulting services **and** the contract exceeds \$250,000, has it been approved by the Board of Regents?
16. If your contract is for consulting services **and** the contract exceeds \$15,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor approve the contract? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.)
- b. Was approval to enter into the contract obtained from the Governor's Budget Office by issuance of a finding of fact by that office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute? (See Texas Government Code Section 2254.029 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System component institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any component institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>.) If the answer is NO, please provide the following information so that Business and Administrative Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>):  
(1) The nature of the previous employment with the agency:

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Business and Administrative Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

(2) The date the employment was terminated: \_\_\_\_\_

(3) The annual rate of compensation for the employment at the time of termination: \_\_\_\_\_

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

17. If you will pay for the contract workers from funds in a budgetary account that begins with a 53 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System component institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gvtoc.html>)
- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?
- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
- (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?

<sup>4</sup> The General Appropriations Act (77<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Business and Administrative Services if you are unsure.

Yes No N/A

- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

---

#### PART 4: ALL CONTRACTS

- X   18. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

\*As an amendment to an original contract with Prometheus, the RFP process was followed two years ago. I interviewed Rob Robinson who headed the contract process at that time and found out that due diligence took place and these items have been addressed.

---

♪♪♪ Thank you for completing this checklist. ♪♪♪

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific         | Black                    | Hispanic                 | American-<br>Indian      | Woman<br>Owned           |
|-----------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> |

2004-071-01AM

Completed

The University of Texas TeleCampus

**AMENDMENT No. 1  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1  
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2003 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

**1. The following Schedule of Fees is hereby added to Schedule 1:**

**SITE: SCHEDULE OF FEES**

|                                                                                   | Initial Active User Capacity | Initial Bandwidth     | Initial RAID storage | Initial Term Annual Fee (USD) |
|-----------------------------------------------------------------------------------|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License<br><b>Every Child Every Advantage Program</b> |                              |                       |                      | \$32,500*                     |
| Blackboard Community Portal License<br><b>Every Child Every Advantage Program</b> |                              |                       |                      | \$17,500*                     |
| Blackboard Learning System™ License<br>University of Texas System Program         |                              |                       |                      | \$0**                         |
| Blackboard Community Portal License<br>University of Texas System Program         |                              |                       |                      | \$0**                         |
| Blackboard ASP - Annual Use Fee<br>University of Texas System Program             |                              |                       |                      | \$0                           |
| Blackboard ASP - One-time Setup Fee<br><b>Every Child Every Advantage Program</b> |                              |                       |                      | \$14,000                      |
| Blackboard ASP - Annual Use Fee*<br><b>Every Child Every Advantage Program</b>    |                              |                       |                      | \$42,800*                     |
|                                                                                   | 10,000<br>(minimum)          | 512 kbps<br>(minimum) | 20 GB<br>(minimum)   |                               |
| <b>Total Fees Due:</b>                                                            |                              |                       |                      | <b>\$107,800</b>              |

\* These fees are annual.

\*\* Customer receives, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

**2. The following language is hereby added to the end of Section 1.1 of Schedule 1:**

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

**3. The following language is hereby added to Schedule 1 as Section 1.12:**

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSWM (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

2.4 Usage Reports. Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

**BLACKBOARD**

**CUSTOMER: The University of Texas TeleCampus**

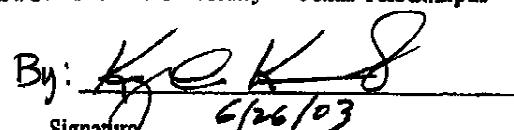
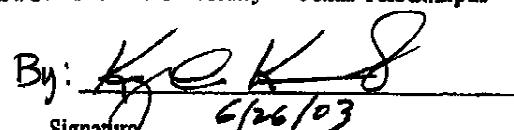


Signature

Teresa Frazier

Date: 20th of June, 2003

Teresa Frazier  
Senior Director, Contracts

  
By:  Kerry Kennedy  
6/26/03

Signature

Kerry Kennedy, Executive Vice Chancellor

Date:



## Loyd, Loretta

---

**From:** Mills, Carrie  
**Sent:** Friday, November 19, 2004 4:55 PM  
**To:** Loyd, Loretta  
**Subject:** FW: Attached Image  
**Attachments:** 0138\_001.pdf

This is amendment 3 and pertains to Embanet. Dr. Kelly has signed a new contract for Embanet. This contract is complete as well. Please note, there was supposed to be an amendment 2 but we would not agree to the terms that Blackboard wanted so amendment 2 never happened. This gets very confusing.

---

If he has questions, he can contact Robert Robinson at 4397.

Thanks,

*Carrie Mills*

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**From:** canon@utsystem.edu [mailto:[canon@utsystem.edu](mailto:canon@utsystem.edu)]  
**Sent:** Friday, November 19, 2004 3:42 PM  
**To:** Mills, Carrie  
**Subject:** Attached Image

The University of Texas TeleCampus

**AMENDMENT No. 3  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL  
AGREEMENT BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Agreement (the "Agreement") dated June 28, 2002, between Blackboard Inc. ("Blackboard") and The University of Texas, TeleCampus ("Customer") is made as of 2/21/04, 2004 (the "Effective Date").

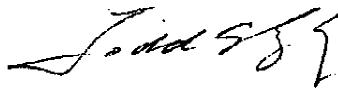
The parties hereby agree to amend the Agreement as follows:

Blackboard will subcontract with Embanet, Inc. on a month to month basis for the continued provision of end user technical support services. Blackboard will bill Customer as required for the actual cost of the Embanet services as evidenced by an approved Embanet invoice. Blackboard agrees to provide these services through Embanet until Customer notifies Blackboard that it has made other arrangements for the service or no longer requires the service. Blackboard understands and acknowledges that Customer may negotiate directly with Embanet or any other service provider for the provision of end user support services in the future.

The parties expressly acknowledge that this Amendment No. 3, the Blackboard Professional Services Agreement and its Statement of Work are subject to the Blackboard Master Terms of the original Agreement, as amended therein to the extent of any conflict between the terms and conditions of the Professional Services Agreement and the Master Terms of the original Agreement, as amended, the Master Terms shall prevail.

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

**BLACKBOARD, INC.**



Signature  
Todd Gibby

Date: 2-24-04

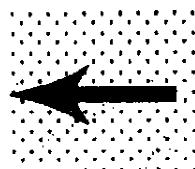
**CUSTOMER: The University of Texas  
TeleCampus**



RR

Signature  
Philip R. Aldridge,  
Interim Vice Chancellor for Business Affairs

Date: 2/27/04



2004-071-01AM

*duplicate  
copy*

The University of Texas TeleCampus

**AMENDMENT No. 1  
TO THE BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL SCHEDULE 1  
AND THE ASP SCHEDULE 2 DATED JUNE 30, 2002, BETWEEN BLACKBOARD INC.  
AND UNIVERSITY OF TEXAS, TELECAMPUS**

This Amendment to the Blackboard Learning System/Community Portal Schedule 1 ("Schedule 1") and the ASP Schedule 2 ("ASP Schedule") dated June 30, 2002, between Blackboard Inc. ("Blackboard") and University of Texas, TeleCampus ("Customer") is made as of June 20, 2004 (the "Effective Date").

The parties hereby agree to the following terms regarding the use of the Blackboard Software by Customer for use in the Every Child Every Advantage Program:

**1. The following Schedule of Fees is hereby added to Schedule 1:**

**SITE: SCHEDULE OF FEES**

|                                                                            | Initial Active User Capacity | Initial Bandwidth     | Initial RAID storage | Initial Term Annual Fee (USD) |
|----------------------------------------------------------------------------|------------------------------|-----------------------|----------------------|-------------------------------|
| Blackboard Learning System™ License<br>Every Child Every Advantage Program |                              |                       |                      | \$32,500*                     |
| Blackboard Community Portal License<br>Every Child Every Advantage Program |                              |                       |                      | \$17,500*                     |
| Blackboard Learning System™ License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard Community Portal License<br>University of Texas System Program  |                              |                       |                      | \$0**                         |
| Blackboard ASP - Annual Use Fee<br>University of Texas System Program      |                              |                       |                      | \$0                           |
| Blackboard ASP - One time Setup Fee<br>Every Child Every Advantage Program |                              |                       |                      | \$15,000                      |
| Blackboard ASP - Annual Use Fee*<br>Every Child Every Advantage Program    |                              |                       |                      | \$42,000*                     |
|                                                                            | 10,000<br>(minimum)          | 512 kbps<br>(minimum) | 20 GB<br>(minimum)   |                               |
| <b>Total Fees Due:</b>                                                     |                              |                       |                      | <b>\$107,000</b>              |

\* These fees are annual.

\*\* Customer received, free-of-charge, one (1) Blackboard Learning System and Community Portal License, and ASP Services to be used solely for the Customer's University of Texas System Program.

**2. The following language is hereby added to the end of Section 1.1 of Schedule 1:**

For a period of one (1) year after the Effective Date of Amendment No. 1, this Schedule will allow Customer's Authorized Schools, as defined below in Section 1.12, to use a separate installation of the Blackboard Learning System and Community Portal System (including the Blackboard ASP Services) free of charge when such school's use is the lesser of a) ten (10%) percent of its FTE, or b) 1,000 discrete students enrolled in Blackboard courses. A "discrete student" is defined as a single student who can be in multiple courses but is assessed just once. In addition, each Authorized School will be allowed to create and use courses under this license. Each Authorized School will be entitled to use the Blackboard Learning System and Community Portal System (including Blackboard's ASP Services) under the terms of this Schedule (and the ASP Schedule) for 1 (one) year, starting on the date of each Authorized School's first course offering. For avoidance of doubt, the one year term shall begin on the date an Authorized School offers its first course and not the Effective Date of Amendment No. 1. In the event that an institution wishes to renew after its initial term, the UT TeleCampus, Blackboard, and the institution will mutually agree on a process to handle the transition from the current program to a full Blackboard Learning System, or Learning System with the Community Portal System.

**3. The following language is hereby added to Schedule 1 as Section 1.12:**

An "Authorized School(s)" is defined as one of the following: Arlington (FTE - 22,500), Brownsville (FTE - 9,000), Dallas (FTE - 10,000), San Antonio (FTE - 18,000), Tyler (FTE - 3,500), Permian (FTE - 2,000), Pan American (FTE - 13,000), El Paso (FTE - 15,000), UTSW (FTE - 1,500).

4. The following is hereby added to Section 2 of the ASP Schedule:

**2.4 Usage Reports.** Beginning on October 1, 2003, Customer agrees to provide to Blackboard a quarterly report that contains the number of students from each Authorized School.

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

**BLACKBOARD**



Signature

Teresa Frazier

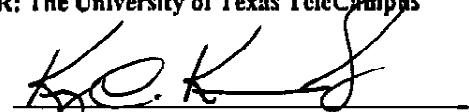
Date:

20th of June, 2003

Teresa Frazier  
Senior Director, Contracts

**CUSTOMER: The University of Texas TeleCampus**

By:



Signature  
C/26/03

Kerry Kennedy, Executive Vice Chancellor

Date:



2004-071

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

|                  |
|------------------|
| Rec'd UT System  |
| JUL 03 2002      |
| Business Affairs |

TO: The University of Texas System Office of Business Affairs

FROM: Michael Anderson  
 Technology and Corporate Development Manager  
 University of Texas System TeleCampus

---

DATE: July 3 , 2002

Name of Contractor: Blackboard Inc.

Total Value of Contract: \$173,100

Purpose of Contract: Online courseware management system license and hosting

Beginning and Ending Dates of Contract: June 30 , 2002 , through June 30 , 2004

**Note:** One original of the contract will be retained by the Office of Business Affairs. Please send a sufficient number of originals to meet each party's document retention needs.

Please answer each of the following questions and attach the requisite approvals to this checklist:

YES    NO    N/A

1.    If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2.    If Office of General Counsel approval as to legal form is required by BPM 48 or otherwise, have you attached a copy of OGC's approval?
3.    If approval of the contract by the Office of Health Affairs or the Office of Academic Affairs is required by BPM 48 or otherwise, have you attached a copy of the requisite approval?
4.    If approval of the contract by the Board of Regents is required by Part One, Chapter I, § 9, Regents Rules and Regulations (<http://www.utsystem.edu/bor/TOCRRR.htm>), has such approval been obtained?
5.    If the answer to Question 4 is no, does the contract contain a statement that the contract is not effective until the Board of Regents approves it?
6.   Does the contract comply with the purchasing procedures promulgated by the applicable System or component institution purchasing agent?
7.    If the contract is for consulting services and exceeds \$15,000, have you complied with the requirements of BPM 43 (<http://www.utsystem.edu/BPM/43.htm>)?

|     | YES                                 | NO                                  | N/A                      |                                                                                                                                                                                                                                                                                                                                                                        |
|-----|-------------------------------------|-------------------------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | If the contract is for \$100,000 or more, have you complied with BPM 58 ( <a href="http://www.utsystem.edu/bpm/58-06-00.htm">http://www.utsystem.edu/bpm/58-06-00.htm</a> ) and HUB Action Plan procedure D.2.3.2? (For questions about the HUB Action Plan, please contact the Associate Vice Chancellor for Business Affairs.)                                       |
| 9.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                          | Is the contract complete, with all pages, exhibits, schedules, etc., attached?                                                                                                                                                                                                                                                                                         |
| 10. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                          | Do you know whether a member of the Board of Regents has a financial interest, directly or indirectly, in the contract?                                                                                                                                                                                                                                                |
| 11. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                          | Has the authorized person in your office or department signed or initialed <u>the contract</u> beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?                                                                                                             |
| 12. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                          | Are there any significant risks or issues related to the contract? If so, please elaborate below or on an additional page, if needed:<br>Blackboard could go out of business, and our online courses would not have a platform (software and hardware) on which to run.                                                                                                |
| 13. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | Have you confirmed with the State Comptroller ( <a href="http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html">http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html</a> ) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Section 403.055 of the Texas Government Code requires such verification for purchases of goods or services.) |



2004-071 -

#225

University of Texas - TeleCampus

**BLACKBOARD MASTER TERMS**

These Blackboard Master Terms ("Master Terms"), made this 30<sup>th</sup> day of JUNE, 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 University of Texas System - TeleCampus having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("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 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 those 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, 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; (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, financials, 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 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 (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 given the disclosing party 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 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 or breach by the other party is not corrected within thirty (30) days after receipt of a written notice of the default, such termination to be schedule-specific.

**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.

**5.6 Survival.** The termination or expiration 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 or expiration, except as expressly provided herein.

#### 6. FEES; PAYMENT

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**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 sixty (60) days of the effective date of an invoice from Blackboard. Blackboard expressly reserves the right to change the License Fee and Maintenance and Support Fee 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 will not interfere with Customer's business and shall not be made more frequently than once every twelve months.

**6.4 Taxes.** The fees hereunder do not include 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. 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             | Darcy Hardy                                                                         |
| Title            | Assistant Vice Chancellor for Academic Affairs                                      |
| Address          | University of Texas System, 210 West 6th Street, CTJ-Suite 2,100, Austin, TX 78701. |
| E-mail:          | dhardy@utsystem.edu                                                                 |
| Telephone number | 512-499-4207                                                                        |

#### 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

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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, EXCEPT FOR CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.1, BLACKBOARD'S LIABILITY SHALL NOT 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, subject to the exercise by the Texas Attorney General of his statutory duties, 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.** To the extent authorized by the Constitution and laws of the State of Texas, Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising 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 Sovereignty.** 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.

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

**9.5 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.

**9.6 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.

**9.7 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, are 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. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

**9.8 Dispute Resolution Clauses Mandated by Chapter 2260, Texas Government Code.** To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Blackboard to attempt to resolve any claim for breach of contract made by Blackboard that cannot be resolved in the ordinary course of business. The Chief

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Business Officer of the Customer shall examine Blackboard's claim and any counterclaim and negotiate with Blackboard in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Blackboard; (ii) neither the execution of this Agreement by Customer nor any conduct, action or inaction of any representative of Customer relating to this Agreement constitutes or is intended to constitute a waiver of Customer's or the State's sovereign immunity to suit; and (iii) Customer has not waived its right to seek redress in the courts.

**9.9 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.

**9.10 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval of authorization of any government authority.

**9.11 U.S. Government Sales.** If Customer is a U.S. Government entity, the Software is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 600, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

**9.12 Export Control.** Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the consent of Blackboard and 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.

**9.13 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.

**9.14 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.

**9.15 Miscellaneous.**

(a) **Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, by signing the agreement, Blackboard certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that Blackboard is exempt from the payment of such taxes, or that Blackboard is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Blackboard acknowledges and agrees that if this certification is false or inaccurate, at Customer's option, the Agreement may be terminated and payment withheld.

(b) **Sales Tax Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 2155.004, Texas

Government Code, Blackboard certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) **Family Code Child Support Certification.** By signing the Agreement, Blackboard certifies as follows: "Under Section 231.006, Texas Family Code, Blackboard certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(d) **Payment of Debts to the State of Texas.** Pursuant to Section 403.055, Texas Government Code, Blackboard agrees that any payments owing to Blackboard under this Agreement may be applied to any debt or delinquent taxes that Blackboard owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

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(e) Products and Materials Produced in Texas. Blackboard agrees that if it must purchase products and materials to perform its obligations hereunder, as required by Section 2155.4441, Texas Government Code, Blackboard shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

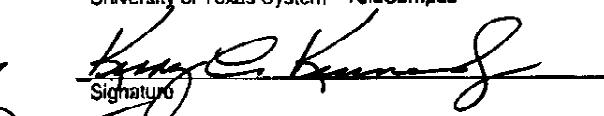
(f) Technology Access. To the extent determined by a court of competent jurisdiction that the Blackboard Learning System is upon the Effective Date an ais ("Automated Information System"), and in accordance with Section 2157.005, Texas Government Code, Blackboard expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to the accessibility by persons with visual impairments. Accordingly, Blackboard represents and warrants to Customer that the technology provided to Customer is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including

prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If the Blackboard Learning System is determined to be an automated information system, Blackboard will be given six (6) months to comply with the above referenced requirements.

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

  
 Signature \_\_\_\_\_  
 Print Name and Title \_\_\_\_\_  
**TESS FRAZIER**  
**SENIOR DIRECTOR**  
 Date: \_\_\_\_\_

  
 Signature \_\_\_\_\_  
 Print Name and Title \_\_\_\_\_  
 Kerry L. Kennedy  
 Executive Vice Chancellor for Business Affairs  
 Date: 30-JUNE-2002

Date Signed: 7/8/02

ASP Set up 15,000

Monthly Fee:

$$3325 \times 24 \text{ mos} = \underline{79,800}$$

Total ASP 94,800

Contract 6/30/02 → 6/30/03

Annual

$$45487 \div 12 \times 2 (\text{July-Aug}) 7881$$

$$22188 \div 12 \times 2 ("") 3698$$

ASP

$$\text{Set up} 15,000$$

$$3325 \times 2 (\text{July-Aug}) 6650$$

|                        |       |
|------------------------|-------|
| Leasing Sew            | 10625 |
| <u>2001-2002 43554</u> |       |
| costs                  |       |

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**HIGHER EDUCATION SOFTWARE SCHEDULE 1  
BLACKBOARD LEARNING SYSTEM/COMMUNITY PORTAL™**

This Blackboard Learning System 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 FEES**

|                                                                                                            |                   | Level of License and Support | Initial Term Annual Fees (USD) |
|------------------------------------------------------------------------------------------------------------|-------------------|------------------------------|--------------------------------|
| <b>Blackboard Learning System:</b>                                                                         |                   |                              | \$45,487                       |
| <b>Community Portal System :</b>                                                                           |                   |                              | \$22,188                       |
| <b>ASP Set Up Fee</b>                                                                                      |                   | \$15,000                     |                                |
| <b>Monthly ASP Fee</b>                                                                                     |                   | \$3,325                      |                                |
| <b>Total ASP</b>                                                                                           |                   |                              | \$94,800                       |
| <b>Total Learning Services</b>                                                                             |                   |                              | \$ 10,625                      |
| <b>Total Fees Due:</b>                                                                                     |                   |                              | \$173,100                      |
| Designated Server Site (Physical Location of the Software);<br>Blackboard ASP site, per Schedule 2 hereto. | Database Version: | Operating System:            | Hardware Model:                |
| <b>CUSTOMER'S- FTE: 3900</b>                                                                               |                   |                              |                                |

**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 install and use one installation copy and one non production test copy of the Software on the Internet or Intranet server at the site(s) designated above. Customer may use the Software solely in connection with providing access to Customer Content to Customer's: students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide course or content to third parties who are not Customer's students or employees, such use shall be subject to execution of an additional license grant and license fees.

**1.2 Copies.** Customer may make one (1) copy of the Software for backup and archival purposes.

**1.3 Supported Interfaces.** Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

**1.4 Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. For avoidance of doubt, Customer may customize the Software only to the extent permitted by the user interface of the Software.

**1.5 Third Party Software/Content.** Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Software"), including without limitation, Web Logic Express, WebLogic Application Server and WebLogic JDBC Drivers ("BEA 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 own instructional activities. To the extent that any content is included or provided through the Third Party Software the use of such content may be subject to additional terms and restrictions that shall be described in the Documentation, made available through the Software, or otherwise provided to Customer by Blackboard. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such use from BEA Systems, Inc. As of the Effective Date of this Agreement, the Third Party Software listed above is the exclusive Third Party Software used by Blackboard for operation of the Learning System and Community Portal Software.

**1.6 Termination of Access to Content through Third Party Software.** Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the third-party content that is delivered through the Third Party Software at any time for any reason without prior notice or liability. If possible, Blackboard will provide advance notice to Customer of such termination and Blackboard will make commercial reasonable efforts to replace terminated functionality with substantially similar functionality.

**1.7 Terms of Use.** The use of the Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

**1.8 Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use of Customer's name, logo and/or other marks may not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

**1.9 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 pursuant to the Support and Maintenance section herein.

**1.10 Auto Reporting.** Customer shall maintain, and not disable, the Auto Report option of the Software, which Blackboard acknowledges only reports aggregate usage information, and no individually identifiable user information, to Blackboard.

**1.11 Expansion of Licensed Use.** Customer's pricing is based on Customer's FTE. Customer and Blackboard agree that for the initial Term the FTE count will be 3900. Thereafter, Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. Blackboard will assess additional license fees for increases in Customer's FTE after the initial Term as follows:

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Blackboard Learning System Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE of licensing institution PLUS the number of Users in outside programs. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below:

**LEARNING SYSTEM**

| Blackboard Band  | Pricing           |
|------------------|-------------------|
| Fewer than 2,000 | \$25,000 annually |
| 2,000 to 3,999   | \$32,500 annually |
| 4,000 to 7,999   | \$40,000 annually |
| 8,000 to 14,999  | \$47,500 annually |
| 15,000 to 24,999 | \$55,000 annually |
| 25,000 to 49,999 | \$62,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$25,000 annually

**COMMUNITY PORTAL SYSTEM:**

| Blackboard Band  | Pricing           |
|------------------|-------------------|
| Fewer than 2,000 | \$15,000 annually |
| 2,000 to 3,999   | \$17,500 annually |
| 4,000 to 7,999   | \$20,000 annually |
| 8,000 to 14,999  | \$22,500 annually |
| 15,000 to 24,999 | \$25,000 annually |
| 25,000 to 49,999 | \$27,500 annually |

ADDITIONAL Higher Education FTE bands of 25,000 will be priced at \$15,000 annually

For the purposes of this agreement, "FTE" or "Full Time Equivalent" is determined using the following formula:

- a) # of Students taking 12 or more credit hours
- b) # of Students taking less than 12 credit hours x 0.5 (b x 0.5)
- c) # of Students participating in extension programs
- d) # of Alumni using system x 0.25 (d x 0.25)
- e) Other

Total FTE Count equals the sum of a + b + c + d + e.

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.

**2. FEES**

Customer shall pay Blackboard in US Dollars the non cancelable, non-refundable License and Support Fees specified herein within sixty (60) days after receipt of an invoice from Blackboard. For each Renewal Term (as defined below), Customer shall pay Blackboard the then-current License Fee for the Software within thirty (30) days after receipt of an invoice from Blackboard. ALL Payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Maintenance and Support Services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

**3. SUPPORT AND MAINTENANCE**

**3.1 Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

**3.2. Software Errors.** "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

**3.3. Telephone Support.** Customer shall receive priority queuing with regard to Customer's calls to Blackboard. Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

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**3.4. Error Resolution.**

- (a) **Severity Code 1.** Severity Code 1 implies that the Software is not functioning. Some examples of Severity Code 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software 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 Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Code 2 Software Errors are as follows: (i) intermittent Software Error and (ii) major functional component is unavailable. Severity Code 1 Software Errors will take priority over Severity Code 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Software Errors as long as there are no Severity Code 1 Software Errors awaiting resolution.
- (c) **Severity Code 3.** Severity Code 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Code 3 Software 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 Software Errors after Severity Code 1 and Severity Code 2 Software Errors. Blackboard may correct Severity Code 3 Software 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 Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Software Error reports awaiting resolution.
- (e) **Out-of-Scope.** A reported Software Error is outside the scope of this Agreement when it is determined not to be related to the Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

Please list Customer's technical contacts to receive the Maintenance and Support Services:

|                   |                        |
|-------------------|------------------------|
| Name:             | Rob Robinson           |
| Title:            | Associate Director     |
| E-mail:           | rrobinson@utsystem.edu |
| Telephone number: | 512-499-4207           |
| Name:             | Michael Anderson       |
| Title:            | Opportunity Manager    |
| E-mail:           | manderson@utsystem.edu |
| Telephone number: | 512-499-4207           |
| Name:             | Kristin Logan          |
| Title:            | Systems Analyst        |
| E-mail:           | klogan@utsystem.edu    |
| Telephone number: | 512-499-4207           |
| Name:             | Jimmy Holloway         |
| Title:            | Network Analyst        |
| E-mail:           | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207           |

**3.5. Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 3.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

**3.6. Installation Assistance.** In accordance with Section 1.2 of Schedule 2, Blackboard is responsible for installation of Software, including Updates, Corrections, and Upgrades, covered under that ASP Schedule. Customer is responsible for all other installation of the Software provided pursuant to this Agreement. Blackboard may provide installation assistance pursuant to a separate Blackboard Professional Services Agreement.

**3.7. 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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

**4. LIMITED WARRANTY BY CUSTOMER**

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, and (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

**5. LIMITED WARRANTY BY BLACKBOARD**

**5.1 Authority.** Blackboard represents and warrants that that (i) it has the authority to execute this Agreement, and (ii) Blackboard will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement.

**5.2 Performance Warranty.** Blackboard represents and warrants that the Software (but not including any Third Party Software) will substantially conform to the Documentation for ninety (90) days after the Effective Date, 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 repair or replacement of the defective Software in a timely manner as specified in the Maintenance and Support Services Schedule, provided that Customer notifies Blackboard of the deficiency within the warranty period and has installed all Corrections, Upgrades and Updates. 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. BLACKBOARD DOES NOT

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WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT HEREOF.

6. TERM

This Software Schedule will commence upon the Effective Date. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of two (2) years ("Initial Term"). Thereafter, this Software Schedule will renew 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 Software Schedule or if the Software Schedule otherwise terminates as provided in the Master Terms, Customer must immediately remove the Software from its server and provide Blackboard with thirty (30) day prior written notice of its intent not to renew and with proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

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

BLACKBOARD

Signature

TESS FRAZIER  
SENIOR DIRECTOR

Date:

CUSTOMER

University of Texas System - TeleCampus

Signature

Print Name and Title  
Kerry L. Kennedy  
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

## University of Texas - TeleCampus

**SCHEDULE 2**  
**BLACKBOARD LEARNING SYSTEM/COMMUNITY™ ASP AGREEMENT**

This Blackboard ASP Agreement ("ASP Agreement"), made this 30th day of June, 2002 (the "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 University of Texas System - TeleCampus, having an address at University of Texas System 210 West 6th Street Suite 2,100 Austin TX 78701 ("Customer").

Blackboard provides ASP services to permit its customers to host everything from single course Web sites to an entire online campus. Customer wishes to adopt Blackboard's ASP services to enhance its own educational programs, and Blackboard is willing to provide ASP services to Customer for this purpose.

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

**1. BLACKBOARD RESPONSIBILITIES.**

**1.1 Provision of Services.** Blackboard, either directly or through its affiliates or contractors, will provide Customer storage space on, and access to the Blackboard Software that Customer is authorized to use pursuant to a separate agreement from, the Blackboard ASP network maintained by Blackboard for the purpose of making Customer Content (as defined in Section 2.2 below) accessible to Customer's authorized end users via the Internet ("ASP Services").

**1.2 Provision of Hardware and Software.** In connection with the ASP Services, Blackboard will provide, install and maintain all software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security and virus-scanning software and other software that is reasonably necessary to operate and maintain the Software.

**1.3 Availability and Operational Specifications.** The Software will be accessible twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to 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. The environmental and operational specifications of the ASP Services in effect as of the Effective Date are set forth on Exhibit A hereto.

**1.4 Managed Firewall Service.** Blackboard will provide the Customer with its standard managed firewall service, which enables secure delivery of Blackboard's application services using fully redundant hardware-based firewalls. Customer's managed firewall service will be available 24 hours a day, 7 days a week.

**1.5 Virtual Private Network.** Blackboard will configure the VPN hardware and ship to the Customer's site for installation by the Customer. During the life of the agreement between Blackboard and License, and beyond, Blackboard is the sole owner of the VPN hardware. Blackboard is not liable or responsible for defects in the VPN hardware due to the negligence of the hardware manufacturer. The option for VPN is available to the Customer during the Initial Term of this Agreement for the fees set forth in Section 3 below.

**1.6 Data Restoration Policy.** For all data restoration requests that are not caused by the failure of Blackboard, Blackboard will provide the Customer with four complimentary database restores per contract year. In excess of the four complimentary restores, the Customer will incur an administrative fee for requests to restore portions of the Blackboard database or file system. These requests include, but are not limited to deleted grades, discussion board threads, and course documents. The fee covers the labor costs associated with migrating the backup data to the test server, transferring the requested data back to your production server and the hardware for dedicated restore servers. The Customer has two choices when requesting a restore:

- Customer can manually retrieve data from a designated server for five business days. Upon retrieval of the data, the Customer must notify Blackboard ASP Product support via email so that Blackboard can reclaim the server.
- Export/import a course as another name directly into the Customer's hosted system. However, grades, digital drop box entries and discussion board items will not export.

When requesting a data restore, the Customer must provide the instructor, course ID, item(s) to be restored, date of the restore requested and desired restoration method (i.e. retrieval from a designated server or export/import).

**2. CUSTOMER RESPONSIBILITIES; LIMITED CONTENT LICENSE.**

**2.1 Customer Responsibilities.** Customer shall be solely responsible for the use by Customer and its end users of the ASP Services and the resources available through the ASP Services. Customer shall refrain from using the ASP Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or abusing the ASP Services or the resources available through the ASP Services.

**2.2 Limited Content License.** Only to the extent necessary to provide the ASP Services to the Customer pursuant to this Agreement, Customer hereby grants Blackboard a royalty-free, non-exclusive, world-wide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the software that enables ASP Services, modify and create derivative works from any materials provided by Customer and/or Customer's end-users for use within the Software, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text ("Customer Content"), in whole or in part, in any form, media, or technology. Customer maintains ownership of Customer Content. Blackboard will not use Customer's course content in marketing or demo materials, nor will Blackboard knowingly release Customer's course content to other Blackboard customers.

**2.3 Virtual Private Network.** Customer is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Customer with documentation to be used with the VPN hardware installation process. Customer will receive standard technical support as specified in the Agreements. Upon the request of the Customer, Blackboard may send a technical consultant to assist in the installation of the VPN hardware. The technical consultant will be provided at the then current Blackboard rates, including time and materials.

**3. FEES.**

Customer agrees to pay Blackboard in US Dollars the following non-refundable ASP fees and expenses ("ASP Fees") per month for the initial term, and thereafter for each renewal term as provided below. Blackboard expressly reserves the right to change the ASP Fees for any renewal term. The Customer is limited to 10,000 Active Users for the pricing below. Blackboard can provide an infrastructure for additional users at an additional cost as outlined below. An Active User is a student enrolled in at least one course or organization. Except as otherwise provided below, Customer must pay the ASP Fees in U.S. Dollars no later than sixty (60) days after the date of an invoice from Blackboard. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154:

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**BLACKBOARD LEARNING SYSTEM™:**

- \$15000 initial set-up fee for each installation of the Software.
- \$3325 per month for the service for up to 10,000 Active Users and 20 Gb of RAID protected storage and 512 kbps of bandwidth measured using the 95<sup>th</sup> percentile calculation delivered via 100 mbps Internet uplink.
- Each additional 10 GB at \$300 per month.
- Each additional 1 mbps of connectivity at \$ 1,050 per month

**VIRTUAL PRIVATE NETWORK\***

- \$1500 set-up fee
- \$1000 a month

\*VPN is a Customer option in accordance with Section 1.5 herein.

**DATA RESTORATION POLICY**

- \$800 per restore for Learning System software, for restoration beyond what is stated in Section 1.6 herein

**PROMETHEUS HOSTING**

- Blackboard will host Customer's Prometheus licenses for the period June 30, 2002 through June 30, 2003 for no additional charge.

**TEST AND DEVELOPMENT HOSTING**

- Customer may, during the initial Term of the Master Terms and at its option, acquire ASP hosting services for test and development licenses at a monthly rate of \$1,000. This option is only available in minimum three month increments.

**4. TAXES.**

The ASP Fees do not include 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 ASP Services by Blackboard to Customer. 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.

**5. TERM; TERMINATION.**

This Agreement is effective for a period of two (2) years from the Effective Date, and will automatically renew on the terms stated above for additional one-year terms. Blackboard may immediately terminate this ASP Agreement if Customer does not pay the ASP Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party may terminate this Agreement by giving the other party thirty (30) days written notice prior to the expiration of the initial or any renewal term. Upon termination Customer shall immediately return any VPN hardware provided by Blackboard.

**6. DEFAULT.**

Either party, at its option, may terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

**7. CUSTOMER WARRANTY AND INDEMNIFICATION.**

**7.1 Customer Warranty.** Customer represents and warrants that: (a) Customer owns the Content or otherwise has the right to place the Content on the Customer's Web Site; and (b) the 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, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, the Children's Online Privacy Protection Act, and FERPA.

**7.2 Customer Indemnification.** To the extent authorized by the Constitution and laws of the State of Texas, Customer shall indemnify, defend and hold harmless Blackboard, its respective directors, officers, employees and agents, and their successor and assigns, with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based on a claim that any of the Content, or Customer's or its end-users' use of the ASP Services in violation of Section 2 hereof, is unlawful, libelous, and/or infringes or violates rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses.

**8. BLACKBOARD WARRANTIES, LIABILITIES AND INDEMNIFICATION.**

**8.1 Disclaimer of Warranty.** THE ASP SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE ASP SERVICES. THE AVAILABILITY OF THE SOFTWARE DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER.

**8.2 Indemnification.** If Customer receives a claim that the use of the ASP Services infringes a patent, copyright or other intellectual property right, Customer must promptly notify Blackboard in writing. Blackboard, at its own expense and option, will (i) defend and settle such claim, (ii) procure Customer the right to use the ASP Services, (iii) modify or replace the ASP Services to avoid infringement; and/or (iv) refund the ASP Fee paid. 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, subject to the exercise by the Texas Attorney General of his statutory duties, provided that Blackboard will keep Customer

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Informed of, and will consult with any independent attorneys appointed by Customer, at Customer's own expense, regarding the progress of such litigation. These are the sole and exclusive remedies for any and all claims Licensee may have against Blackboard arising out of or in connection with the ASP Services, whether made or suffered by Licensee or another person and whether based in contract or tort. Licensee acknowledges that these disclaimers or warranty permit Blackboard to provide the ASP Services at a lower cost than it otherwise could, and such disclaimers of warranty are reasonable.

**8.3 . Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLACKBOARD OR ANY OF ITS SUPPLIERS BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE ASP SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF BLACKBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AND WITH THE EXCEPTION OF CLAIMS WITHIN THE SCOPE OF BLACKBOARD'S INDEMNIFICATION IN SECTION 8.2, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO THE ASP SERVICES SHALL NOT EXCEED THE ASP FEE CUSTOMER PAID FOR THE IMMEDIATELY PRECEDING 12 MONTHS.

**8.4 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF BLACKBOARD, AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ASP SERVICES.

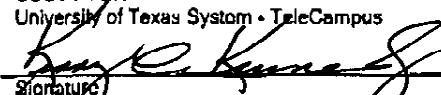
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD

  
Signature: \_\_\_\_\_  
Print Name and Title: **TESS FRAZIER**  
Senior Director  
Date: \_\_\_\_\_

CUSTOMER

University of Texas System - TeleCampus

  
Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Kerry L. Kennedy  
Executive Vice Chancellor for Business Affairs

Date: 30 JUNE, 2002

Date Signed:

7/8/02

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**EXHIBIT A**  
**ASP SERVICES SPECIFICATIONS- AS OF THE AVAILABLE DATE**

**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.

**NETWORK:**

- Redundant Internet connections through a minimum of three separate walls.

**VIRTUAL PRIVATE NETWORK:**

- In the event that there is a hardware failure at the Customer's site, the Customer has the option to disconnect the hardware and ship to Blackboard for resolution. Blackboard will return the hardware to the Customer within five business days if the issue is known and easily resolved by Blackboard. In the event the problem has to be escalated to the hardware manufacturer, Blackboard will use reasonable efforts to provide the Customer with a time frame for resolution. Blackboard is not responsible for any defects or interruption of service due to negligence caused by a defect in the VPN hardware.
- In the event the Customer experiences any service outages relating the VPN service provided by Blackboard, the outage provision below shall govern.
- Blackboard will not provide service credits for interruptions or problems caused by third party vendors. Service credits will not be provided for failure of hardware caused by the manufacturers' negligence or for problems caused by the Customer's employees, agents, contractors or other representatives.

**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.

**INITIAL ACCESS DATE:**

The Software is typically accessible from the hosting site within 7 business days of execution of a Master Agreement incorporating the software license schedule and the hosting schedule and provision of a URL from customer.

**ACCESSIBILITY/SERVICE CREDIT:**

The Software is accessible 24/7, with a 99.7% uptime guarantee. 99.7% uptime means that for 99.7% of the time during any calendar month, the Blackboard hosting services 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 or unavailability of critical processes\*. unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Blackboard 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 shall not exceed one month of service. Service credits are issued as follows:

| Length of Unavailability                    | Service Credit**                                           |
|---------------------------------------------|------------------------------------------------------------|
| up to 1 hour continuous unavailability      | 1 day of service fees credited (i.e., 1/30 monthly fees)   |
| 1 to 4 hours continuous unavailability      | 2 days of services fees credited (i.e., 1/15 monthly fees) |
| more than 4 hours continuous unavailability | 30 days of services fees credited (i.e., 1 monthly fee)    |

**\*Critical Processes:**

Web Server  
 Java Application Server  
 Database Server

\*\*All Service credit shall be applied to the next month's ASP fees. In no event shall a service credit exceed one monthly fee within a 30-day timeframe.

**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. For no additional fees, during the Initial Term, Blackboard will retain Customer's data on a CD and ship the CD(s) to Customer twice a year.

**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.

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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 provide weekly network performance reports 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.

Blackboard will provide Customer with weekly reports including information on services usage, system outages and changes made to the Blackboard system during that week. 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)

### **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.

### **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 monthly.
- Monitoring and event notification procedures are standardized, and are described in a separate document.

### **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.

### **TECHNICAL SUPPORT**

As Customer is responsible for managing the software, four (4) system administrators from Customer will have access to the hosting technical assistance team. These system administrators are responsible for all Blackboard software related questions originating from students and/or teachers unless other arrangements are made, i.e. Instructor/student technical support is purchased. System administrators may go to Blackboard for answers to instructor/student questions. Instructors/students may not contact Blackboard. This includes 24 hour 7 day a week technical support. Elite technical support is available. Elite technical support includes technical support for all Instructors.

### **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 68½°F, plus or minus 2½°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.

### **CLIENT RESPONSIBILITIES**

- The client has full access to the administrator menu and is responsible for the following:

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- 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 clients 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 client and not Blackboard. For example, if the client chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record
- The client is responsible for actually using and managing the Blackboard software.

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**BLACKBOARD LEARNING SOLUTIONS SCHEDULE**

This Blackboard Learning Solutions Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of June 28<sup>th</sup>, 2002. 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 Agreement.

**TOTAL DAYS OF LEARNING SERVICES: 5\*****TOTAL COST OF LEARNING SERVICES: \$10,625**

\*Learning services will either be performed at Blackboard's Washington, DC office or at the Customer's Austin, TX campus. Learning services at the Customer's location will be performed in minimum two-day increments.

**1. BLACKBOARD LEARNING SOLUTIONS**

1.1 Blackboard, upon request of Customer, shall provide learning solutions to Customer. To request or schedule a learning event for Customer, Customer shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement. Events are typically scheduled 3 to 6 weeks in advance.

1.2 Hands-on class size is restricted to a maximum of 15 people to maintain an effective instructor-student ratio. Extra students may require an additional materials, instructor fee, or additional days. Large groups may request presentation learning instead of the hands-on classroom format.

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

- A computer lab containing one computer for each student. Each computer must have at least 233 MHz processors and 64 MB or RAM and monitors capable of at least 800x600 resolution.
- A high bandwidth Internet connection from each computer
- Microsoft Internet Explorer 4.0 or later OR Netscape 4.7 or later installed on each computer
- Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
- A video projection device capable of 800x600 resolution attached to a "lead" computer.
- Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

**2. FEES FOR BLACKBOARD LEARNING SOLUTIONS STAFF.**

2.1 Customer will reimburse Blackboard for (i) reasonable travel and living expenses, in accordance with the State of Texas per diem rates, incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the learning solutions, and (ii) international telephone charges. ALL payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Expenses items greater than \$250 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. 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, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the learning services if Blackboard conducts learning services at a site other than Blackboard's facilities.

2.2 Cancellation. In the event that Customer cancels a scheduled training day, Customer shall be billed for cancellation fees as follows:

- Prior to 21 days before the scheduled event: \$200
- 15-21 days before the scheduled event=\$600
- 8-14 days before the scheduled event=\$1000
- 1-7 days before the scheduled event = the then current fee per cancelled day

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

BLACKBOARD

CUSTOMER

University of Texas System - TeleCampus

Signature

Signature

Print Name and Title

Print Name and Title

TESS FRAZIER  
SENIOR DIRECTORKerry L. Kennedy  
Executive Vice Chancellor for Business Affairs

Date:

Date: 30-June, 2002

Date Signed: 7/8/02

## University of Texas - TeleCampus

## CONVERSION TOOL SOFTWARE SCHEDULE

This Blackboard Conversion Tool Software ("Software") Schedule between Blackboard and Customer is an attachment to the Master Terms between Blackboard and Customer and is effective as of the date of execution. 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 FEES

|                                    | Level of License and Support | Initial Term Fees (USD) |
|------------------------------------|------------------------------|-------------------------|
| Blackboard Conversion Tool License |                              | N/A                     |
| Total Fees Due:                    |                              | N/A                     |

## 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 install and use one installation copy of the Software on the Internet or Intranet server at Customer's site designated above. Customer may use the Software solely in connection with migrating course shells, instructor data associated with those course shells and top-level user account information from Prometheus 5.0.2 to Blackboard Learning System Release 5.51 and from Blackboard Learning System Release 5.51 to Blackboard Learning System Release 6.0 (when available). In the event Customer wishes to use the Software in a manner other than as set forth above, Customer will be required to execute an additional license agreement with Blackboard.

1.2 **Intellectual Property Restrictions.** Except as otherwise expressly set forth in this Schedule or in the Master Terms, Customer shall not (i) copy the Software or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Software or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, , make available, or otherwise grant rights to the Software or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Software or any Third Party 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; (vii) otherwise access database information; or, (viii) reverse engineer, decompile or disassemble any component of the Software or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Use of any interfaces to accomplish the actions prohibited in Section 1.2 shall constitute a violation of this Section 1.3.

1.3 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.5 **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 pursuant to the Support and Maintenance section herein.

## 2. FEES. N/A

## 3. TERM

This Software Schedule will commence upon the date of execution. Unless earlier terminated as provided in the Master Terms, this Software Schedule will remain in effect for a period of one (1) year ("Initial Term"). If this Software Schedule otherwise terminates as provided in the Master Terms, Customer must remove the Software from its server and provide Blackboard with thirty (30) day proof of the destruction of the original copy and any other copies of the Software and return or destroy all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost.

## 4. SUPPORT AND MAINTENANCE

4.1 **Support.** Blackboard will provide telephone technical support for the Software to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Blackboard will provide Customer with four (4) hours of free support in connection with using the Software, provided Customer has notified Blackboard's account manager in writing at least five (5) business days before of Customer's intention to use the Software. If the Customer requires more than four (4) hours of support, Blackboard will provide additional support on a time and materials basis pursuant to section 4.3 below. Blackboard will provide support only to those Customers who are in compliance with Blackboard minimum configuration requirements. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, excluding US Federal holidays, unless otherwise specified by Blackboard. Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then prevailing rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer. Blackboard's sole obligation is limited to repair or replacement of the defective software in a timely manner provided that Customer has properly installed all Corrections, Upgrades and Updates. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Software provided to Customer. Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

4.2. **Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Software as they are made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the software and the two (2) most recent previously issued Updates of the Software.

4.3 **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 support services are billable to Customer at Blackboard's then-existing services rates, with a one-hour minimum charge per call. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

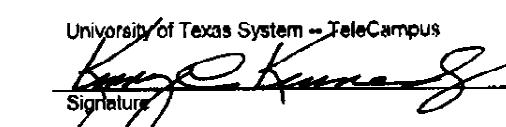
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IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BLACKBOARD

  
Signature  
Print Name and Title: **TESS FRAZIER**  
**SENIOR DIRECTOR**  
Date:

University of Texas System - TeleCampus

  
Signature

Print Name and Title  
Korry L. Kennedy  
Executive Vice Chancellor for Business Affairs  
Date: 30 June, 2002

Date Signed: 7/8/02

University of Texas - TeleCampus

**SCHEDULE  
PROMETHEUS SOFTWARE - RENEWAL**

This Prometheus 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 FEES**

|                                                                                    | Level of License            | Initial Term Fees (USD)          |                 |
|------------------------------------------------------------------------------------|-----------------------------|----------------------------------|-----------------|
| Prometheus Software                                                                |                             | \$ N/A                           |                 |
| Total Fees Due:                                                                    |                             | \$ N/A                           |                 |
| Designated Server Site (Physical Location of the Software):<br>Prometheus ASP site | Database Version:<br>Oracle | Operating System:<br>Solaris 2.6 | Hardware Model: |

**1. LICENSE**

1.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a perpetual, non-exclusive, nontransferable, royalty-free license to use the software program known as Prometheus, including any Corrections, Updates, and Upgrades provided pursuant to the maintenance and support services described below (the "Prometheus Software") in source code form. Customer may use the Prometheus Software solely in connection with providing access to Customer Content to Customer's students resident in a degree- or certificate-granting program, prospective students, alumni, consortia students registered to take one of Customer's regularly offered courses of instruction, employees, trustees and collaborating researchers and internal training for Customer's employees. In the event Customer wishes to use the Software to provide courses or content to third parties who are not Authorized Users, the parties will negotiate in good faith the terms of an additional license and such use shall be subject to execution of an additional license grant and the payment of license fees and/or other fees.

1.2 **Intellectual Property Restrictions.** Customer shall not (i) sell, assign, distribute, lease, market, rent, sublicense, transfer, make available, or otherwise grant rights to the Prometheus Software in whole or in part to any third party in any form; (ii) electronically transfer the Prometheus Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Prometheus Software; (iii) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Prometheus Software; or (iv) add any other notices or markings to the Prometheus Software or any portion thereof.

1.3 **Customizations.** Customer shall have the right to customize the Prometheus Software (the "Customizations") solely for use in connection with providing access to Customer Content through the Prometheus Software pursuant to Section 1.1 above. All such Customizations shall be deemed to be Prometheus Software and subject to the terms and conditions of the Master Terms and this Schedule to the same extent as the Prometheus Software. Customer shall not permit any third party, other than Blackboard, to create Customizations without the prior written consent of Blackboard, which shall not be unreasonably withheld.

1.4 **Third Party Prometheus Software/Content.** Customer acknowledges that the Prometheus Software may utilize software and/or content made available to Blackboard by third parties ("Third Party Prometheus 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 Prometheus Software solely in connection with Customer's own instructional activities.

1.5 **Ownership of Prometheus Software/Customizations.** Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest to (i) the Prometheus Software and the Customizations; (ii) Upgrades, Corrections and Updates to the Prometheus Software; (iii) all precursors, portions and works in progress with respect thereto; (iv) all inventions, works of authorship, technology, information, know-how, materials and tools relating thereto or to the development, support or maintenance thereof; (v) all copyrights, patent rights, trade secret rights, trademark rights, and all other intellectual property rights of any sort; and (vi) all business, contract rights, and goodwill in, incorporated or embedded in, used to develop or related to any of the foregoing (collectively subsections (i-v) are "Prometheus Intellectual Property"). To the extent any right, title or interest in the Prometheus Intellectual Property vests with Customer, Customer shall assign and hereby assigns all such right, title and interest to the Prometheus Intellectual property to Blackboard. Customer further agrees to assist Blackboard as may be required to evidence, record and perfect the assignment described in this Section 1.5 and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights.

1.6 **Terms of Use.** The use of the Prometheus Software by Customer's end users is governed by additional terms and conditions ("Terms of Use") made available within the Prometheus Software. Customer shall maintain the Terms of Use, and shall not obscure, remove, or alter the Terms of Use. Customer may, at its sole discretion, replace the Terms of Use with its own terms and conditions applicable to its end users, provided however, that such terms and conditions are no less protective of Blackboard than the Terms of Use.

1.7 **Other Rights.** Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Prometheus Software in Blackboard's promotional materials. Such use will not endorse or imply endorsement of Blackboard by Customer. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

**2. FEES**

In consideration of the license granted herein, Customer shall pay to Blackboard in US Dollars the non-cancelable, non refundable License Fee specified herein in accordance with the terms and conditions of the Master Terms. All payments shall be sent to Blackboard Inc, Box 200154 Pittsburgh, PA 15251-0154. Customer agrees to reimburse Blackboard for (i) reasonable travel and living expenses in accordance with the State of Texas per diem rates incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of maintenance and support services and (ii) any other expenses described in this Schedule. Blackboard will receive Customer's prior approval for expenses greater than \$250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. 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.

\* Other Third Party Software Products may include TutorNet Virtual Classroom, Oracle database and Apache.

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**3. TERM**

This Prometheus Software Schedule will commence upon the Effective Date and will remain effective for a period of ten (10) months, from September 1, 2002 through June 30, 2003, unless otherwise terminated as provided in the Master Terms.

**4. MAINTENANCE AND OTHER SERVICES**

**4.1 Support.** Blackboard will provide telephone technical support for the production copy to four (4) technical contacts who are the only individuals who may contact Blackboard regarding the support services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed four (4) contact personnel. Such support will be available 24 hours a day, 7 days a week unless otherwise specified by Blackboard. Upon request of Customer, Blackboard may make representatives available for onsite support, at its sole discretion, at Blackboard's then current rates. Support services do not include Third Party Software; however, Blackboard shall make best efforts to pass on any rights or benefits such third party may be willing to provide to Customer at no additional cost to Customer.

**4.2 Software Errors.** "Prometheus Software Error" shall mean a Reproducible Defect or combination thereof in the Prometheus Software that results in a failure of the Prometheus Software, when used in accordance with the Documentation. A reproducible defect means a defect that Blackboard can reproduce using that version of the Prometheus Software provided to Customer. Prometheus Software Errors do not include those errors caused by (i) Customer's negligence, (ii) any modification or alteration Customer makes to the Prometheus Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Prometheus Software.

**4.3 Telephone Support.** Telephone support representative(s) serve as Customer's interface with Blackboard. They provide instructional assistance for Blackboard's products, accept error reports and ensure that reported Prometheus Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5284. Upon receipt of Customer's call, Blackboard will determine whether the Prometheus Software Error relates to the Prometheus Software, or is directly caused by the Prometheus Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Code, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

**4.4 Error Resolution.**

(a) **Severity Code 1.** Severity Code 1 implies that the Prometheus Software is not functioning. Some examples of Severity Code 1 Prometheus Software Errors are as follows: (i) Prometheus Software is down and will not restart; (ii) Prometheus Software is not able to communicate with external systems; and (iii) Prometheus Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Code 1 Prometheus Software Error reports on a twenty-four (24) hour basis. When a Severity Code 1 Prometheus Software Error is reported, Blackboard will assign resources necessary to correct the Prometheus Software Error. If access to the Prometheus Software 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 Prometheus Software is running but that Customer is unable to use major portions of the Prometheus Software. Some examples of Severity Code 2 Prometheus Software Errors are as follows: (i) intermittent Prometheus Software Error and (ii) major functional component is unavailable. Severity Code 1 Prometheus Software Errors will take priority over Severity Code 2 Prometheus Software Errors. Blackboard will assign appropriate technical resources to Severity Code 2 Prometheus Software Errors as long as there are no Severity Code 1 Prometheus Software Errors awaiting resolution.

(c) **Severity Code 3.** Severity Code 3 implies that the Prometheus Software is operating close to normal but there is a non-critical Prometheus Software Error. Severity Code 3 Prometheus Software 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 Prometheus Software Errors after Severity Code 1 and Severity Code 2 Prometheus Software Errors. Blackboard may correct Severity Code 3 Prometheus Software 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 Prometheus Software is operating normally but the customer is in need of instructional assistance. Severity Code 1, 2, and 3 Prometheus Software Errors will take priority over Severity Code 4 calls. Blackboard will assign appropriate technical resources to Severity Code 4 calls as long as there are no Severity Code 1, 2, or 3 Prometheus Software Error reports awaiting resolution.

(e) **Out-of-Scope.** A reported Prometheus Software Error is outside the scope of this Agreement when it is determined not to be related to the Prometheus Software. Examples of such unrelated problems include, but are not limited to, Customer's host or applications software, Customer's hardware and cabling power or environmental conditions, and human error.

**Please list Customer's technical contacts to receive the Maintenance and Support Services:**

|                   |                        |
|-------------------|------------------------|
| Name:             | Rob Robinson           |
| Title:            | Associate Director     |
| E-mail:           | robinson@utsystem.edu  |
| Telephone number: | 512-499-4207           |
| Name:             | Michael Anderson       |
| Title:            | Opportunity Manager    |
| E-mail:           | manderson@utsystem.edu |
| Telephone number: | 512-499-4207           |
| Name:             | Kristin Logan          |
| Title:            | Systems Analyst        |
| E-mail:           | klogan@utsystem.edu    |
| Telephone number: | 512-499-4207           |
| Name:             | Jimmy Holloway         |
| Title:            | Network Analyst        |
| E-mail:           | jholloway@utsystem.edu |
| Telephone number: | 512-499-4207           |

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**4.5. Maintenance.** Blackboard will provide Customer with Updates, Corrections and Upgrades to the Prometheus Software as they may be made generally available from time to time. Notwithstanding any other provisions in this Agreement, Blackboard shall provide support pursuant to Section 4.1 only with respect to the then-current generally available version of the Prometheus Software and the two (2) most recent previously issued Updates of the Prometheus Software.

**4.7 Purchase of Additional Support and Maintenance Services.** In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Elite level maintenance and support services in accordance with the applicable terms and conditions and at Blackboard's then current rates. Elite technical support includes technical support for all instructors.

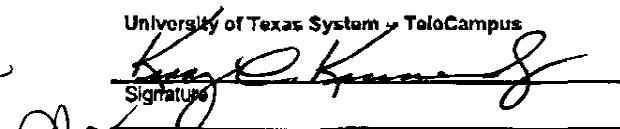
**4.8 Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Prometheus Software or are not covered by the support services are billable to Customer at Blackboard's then current rates. If Customer desires such additional services, it must execute a copy of Blackboard's Professional Services Agreement for the services.

**5. LIMITED WARRANTY BY CUSTOMER**

Customer represents and warrants that (i) it has the authority to execute this Agreement, (ii) the information Customer has provided is complete and accurate, (iii) Customer will comply with all applicable local, national and international laws, regulations or other provisions as applicable in performing its obligations under this Agreement, and (iv) Customizations will not infringe any copyright or other intellectual property right of any third party.

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

BLACKBOARD  
  
 Signature \_\_\_\_\_  
 Print Name and Title \_\_\_\_\_  
**TESS FRAZIER**  
**SENIOR DIRECTOR**  
 Date: \_\_\_\_\_

University of Texas System - TeleCampus  
  
 Signature \_\_\_\_\_  
 Print Name and Title \_\_\_\_\_  
 Kerry L. Kennedy  
 Executive Vice Chancellor for Business Affairs  
 Date: 30 June, 2002

Date Signed: 7/8/02

2004-071-03RN-~~1152~~

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

Rec'd UT System

2006

OCT 25 2005

11

Business Affairs

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs |        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--------|
| FROM:                                                                                                                                                                             | UT TeleCampus                                             |        |
| DATE:                                                                                                                                                                             | October 20, 2005                                          |        |
| Departmental Contract Administrator: Rob Robinson                                                                                                                                 |                                                           |        |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                           |        |
| Contractor's Vendor Identification Number <sup>1</sup> :                                                                                                                          |                                                           |        |
| Total Value of Contract: 522081178                                                                                                                                                |                                                           |        |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                           |        |
|                                                                                                                                                                                   | Fiscal Year                                               | Amount |
|                                                                                                                                                                                   | \$120,104                                                 |        |
|                                                                                                                                                                                   | \$                                                        |        |
|                                                                                                                                                                                   | \$                                                        |        |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                           |        |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? No                                                                                                  |                                                           |        |
| Dollar value of work being subcontracted to HUB firms: \$ N/A                                                                                                                     |                                                           |        |
| Purpose of Contract: Ibkube ciyseware management system license and hosting                                                                                                       |                                                           |        |
| Beginning Date of Contract: June 20, 2002 original contract -                                                                                                                     |                                                           |        |
| Ending Date of Contract: Automatic renewal terms as long as UTTC uses Blackboard                                                                                                  |                                                           |        |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>Renewal</i>               |                                                           |        |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                           |        |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes No N/A

Acct. & Purch.- Svcs.

OCT 27 2005

**RECEIVED**

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as required by Section 23 of the Information Resources Use and Security Policy?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If the contract is for the purchase or development of an electronic system that will use social security numbers, have you obtained the approval of the System Administration SSN Coordinator as required by section 3.6.4.2 of Business Procedures Memorandum 66?
- 
4. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval? If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with BPM 48?
- 
5. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit, as required by Texas Government Code Section 321.020? (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- 
6. If approval of the contract by the Board of Regents is required by Series 10501, Section 2.1 and Section 3, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
- 
7. If the answer to Question 5 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 
8. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Series 10501, Section 5.1(b), Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)
- 
9. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 
10. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-05.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with BPM 58 and the HUB Action Plan, please contact the Senior Director for HUB Programs in the Office of HUB Development.)
- 
11. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
- 
12. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 
13. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-

Yes No N/A

14. Has the authorized person in your office or department signed or initiated the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:

*if Blackboard went out of business, UTIC courses would need/require another platform on which to run*

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

18. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.

- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.) (Please attach a copy of the signed form.)

- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- c. Was an invitation to present offers posted in the Texas Register a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.) If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the Texas Register after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):
- (1) The nature of the previous employment with the agency: \_\_\_\_\_
- (2) The date the employment was terminated: \_\_\_\_\_
- (3) The annual rate of compensation for the employment at the time of termination: \_\_\_\_\_

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

19. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 540100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.
- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)
- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?
- c. Have you confirmed that contract workers are **NOT** being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers are being used in these areas, please explain why below:
- \_\_\_\_\_
- \_\_\_\_\_

<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

**PART 4: ALL CONTRACTS**

20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Thank you for completing this checklist.

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific                    | Black                    | Hispanic                 | American-<br>Indian                 | Woman<br>Owned           |
|-----------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 4. _____  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |



# UT TeleCampus

expand your options • learn online • [www.uttc.org](http://www.uttc.org)

The University of Texas System  
702 Colorado Street  
Austin, TX 78701

October 24, 2005

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

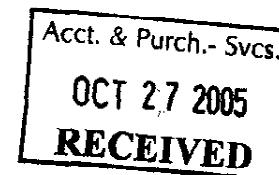
Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University:                   Mr. Scott C. Kelley  
                                         Executive Vice Chancellor for Business Affairs  
                                         601 Colorado Street  
                                         Austin, Texas 78701  
                                         Fax (512) 499-4289  
                                         Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to:                   UT TeleCampus  
                                         UT System Administration  
                                         702 Colorado Street  
                                         Austin, Texas 78701  
                                         Attention: Dr. Darcy Hardy



Currently the yearly fees during the one (1) year renewal period, starting on July 1, 2005 and ending on June 30, 2006 will equal a total of \$97,000. It is divided as described in Schedule 1 and Schedule 2 -- an annual fee equal to \$35,000 for the Blackboard Learning System, an annual fee equal to \$20,000 for the Community Portal, and an annual fee equal to \$42,000 for the Blackboard Learning System/Community ASP. This renewal letter proposes modifying the Learning System/Community System invoice to include 14.75 months to the renewal date up to 10/1/2006.

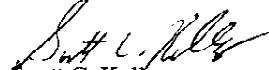
This letter also requests modification of the ASP Hosting renewal invoice to include 15 months to line the renewal date up to 10/1/2006 and from this time forward.

This modification means the invoice for this renewal term will be as follows:

|                                          |           |
|------------------------------------------|-----------|
| Learning System/Community System License | \$67,604  |
| ASP Hosting                              | \$52,500  |
| TOTAL                                    | \$120,104 |

All future renewals will now be set to invoiced mid-September and due October 1.

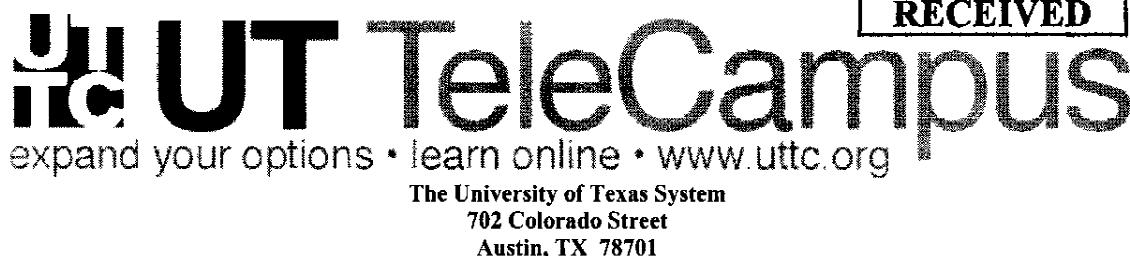
Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c: Darcy Hardy  
Rob Robinson  
Marta Hubbard  
Carrie Mills

Acct. & Purch.- Svcs.  
NOV 06 2005  
RECEIVED



October 24, 2005

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The Univcrsity of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University: Mr. Scott C. Kelley  
Executive Vice Chancellor for Business Affairs  
601 Colorado Street  
Austin, Texas 78701  
Fax (512) 499-4289  
Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to: UT TeleCampus  
UT System Administration  
702 Colorado Street  
Austin, Texas 78701  
Attention: Dr. Darcy Hardy

Currently the yearly fees during the one (1) year renewal period, starting on July 1, 2005 and ending on June 30, 2006 will equal a total of \$97,000. It is divided as described in Schedule 1 and Schedule 2 -- an annual fee equal to \$35,000 for the Blackboard Learning System, an annual fee equal to \$20,000 for the Community Portal, and an annual fee equal to \$42,000 for the Blackboard Learning System/Community ASP. This renewal letter proposes modifying the Learning System/Community System invoice to include 14.75 months to the renewal date up to 10/1/2006.

This letter also requests modification of the ASP Hosting renewal invoice to include 15 months to line the renewal date up to 10/1/2006 and from this time forward.

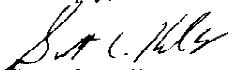
Approved: *Jmf* 11/1/05

This modification means the invoice for this renewal term will be as follows:

|                                          |           |
|------------------------------------------|-----------|
| Learning System/Community System License | \$67,604  |
| ASP Hosting                              | \$52,500  |
| TOTAL                                    | \$120,104 |

All future renewals will now be set to invoiced mid-September and due October 1.

Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c:      Darcy Hardy  
          Rob Robinson  
          Marta Hubbard  
          Carrie Mills

2004-071-04RN

2007

Rec'd UT System

OCT 26 2006

5

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

Business Affairs

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs #59 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                 |
| DATE:                                                                                                                                                                             | October 26, 2006                                              |
| Departmental Contract Administrator: Marta Hubbard                                                                                                                                |                                                               |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                               |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                               |
| Total Value of Contract: \$97,000                                                                                                                                                 |                                                               |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                               |
| Fiscal Year                                                                                                                                                                       | Amount                                                        |
| 2006-2007                                                                                                                                                                         | \$97,000                                                      |
| \$                                                                                                                                                                                | \$                                                            |
| \$                                                                                                                                                                                | \$                                                            |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                               |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                               |
| Dollar value of work being subcontracted to HUB firms: \$0                                                                                                                        |                                                               |
| Purpose of Contract Renewal letter                                                                                                                                                |                                                               |
| Beginning Date of Contract: October 1, 2006 for renewal – Original contract – June 20, 2002                                                                                       |                                                               |
| Ending Date of Contract: Automatic renewal terms as long as UTTC uses Blackboard 8/31/2007 (or this letter) Open                                                                  |                                                               |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                              |                                                               |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                               |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by [BPM 48](http://www.utsystem.edu/BPM/48.htm) (<http://www.utsystem.edu/BPM/48.htm>)?
- 
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as required by Section 23 of the [Information Resources Use and Security Policy](#)?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

14. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- 

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

18. If your contract is for consulting services **and the contract exceeds \$25,000**, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.

- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 — <http://www.utsystem.edu/BPM/43.htm>.) (Please attach a copy of the signed form.)

- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of **studying** or **advising** a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
- (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

**PART 4: ALL CONTRACTS**

20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

---



---



---



---

☞ Thank you for completing this checklist. ☞



The University of Texas System  
702 Colorado Street  
Austin, TX 78701

October 26 2006

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

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If to University:                   Mr. Scott C. Kelley  
                                         Executive Vice Chancellor for Business Affairs  
                                         601 Colorado Street  
                                         Austin, Texas 78701  
                                         Fax (512) 499-4289  
                                         Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to:                   UT TeleCampus  
                                         UT System Administration  
                                         702 Colorado Street  
                                         Austin, Texas 78701  
                                         Attention: Dr. Darcy Hardy

This renewal letter covers the time period of October 1, 2006 through August 31, 2007, and the invoice will cover the following:

Learning System (October 2006 – August 2007): \$35,016.67  
Community System (October 2006 – August 2007): \$19,983.33  
ASP (October 2006 – August 2007): \$41,983.33  
Total: \$96,983.33

All future renewals will now be set to invoiced mid-August and due September 1 covering the time period of September 1 through August 31.

Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c: Darcy Hardy  
Rob Robinson  
Marta Hubbard  
Carrie Mills

2004-071-05RN

2007

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

Rec'd UT System

AUG 16 2007

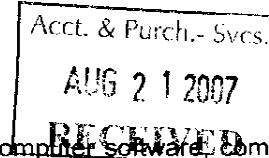
Business Affairs

8

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs #300 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                  |
| DATE:                                                                                                                                                                             | August 17, 2007                                                |
| Departmental Contract Administrator: Rob Robinson                                                                                                                                 |                                                                |
| Name of Contractor:                                                                                                                                                               | Blackboard                                                     |
| Contractor's Vendor Identification Number <sup>1</sup> : 15220811788                                                                                                              |                                                                |
| Total Value of Contract: \$120,000                                                                                                                                                |                                                                |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                                |
| Fiscal Year                                                                                                                                                                       | Amount                                                         |
| 2007-2008                                                                                                                                                                         | \$120,000                                                      |
|                                                                                                                                                                                   | \$                                                             |
|                                                                                                                                                                                   | \$                                                             |
| Account number from which contract will be funded <sup>2</sup> : [REDACTED]                                                                                                       |                                                                |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                                |
| Dollar value of work being subcontracted to HUB firms: \$0                                                                                                                        |                                                                |
| Purpose of Contract Renewal letter                                                                                                                                                |                                                                |
| Beginning Date of Contract: September 1, 2007 for renewal – Original contract – June 20, 2002                                                                                     |                                                                |
| Ending Date of Contract: Automatic renewal terms as long as UTTC uses Blackboard                                                                                                  |                                                                |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input type="checkbox"/> No <input type="checkbox"/>                                         |                                                                |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                                |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A



1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the System Chief Information Officer as required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>)?
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as required by Section 23 of the Information Resources Use and Security Policy?

<sup>1</sup> For contractors to be paid, they must have or obtain a vendor identification number (VID) from the State Comptroller. If a contractor already has a VID, Accounting and Purchasing Services can provide you with that number. If a contractor does not have a VID, please go to <http://www.utexas.edu/admin/purchasing/vid.html> to establish a VID for that contractor.

<sup>2</sup> Accounting and Purchasing Services (499-4579) can encumber the funding if requested. Such an encumbrance will assist you with budgeting your funds.

Yes No N/A

3. If the contract is for the purchase or development of an electronic system that will use social security numbers, have you obtained the approval of the System Administration SSN Coordinator as required by section 3.6.4.2 of Business Procedures Memorandum 66?
- 

4. a. If Office of General Counsel approval as to legal form is required by BPM 48 (<http://www.utsystem.edu/BPM/48.htm>) or otherwise, have you attached a copy of OGC's approval?  
b. If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with BPM 48?
- 

5. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit, as required by Texas Government Code Section 321.020? (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- 

6. If approval of the contract by the Board of Regents is required by Series 10501, Section 2.1 and Section 3, Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?
- 

7. If the answer to Question 5 is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 

8. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Series 10501, Section 5.1(b), Regents' Rules and Regulations (<http://www.utsystem.edu/bor/rules>)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)
- 

9. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 

10. If the contract is for \$100,000 or more, have you complied with BPM 58 (<http://www.utsystem.edu/BPM/58-06-05.htm>) with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with BPM 58 and the HUB Action Plan, please contact the Senior Director for HUB Programs in the Office of HUB Development.)
- 

11. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)
- 

12. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 

13. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
-

Yes No N/A

14. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

15. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- 

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

16. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information (<http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>) that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code Sections 2107.008 and 2252.903 (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>) require such verification for purchases of goods or services.)

17. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value? (Required by Texas Government Code Section 2156.009.) (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>3</sup> If it is not, please go to Part 3 of this checklist.

18. If your contract is for consulting services and the contract exceeds \$25,000, please answer the following questions; otherwise, please skip to Part 3 of this Checklist.

- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See BPM 43 – <http://www.utsystem.edu/BPM/43.htm>.) (Please attach a copy of the signed form.)

- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code Section 2254.028 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- c. Was an invitation to present offers posted in the Texas Register a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code Sections 2254.028 and 2254.029 – <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

<sup>3</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code Sections 2254.032, 573.023 and 573.024 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?

- f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code Section 2254.033 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>). If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the Texas Register after the contract is signed (see Texas Government Code Section 2254.030 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>):

(1) The nature of the previous employment with the agency:

---

(2) The date the employment was terminated:

---

(3) The annual rate of compensation for the employment at the time of termination:

---



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### PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS — If your contract involves the use of contract workers,<sup>4</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

---

19. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code Section 2252.901 — <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.)

- b. Do you have in your contract file a written description of how the use of a contract workforce fits into your department's mission, goals, and objectives?

- c. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
- 
- 

---

<sup>4</sup> The General Appropriations Act (78<sup>th</sup> Legislature), Article IX, Section 4.07(a), defines contract workers as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A



- d. Do you have in your contract file a written cost benefit analysis confirming that it is more cost-effective to hire outside workers than hire full-time employees?
- e. If you do not have a written cost benefit analysis, is the contract being entered into for one of the following reasons:
  - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- f. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- g. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- h. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- i. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

#### PART 4: ALL CONTRACTS



20. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

---



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Thank you for completing this checklist.

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific         | Black                               | Hispanic                 | American-<br>Indian      | Woman<br>Owned           |
|-----------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



expand your options • learn online • [www.uttc.org](http://www.uttc.org)

**The University of Texas System  
702 Colorado Street  
Austin, TX 78701**

August 17, 2007

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

If to University:                   Mr. Scott C. Kelly  
                                         Executive Vice Chancellor for Business Affairs  
                                         601 Colorado Street  
                                         Austin, Texas 78701  
                                         Fax (512) 499-4289  
                                         Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to:                   UT TeleCampus  
                                         UT System Administration  
                                         702 Colorado Street  
                                         Austin, Texas 78701  
                                         Attention: Dr. Darcy Hardy

This renewal letter covers the time period of September 1, 2007 through August 31, 2008, and the invoice will cover the following:

Learning System (September 2007 – August 2008): \$45,000.00  
Community System (September 2007 – August 2008): \$25,000.00  
ASP (September 2007 – August 2008): \$50,000.00  
Total: \$120,000.00

Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c: Darcy Hardy  
Rob Robinson  
Marta Hubbard  
Carrie Mills

2004-071-05RN



7

Rec'd UT System

July 31, 2008

JUL 31 2008

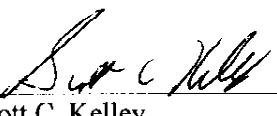
Business Affairs

**M E M O R A N D U M**

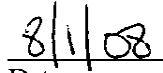
TO: Dr. Scott C. Kelley  
FROM: Darcy Hardy  
SUBJECT: Blackboard Statement of Work

The attached statement of work allowed for additional expenses to the original Blackboard contract in the amount of \$4,320. Please approve below to allow for payment of the work.

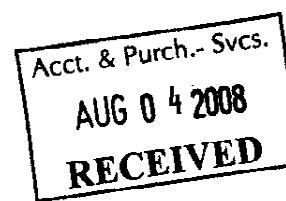
Your consideration is appreciated. If you have questions or concerns please let me know.

  
\_\_\_\_\_  
Scott C. Kelley

Executive Vice Chancellor  
for Business Affairs

  
\_\_\_\_\_  
Date

Attachments



VOID IF EXECUTED AFTER: March 14, 2008  
 Customer: University of Texas - Telecampus

**EXHIBIT TO**  
**BLACKBOARD PROFESSIONAL SERVICES AGREEMENT**  
STATEMENT OF WORK

This Work Statement is a preliminary expectation of both Blackboard and University of Texas - Telecampus ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated project managers of each Blackboard and Customer. The work described below is intended to be performed on a time and materials basis.

This Statement of Work (SOW) is an attachment to the Professional Services Agreement (PSA) between Blackboard and Customer, dated June 30, 2002, which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

#### 1 Engagement Summary

University of Texas Telecampus (UTTC) supports teaching and learning activities with an implementation of the Blackboard Academic Suite, hosted by Blackboard ASP. The Blackboard system is integrated with UTTC's student information system (SIS) such that user, course and enrollment information is automatically updated in Blackboard based on data managed by the SIS. As the SIS is hosted by a 3<sup>rd</sup> party, the integration tools currently require significant support and maintenance from the SIS host. To simplify the integration and reduce risk, UTTC is requesting that Blackboard provide consultants (each a "Consultant") to perform certain services to reconfigure the integration and provide support thereafter.

#### 2 Scope of Consulting Services

Based on discussions with the customer and our derived understanding, Blackboard will deliver the following Consulting Services:

##### 2.1 Snapshot Integration Update (Integration Certification)

The objective of the Snapshot Integration Certification service is to extend the Customer IT staff's technical knowledge of the snapshot integration process and to improve their understanding of the associated business rules and requirements. More specifically, this service is designed to develop or refresh the necessary skills within the Customer IT staff to assess new requirements and update the snapshot integration process to accommodate rule and process changes as organizational needs evolve.

The expected outcome for UTTC will be a reconfiguration of the snapshot integration tools such that their SIS host will no longer be primarily responsible for the execution, support and maintenance of the Blackboard Snapshot Tool. This configuration will be more aligned with typical Blackboard Snapshot Integration best practices for ASP customers and will allow Blackboard Global Services to provide maintenance services for integration support.

#### 2.2 Project Management

Project Management delivers the communication and coordination activities for both customer and Blackboard. The goal of Project Management is that all project objectives and milestones are met in a timely and cost effective manner. To achieve these outcomes, Blackboard will appoint a Project Manager who will be responsible for the overall engagement delivery, documentation, status reporting, and resource management.

#### 3 SCOPE OF ADDITIONAL SERVICES

##### 3.1 Integration Customization Maintenance

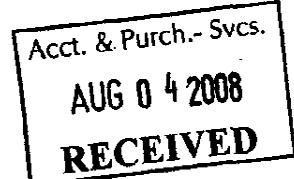
The Integration Customization Maintenance ("ICM") service provides customers with Blackboard Consulting assistance, for named consulting projects; to support planned Blackboard Academic Suite software upgrades by ensuring customizations are compatible with upgrades. More specifically, ICM services will provide:

- Facilitated Blackboard Consulting support and development assistance, for named consulting projects, in the maintenance of minor "dot release" system upgrades and "Hotfixes." Named consulting projects may include:
  - Snapshot Data Integration – maintain the Blackboard Java-based snapshot controller technology, support existing integration tools and provide troubleshooting in the event of unexpected behavior
  - Continued operation of named consulting project when the customer chooses to upgrade the Blackboard's Academic Suite, including any of its components. In addition, this service will provide coverage when the customer upgrades to the latest Application Pack, Service Pack or Hotfix, as defined by Blackboard.
- If hosted by Blackboard, continued operation of named consulting projects in the event of a hardware failover or in conjunction with ASP upgrades and underlying infrastructure changes, excluding Oracle RAC configurations (ASP hosted customers only).

#### 4 Project Resource Requirements

In order to complete this project, Blackboard proposes the following projected staffing model.

| Role            |                                                                                      | Activities and Responsibilities |
|-----------------|--------------------------------------------------------------------------------------|---------------------------------|
| Director        | Executive oversight and quality assurance                                            |                                 |
| Project Manager | Management of project tasks, schedule, resources, documentation and status reporting |                                 |
| Consultant      | Execution of technical activities and documentation                                  |                                 |



VOID IF EXECUTED AFTER: March 14, 2008  
 Customer: University of Texas - Telecampus

## 5 Customer Responsibilities

Blackboard Consultant's service model assumes active participation from the customer team. The customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to successfully execute required tasks.

## 6 Professional Fees, Expenses and Terms

Please reference the Service Pricing section for professional fees information. Blackboard Consulting rates reflect the role and requisite experience level of the assigned individuals.

Blackboard Consulting will invoice the customer for the actual travel related costs incurred as part of this engagement. Blackboard Consulting will make every reasonable effort to minimize travel costs to the customer while still meeting project objectives.

Normal consulting hours are from 9 am to 5 pm local time Monday through Friday excluding Blackboard Holidays. Blackboard Consulting may charge 125% of the standard rates below for evening and weekend service delivery.

## 7 Services Pricing

### 7.1 Consulting Service Estimates

Below is an estimate of activities by service, by role:

| Time and Materials Consulting Activities | Product Code   | Hour Estimate | Estimated Fees  |
|------------------------------------------|----------------|---------------|-----------------|
| Snapshot Re-Deployment                   | AS-TKTINTOCERT | 59            | \$12,685        |
| <b>Total</b>                             |                |               | <b>\$12,685</b> |

\* This is an estimate of cost for the services to be provided. Actual costs and subsequent invoicing will reflect actual hours, rates and expenses as incurred on the project by the specific assigned resources at their respective billing rates.

### 7.2 Additional Service Costs

The costs for additional services are detailed below:

| Service Name                                   | Product Code | Term of Service | Fees           |
|------------------------------------------------|--------------|-----------------|----------------|
| ASP Integration ICM (as detailed in Exhibit A) | AS-ICMINTASP | 1 year          | \$7,000        |
| <b>Total</b>                                   |              |                 | <b>\$7,000</b> |

ICM is an annual subscription service that commences upon completion of the named consulting project. Year 1 fees are billed in advance at this time. Year 2 fees will be billed to align with the renewal of the Blackboard Academic Suite license and will be prorated based on the closure date of the named project. ICM is automatically renewed on an annual basis unless otherwise agreed. Blackboard Consulting will perform an annual evaluation of all ICM contracts. Subscription fees may be adjusted at that time. Clients will be notified of the appropriate adjustments during the contract renewal process.

## 8 Project Timeline

The project schedule will be finalized with the customer's project lead upon project initiation.

## 9 Change Control

Changes to scope, resources, staffing, or timeline may impact this estimate. In the event a change occurs, the Blackboard Consulting Project Manager will capture and assess the impact and relevant implications through the project Change Control Process. This process will yield a Project Change Request (PCR) document for the customer's review and consideration. The PCR requires customer and Blackboard approval to be valid and actionable, if applicable.

## 10 Assumptions

Our approach, timeline, team structure, and professional fees are based on the below assumptions. Variance from these assumptions will be managed through the Change Control Process and may affect the actual schedule and cost of the project.

- All pricing and discounts are valid for 90 days from the executed Statement of Work date for work not initiated;
- This agreement covers only the activities as described;
- Customer will provide Blackboard with access to the appropriate physical and technical environments to successfully complete the effort outlined in this document;
- Customer will complete a review of all submitted draft working products, or set of working products, in five business days unless otherwise agreed to in writing;
- The Customer shall assign a representative to be the primary point of contact for the Blackboard Project Manager. This representative shall have full authority to make all decisions regarding project scope, overall timeline, and related projects costs, as well as ensuring the necessary customer project personnel, resources, etc. are available to successful complete the project(s);

VOID IF EXECUTED AFTER: March 14, 2008  
 Customer: University of Texas - Telecampus

- Quality involvement and working products from the Customer are critical to the project's success. To that end, the Customer's representative shall be responsible for coordinating all meetings that involve Customer and third-party contractor staff members, working products, and information requests in a timely fashion;
- Working Products are artifacts, used by Blackboard, that demonstrate progress toward a deliverable; however, they are not themselves deliverables;
- All Consulting Services related to this Project, as outlined in this document, shall be performed on a time and materials basis;
- Services are estimated and billed based upon an eight (8) hour workday per Consultant, forty (40) hour work week per Consultant. The applicable billing rate for the Consultants shall be at the rates set forth in the table above;
- All reasonable travel, meals and lodging expenses shall be billable at cost and all such expenses shall be borne solely by Customer;
- All fees and expenses shall be billed on a monthly basis and such bills shall be due and payable Net 30;
- The customer will bring current all outstanding invoices from previous agreements greater than thirty (30) days, prior to beginning work under this document;
- The estimates above were developed based on the estimated project duration. In the event the project exceeds the duration and crosses a new fiscal year, rate may be adjusted accordingly based on the effort expended in the new fiscal year;
- Except as otherwise stated in this Agreement with regard to the Consulting Services performed hereunder, Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time; and
- If applicable, the terms and conditions in the associated Blackboard software and ASP agreements take precedence over the terms and conditions of this document.

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work as of the date first written below.

BLACKBOARD

CUSTOMER: University of Texas - Telecampus

Signature  
ROSS FRAZIER-VICE PRESIDENT  
 Print Name and Title

Date: 3-2-08

Signature  
Dacey Haady, Executive Director  
 Print Name and Title

Date: 3/8/08

VOID IF EXECUTED AFTER: March 14, 2008  
Customer: University of Texas - Telecampus

**EXHIBIT A**  
**INTEGRATION AND CUSTOMIZATION (ICM)**

**1 OVERVIEW**

Blackboard Consulting offers an annual subscription-based maintenance program for each consulting project involving the integration or customization of target applications. The Integration Customization Maintenance ("ICM") service provides customers with Blackboard Consulting assistance, for named consulting projects, to support planned Blackboard Vista upgrades or ad-hoc customer questions. In either scenario, the customer initiates the process by contacting their Technical Support Manager ("TSM") and creating a support case for the maintenance event.

**2 ASSUMPTIONS**

ICM covers Blackboard-implemented solutions per the original scope of the project. This service will be delivered with the following assumptions:

- ICM hours are from 8 am to 8 pm US Eastern Monday through Friday excluding Blackboard Holidays;
- For all upgrades, customers must have a comparable non-production environment installed with the customization. As Blackboard Consulting does not provide server hardware environments to replicate customers' solutions for development, ICM will need access to the customer's non-production environment to test and validate any required changes prior to deployment in the production environment;
- Customer will notify ICM four (4) weeks prior to any upgrade with upgrade plans;
- ICM covers minor releases such as Application Packs, Service Packs and hotfixes;
- All software developed and provided to the Customer by Blackboard Consulting is maintained solely by Blackboard.

Issue types not covered by ICM include (but are not limited to) the following:

- Issues resulting from changes to the system architecture;

Issues resulting from changes to the customer's external environments such as third party tools used for authentication.



**The University of Texas System**  
**702 Colorado Street**  
**Austin, TX 78701**

August 17, 2007

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

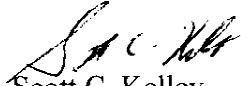
If to University:                   Mr. Scott C. Kelley  
                                         Executive Vice Chancellor for Business Affairs  
                                         601 Colorado Street  
                                         Austin, Texas 78701  
                                         Fax (512) 499-4289  
                                         Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to:                   UT TeleCampus  
                                         UT System Administration  
                                         702 Colorado Street  
                                         Austin, Texas 78701  
                                         Attention: Dr. Darcy Hardy

This renewal letter covers the time period of September 1, 2007 through August 31, 2008, and the invoice will cover the following:

Learning System (September 2007 – August 2008): \$45,000.00  
Community System (Septcmber 2007 – August 2008): \$25,000.00  
ASP (September 2007 – August 2008): \$50,000.00  
Total: \$120,000.00

Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c: Darcy Hardy  
Rob Robinson  
Marta Hubbard  
Carrie Mills

2004-071-06RN

**THE UNIVERSITY OF TEXAS SYSTEM  
OFFICE OF BUSINESS AFFAIRS  
CONTRACT PROCESSING CHECKLIST**

Rec'd UT System 2008

AUG 05 2008

Business Affairs

| TO:                                                                                                                                                                               | The University of Texas System Office of Business Affairs #321 |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|--|
| FROM:                                                                                                                                                                             | UT TeleCampus                                                  |  |
| DATE:                                                                                                                                                                             | July 31, 2008                                                  |  |
| Departmental Contract Administrator: Rob Robinson                                                                                                                                 |                                                                |  |
| Name of Contractor: Blackboard                                                                                                                                                    |                                                                |  |
| Contractor's State Comptroller Tax Identification Number <sup>1</sup> : 15220811788                                                                                               |                                                                |  |
| Total Value of Contract: \$150,000                                                                                                                                                |                                                                |  |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years):                                                                |                                                                |  |
| Fiscal Year                                                                                                                                                                       | Amount                                                         |  |
| 2008-2009                                                                                                                                                                         | \$ 150,000                                                     |  |
| \$                                                                                                                                                                                | \$                                                             |  |
| \$                                                                                                                                                                                | \$                                                             |  |
| Account number from which contract will be funded: [REDACTED]                                                                                                                     |                                                                |  |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                                                                                 |                                                                |  |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                                                                                       |                                                                |  |
| Purpose of Contract: Renewal Letter                                                                                                                                               |                                                                |  |
| Beginning Date of Contract: September 1, 2008 for renewal – Original contract – June 20, 2002                                                                                     |                                                                |  |
| Ending Date of Contract: Automatic renewal as long as UTTC uses Blackboard                                                                                                        |                                                                |  |
| Is this contract an amendment, renewal, or modification of an existing contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                              |                                                                |  |
| <b>Note: The Office of Business Affairs will retain one original of the contract. Please send a sufficient number of originals to meet each party's document retention needs.</b> |                                                                |  |

**PART 1: ALL CONTRACTS** – Please answer each of the following questions and attach the requisite approvals to this checklist:

Yes   No   N/A

1. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the U. T. System Chief Information Officer as required by Policy Number UTS145?
- 
2. If the contract is for the purchase of information technology hardware, software or systems development services, have you obtained the approval of the Office of Technology and Information Services as delegated in the Responsibilities section of Policy Number INT124?

<sup>1</sup>This number should be the Texas State Comptroller of Public Accounts 11-digit taxpayer number; these numbers do not include SSNs. Please check the Comptroller's website to determine if the contractor has a Comptroller 11-digit VID; if they do not leave this line blank. For a contractor to be paid they must also be set up as a UT payee; please find guidance on this process at <http://www.utexas.edu/admin/purchasing/vid.html>. OSS-Accounting & Purchasing Services (499-4129) can assist with questions.

Yes No N/A

3. If the contract is for the purchase or development of an electronic system that will use sensitive digital data as defined in Policy Number UTS165 (e.g., social security numbers, protected health information, sensitive research data, digital data associated with an individual and/or digital data protected by law), have you obtained the approval of the System Administration Information Security Officer?
- 
4. a. If Office of General Counsel approval as to legal form is required by Policy Number UTS145 or otherwise, have you attached a copy of OGC's approval? Or  
   b. If Office of General Counsel approval is not required, did you utilize the OGC Contract Review Procedures in accordance with Policy Number UTS145? Or  
   c. Did you utilize an OGC approved standard contract?
- 
5. If the contract being submitted contains an application for, or is subject to, a grant or sponsored program award, have you obtained a documentation review from the Grants & Contracts Manager in the Office of the Controller?
- 
6. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit as required by Texas Government Code Section 321.020? (<http://www.capitol.state.tx.us/statutes/gv.toc.htm>)
- 
7. a. If approval of the contract by the Board of Regents is required by Regents' Rules and Regulations, Rule 10501, Sections 2.1 and 3 (<http://www.utsystem.edu/bor/rules>), have you obtained that approval?  
   b. If the answer to Question 7.a. is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?
- 
8. If the contract has a value of \$1,000,000.00 or more, has a Disclosure Statement for Purchasing Personnel (State Agency Uniform Nepotism Disclosure Form - 6/2005) been executed by all personnel involved in the contracting process as required by Texas Government Code, Section 2262.004?
- 
9. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Regents' Rules and Regulations, Rule 10501, Section 5.1(b)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)
- 
10. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)
- 
11. If the contract is for \$100,000 or more, have you complied with Policy Number UTS137 with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with Policy Number UTS137 and the HUB Action Plan, please contact the Senior Director of HUB Programs.)
- 
12. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please use the HUB Vendor List form attached to this checklist.)

Yes No N/A

- 
13. Is the contract complete, with all pages, exhibits, schedules, etc., attached?
- 
14. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")
- 
15. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?
- 
16. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed:
- 
- 

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

- 
17. Have you confirmed by checking with the State Comptroller's Taxpayer and Vendor Account Information that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code, Sections 2107.008 and 2252.903 require such verification for purchases of goods or services.)
- 
18. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value as required by UT System policy and procedure to comply with Texas Government Code, Section 2156.009?
- 

## PART 2: CONTRACTS FOR CONSULTING SERVICES – Please answer the following questions if your contract is for consulting services.<sup>2</sup> If it is not, please go to Part 3 of this checklist.

- 
19. If your contract is for consulting services **and** the contract exceeds \$25,000, please answer the following questions; **otherwise**, please skip to Part 3 of this Checklist.
- a. Did the appropriate Executive Vice Chancellor sign the Major Consulting Services Contract Approval Request form? (See Policy Number UTS128) (Please attach a copy of the signed form.)
- b. Was a finding of fact issued by (a) the Chancellor or (b) the Governor's Budget Office prior to the signing of the contract? (See Texas Government Code, Section 2254.028).

---

<sup>2</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

Yes No N/A

- c. Was an invitation to present offers posted in the *Texas Register* a minimum of 30 days prior to signing the contract as required by statute and, if the finding of fact was issued by the Chancellor, was it included in the posted information? (See Texas Government Code, Sections 2254.028 and 2254.029)
- d. Have you confirmed that no officer or employee of System Administration (and no officer or employee of any other U. T. System institution that is involved in the contract) has a financial interest in the contractor or is related within two generations, either by birth or by marriage, to the contractor or an individual with a financial interest in the contractor? (See Texas Government Code, Sections 2254.032, 573.023 and 573.024).
- e. If an officer or employee has an interest in or is related to the owners or employees of the contractor, has this information been shared in writing with the Chancellor?
- f. Have you confirmed that the contractor has not been employed by U. T. System (including any institutions) or by any other state agency at any time during the last two years preceding making the offer? (See Texas Government Code, Section 2254.033). If the answer is NO, please provide the following information so that Accounting and Purchasing Services may include it in the notice it will post in the *Texas Register* after the contract is signed (see Texas Government Code, Section 2254.030)
- (1) The nature of the previous employment with the agency:
- 

(2) The date the employment was terminated: \_\_\_\_\_

(3) The annual rate of compensation for the employment at the time of termination: \_\_\_\_\_

---

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>3</sup> please answer the following questions. If not, please go to Part 4 of this checklist.

20. If you will pay for the contract workers from funds in a budgetary account that begins with a 53, 63 or 54-0100 prefix, please answer the following questions; otherwise, please skip to Part 4 on the last page of this checklist.

- a. Have you confirmed that the individual providing services under the contract has **not** been employed by System Administration (or by any other U. T. System institution that is involved in the contract) within the 12 months preceding the effective date of the contract? (See Texas Government Code, Section 2252.901).
- b. Have you confirmed that contract workers are NOT being used in critical areas where in-house expertise should be retained or where confidentiality is important? If contract workers **are** being used in these areas, please explain why below:
- 
- 

<sup>3</sup> Contract workers are defined as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

Yes No N/A

- c. Is the contract being entered into for one of the following reasons:
  - (1) The deadline for completing the project is such that the work cannot be completed by full-time employees due to their current workload or the training required?
  - (2) The work involves a special expertise that is not likely to be used again or will only be used on a random basis?
- d. Does the contract expressly state that the contractor is an independent contractor and not an employee of U. T. System?
- e. Does the contract describe the project or scope of work and provide that payments are made after services are rendered?
- f. Does the contract state the standard or level of performance that the contractor is required to meet (such as "good and worker-like manner" or "best efforts, skill and judgment in accordance with the contractor's profession and applicable laws")?
- g. Does the contract make it the responsibility of the contractor to hire, train, pay and maintain its own employees (if any) for the performance of the services under the contract?

#### PART 4: ALL CONTRACTS

- 21. Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

☞ Thank you for completing this checklist. ☞

## HUB Vendor List

List the Historically Underutilized Business (HUB) vendors who bid on the contract and mark their ethnic and gender category.

| Name:     | Asian<br>Pacific         | Black                    | Hispanic                 | American-<br>Indian      | Woman<br>Owned           |
|-----------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. _____  | <input type="checkbox"/> |
| 2. _____  | <input type="checkbox"/> |
| 3. _____  | <input type="checkbox"/> |
| 4. _____  | <input type="checkbox"/> |
| 5. _____  | <input type="checkbox"/> |
| 6. _____  | <input type="checkbox"/> |
| 7. _____  | <input type="checkbox"/> |
| 8. _____  | <input type="checkbox"/> |
| 9. _____  | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> |





The University of Texas System  
702 Colorado Street  
Austin, TX 78701

July 31, 2008

Blackboard  
1899 L Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Dear Ms. Frazier,

In accordance with the agreement between The University of Texas System (UT TeleCampus) and Blackboard, Inc., effective date June 30, 2002 ("Agreement"), The University of Texas System is exercising the option to automatically renew an additional one year term by providing this written communication to Blackboard, Inc. There remains the option to renew the Agreement for as long as the UT TeleCampus uses the Blackboard Learning System.

Additionally, please note that all future notices and communications, including if Provider intends to deliver written notice to Client pursuant to Section 2251.054, *Texas Government Code*, then Provider shall send that notice to Client as follows:

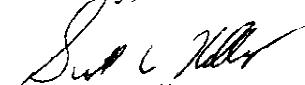
If to University: Dr. Scott C. Kelley  
Executive Vice Chancellor for Business Affairs  
601 Colorado Street  
Austin, Texas 78701  
Fax (512) 499-4289  
Email: [LegalNotices@utsystem.edu](mailto:LegalNotices@utsystem.edu)

With copy to: UT TeleCampus  
UT System Administration  
702 Colorado Street  
Austin, Texas 78701  
Attention: Dr. Darcy Hardy

This renewal letter covers the time period of September 1, 2008 through August 31, 2009, and the invoice will cover the following:

Learning System (September 2008 – August 2009): \$47,500.00  
Community System (September 2008 – August 2009): \$27,500.00  
ASP (September 2008 – August 2009): \$50,000.00  
AS-TKINTGCERT (September 2008 – August 2009): \$15,000  
AS-ICMINTASP (September 2008 – August 2009): \$10,000  
Total: \$150,000

Sincerely,



Scott C. Kelley  
Executive Vice Chancellor  
For Business Affairs

c: Darcy Hardy  
Rob Robinson  
Carrie Mills

2004-071-07RN

2010  
Med 3073  
Sept 15  
15

## THE UNIVERSITY OF TEXAS SYSTEM BUSINESS AFFAIRS CONTRACT PROCESSING CHECKLIST

15

| TO:                                                                                                                | The University of Texas System Office of Business Affairs |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| FROM:                                                                                                              | UT TeleCampus                                             |
| DATE:                                                                                                              | September 25, 2009                                        |
| Departmental Contract Administrator: Rob Robinson                                                                  |                                                           |
| Name of Contractor: Blackboard Inc.                                                                                |                                                           |
| Contractor's State Comptroller Tax Identification Number <sup>1</sup> : 1 2s2xfbw 007 <u>-52-20811788</u>          |                                                           |
| Total Value of Contract: \$438632.00                                                                               |                                                           |
| Cost of Contract by Fiscal Year (please continue on another page if the contract term exceeds three fiscal years): |                                                           |
| Fiscal Year                                                                                                        | Amount                                                    |
| 2009-2010                                                                                                          | \$137744.00                                               |
| 2010-2011                                                                                                          | \$146044.00                                               |
| 2011-2012                                                                                                          | \$154844.00                                               |
| Account number from which contract will be funded: [REDACTED]                                                      |                                                           |
| Is the contractor a certified Historically Underutilized Business (HUB) firm? N/A                                  |                                                           |
| Dollar value of work being subcontracted to HUB firms: \$ 0                                                        |                                                           |
| Purpose of Contract: Renewal Letter                                                                                |                                                           |
| Beginning Date of Contract: September 1, 2009 and Managed Hosting Test: February 1, 2010                           |                                                           |
| Ending Date of Contract: August 31, 2012 and Managed Hosting Test: January 31, 2013                                |                                                           |

Is this contract an amendment, renewal, or modification of an existing contract

**Note: The Office of Business Affairs will retain one original of the cc number of originals to meet each party's document retention needs.**

### PART 1: ALL CONTRACTS – Please answer each of the following approvals to this checklist:

Yes No N/A

1. Legal Review:
- a. If Office of General Counsel approval as to legal UTS145 or otherwise, **have you attached a copy**
  - b. If Office of General Counsel approval is not required Review Procedures in accordance with Policy N results of your review. Or
  - c. Did you utilize an OGC approved standard contract

2004-071  
 - 01 AM 173,100  
 - 01 RIN 107,400  
 - 02 RIN 97,000  
 - 03 AM 7,000  
 - 03 RIN 84,000  
 - 04 AM 120,104  
 - 05 AM 35,000  
 - 06 RIN 97,000  
 - 07 AM 13,175  
 - 08 RIN 120,000  
 - 09 RIN 4320  
 - 10 AM 16,900  
 - 11 RIN 150,000  
 - 12 AM 13,000  
 - 13 RIN 438,632  
1,466,231 00

<sup>1</sup>This number should be the Texas State Comptroller of Public Accounts 11-digit taxpayer number. Please check the UT Direct Point Plus system to determine if the contractor has a Comptroller blank. For a contractor to be paid they must also be set up as a UT payee; please find guidance at <http://www.utexas.edu/admin/purchasing/vid.html>. OSS Accounting & Purchasing Services (49)

Yes No N/A

2. If the contract being submitted contains an application for, or is subject to, a grant or sponsored program award, have you obtained a documentation review from the Grants & Contracts Manager in the Office of the Controller?

---

3. If the contract is for the services of a "private auditor" to audit U. T. System or a function within U. T. System, have you obtained the approval of the Texas State Auditor's Office for the scope of the proposed audit as required by Texas Government Code Section 321.020?

---

4. If the contract binds any of the institutions, have you obtained concurrence (concurrence form) from the chief business officers at the affected U. T. institutions as required by Regents' Rules and Regulations, Rule 10501, Section 5.1(b)? (Note: Mark "N/A" if the contract permits, but does not require, the participation of an institution.)

---

5. If the contract is for System-wide use of computer software, computer hardware, or other information system components, have you attached a copy of the approval of the U. T. System Chief Information Officer as required by Policy Number UTS145?

---

6. If the contract is for the purchase or development of an electronic and information resource (EIR), including software, web sites, telecommunications products, video/multimedia products, information technology hardware or self-contained/closed equipment that includes EIR;

- a. have you complied with Policy Number UTS150 regarding the Texas accessibility standards applicable to the EIR?; and
- b. have you obtained the written approval of the Office of Technology and Information Services as delegated in the Responsibilities section of Policy Number INT124?

---

7. If the contract is for the purchase of software or for the development of software and the contract value is \$5,000 or more, please answer the following questions (GASB 51, Accounting & Financial Reporting for Intangible Assets).

a. Purchasing Software:

- (1) If there are license fees, will the fees be paid annually? Yes  No
- (2) If not annually, will the license fees last for more than one year; how many years? \_\_\_\_\_
- (3) How long do you estimate your department will use the commercially purchased software? \_\_\_\_\_

b. Development of software:

- (1) Will UT System own the software system when it is completed? Yes  No
  - (2) Will the software be completed in this fiscal year? Yes  No
  - (3) What is the estimated implementation date? \_\_\_\_\_
- 

8. If the contract is for the purchase or development of an electronic system that will use sensitive digital data as defined in Policy Number UTS165 (e.g., social security numbers, protected health information, sensitive research data, digital data associated with an individual and/or digital data protected by law), have you obtained the approval of the System Administration Information Security Officer?

---

9. If the contract has a value of \$1,000,000.00 or more, has a Disclosure Statement for Purchasing Personnel (State Agency Uniform Nepotism Disclosure Form - 6/2005) been executed by all personnel involved in the contracting process as required by Texas Government Code, Section 2262.004?

---

Yes No N/A

10. a. If approval of the contract by the Board of Regents is required by Regents' Rules and Regulations, Rule 10501, Sections 2.1 and 3, have you obtained that approval?

- b. If the answer to Question 10.a. is NO, does the contract contain the required statement indicating that the contract is not effective until the Board of Regents approves it?

Note: TeleCampus intends to submit the contract for Board of Regents docket as soon as possible. (*Nov 09*)

11. If the contract is for \$100,000 or more, have you complied with Policy Number UTS137 with respect to the content of the procurement solicitation document, evaluation of bids received, and inclusion of the HUB Subcontracting Plan, where applicable, as a provision of the contract and have you complied with HUB Action Plan procedure D.2.3.2? (For questions about compliance with Policy Number UTS137 and the HUB Action Plan, please contact the Senior Director of HUB Programs.)

12. Have you completed and attached to this checklist the list of HUB vendors who bid on this contract? (Please follow link to the HUB Vendor List form)

13. Does the contract comply with the purchasing procedures required by the applicable System or institution purchasing agent? (Note: Mark "N/A" if UT is the party providing the goods or performing the services that are the subject of the contract.)

14. Is the contract complete, with all pages, exhibits, schedules, etc., attached?

15. Have you determined that no member of the Board of Regents has a financial interest, directly or indirectly, in the contract? (Note: To assist you in making that determination, you may wish to include in your contract the following representation from the contractor: "No member of the Board of Regents of The University of Texas System has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.")

16. Has the authorized person in your office or department signed or initialed the contract beside the signature line for the Executive Vice Chancellor for Business Affairs to confirm that the contract's business terms are correct and appropriate?

17. Have you confirmed that there are no significant risks or issues related to the contract? If there are significant risks or issues related to the contract, please elaborate below or on an additional page, if needed: \_\_\_\_\_

If the contract is with another state agency, stop here and go to Part 4 of this checklist.  
Otherwise, please go to the next question.

18. Have you confirmed by checking the UT Direct Point Plus system that the contractor does not owe any debt or delinquent taxes to the State of Texas? (Texas Government Code, Sections 2107.008 and 2252.903 require such verification for purchases of goods or services.) Please attach the confirmation page to the checklist.

19. Have you prepared and filed with the other records relating to the contract a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value as required by UT System policy and procedure to comply with Texas Government Code, Section 2156.009?

**PART 2: CONTRACTS FOR CONSULTING SERVICES** — Please follow the link to Part 2 and answer the questions if your contract is for consulting services.<sup>2</sup> If it is not, please continue to Part 3.

**PART 3: CONTRACTS FOR CONTRACT WORKERS, INCLUDING CONSULTANTS** – If your contract involves the use of contract workers,<sup>3</sup> please follow the link to Part 3 and answer the questions. If it is not, please go to Part 4 of the checklist.

## PART 4: ALL CONTRACTS

Yes No

- Did you answer YES or N/A to every question on this checklist that you are required to answer for your contract? If you answered NO to any such question, please list below the question number and explain why the answer is no; please continue on an additional page, if needed.

கீழ் Thank you for completing this checklist. கீழ்

<sup>2</sup> Consulting services are the services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Please contact Accounting and Purchasing Services if you need assistance in determining whether the services you are acquiring are consulting services.

<sup>3</sup> Contract workers are defined as "independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants." If your contract primarily involves the provision of labor (as opposed to the provision of goods), it is likely a contract for contract workforce. Please check with Accounting and Purchasing Services if you are unsure.

## Loyd, Loretta

---

**From:** Rosen, Steven  
**Sent:** Monday, September 28, 2009 8:21 AM  
**To:** Loyd, Loretta  
**Subject:** RE: Blackboard

OK, thank you. Please let me know if I can assist there. Kindest regards, Steve

---

Steven G. Rosen  
The University of Texas System - Office of General Counsel  
201 West 7th Street  
Austin, Texas 78701  
Tel. (main): (512) 499-4462  
Tel. (direct): (512) 499-4337  
Fax: (512) 499-4523  
E-mail: [srosen@utsystem.edu](mailto:srosen@utsystem.edu)

 Please consider the environment before printing this e-mail.

THIS MESSAGE IS INTENDED TO BE A CONFIDENTIAL COMMUNICATION, subject to the attorney-client and attorney work-product privileges, and it is intended only for the use of the individual(s) to whom it is addressed. It should not be shown to anyone not employed by the University and should be shared with University employees only on a need-to-know basis.

**From:** Loyd, Loretta  
**Sent:** Monday, September 28, 2009 8:10 AM  
**To:** Rosen, Steven  
**Subject:** RE: Blackboard

The checklist indicated that those items were not applicable. I just checked on those issues. Loretta

**From:** Rosen, Steven  
**Sent:** Monday, September 28, 2009 8:07 AM  
**To:** Loyd, Loretta  
**Subject:** RE: Blackboard

Hi Loretta: Yes, thank you. Rob and Darcy also indicated they would work with Academic Affairs to secure Regents' approval off the Docket, so I trust that also is in the works.

Thank you and best –

Steve

---

Steven G. Rosen  
The University of Texas System - Office of General Counsel  
201 West 7th Street  
Austin, Texas 78701  
Tel. (main): (512) 499-4462  
Tel. (direct): (512) 499-4337  
Fax: (512) 499-4523  
E-mail: [srosen@utsystem.edu](mailto:srosen@utsystem.edu)

 Please consider the environment before printing this e-mail.

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**From:** Loyd, Loretta  
**Sent:** Monday, September 28, 2009 8:01 AM  
**To:** Rosen, Steven  
**Subject:** Blackboard

Steve – Telecampus is submitting a renewal for Blackboard that is well over the threshold for OGC approval. You suggested changes to the addendum and they accepted them into it. Do you give OGC approval to the addendum? Thanks. Loretta

## **Loyd, Loretta**

---

**From:** Miner, Paula  
**Sent:** Friday, September 25, 2009 4:34 PM  
**To:** Leija, Michelle  
**Subject:** Renewal of Blackboard Contract

OTIS approves the TeleCampus renewal of the Blackboard Contract.

Thanks,  
Paula Miner







**ADDENDUM TO THE LICENSE AND SERVICES AGREEMENT SOFTWARE SCHEDULE(S) BETWEEN BLACKBOARD AND  
UNIVERSITY OF TEXAS TELECAMPUSS ("CUSTOMER")**

This Addendum between Blackboard ("Blackboard") and Customer is effective as of September 1, 2009 pursuant to the License and Services Agreement, entered into between the parties on June 30, 2002 ("Agreement"), including the Software Schedule(s) attached thereto (the "Schedules").

Whereas Blackboard desires to offer to Customer the option to lock in Software pricing for a period of up to three (3) years at an annual increase of seven (7%) percent per year effective for Renewal Terms beginning in September 2009 through August 2012.

Whereas Customer desires to lock in Software pricing for a period of up to three (3) years at an annual increase of seven (7%) percent per year effective for Renewal Terms beginning in September 2009 through August 2012.

The parties hereby agree to the following:

Customer licenses from Blackboard the following Software product(s) on an annual basis:

Blackboard Learning System™  
 Blackboard Community System™  
 Blackboard Content System™  
 Blackboard Managed Hosting  
 Blackboard Managed Hosting Test  
 ICM Data Integration

- Blackboard and Customer agree that provided Customer commits to three additional Renewal Terms, annual fees for the licensed Software indicated above will not increase by more than seven (7%) annually for a period not to exceed three years as indicated in the table below.

| PRODUCT                                     | Renewal Term of<br>September 1, 2009-<br>August 31, 2010 | Renewal Term of<br>September 1, 2010-<br>August 31, 2011 | Renewal Term of<br>September 1, 2011-<br>August 31, 2012 |
|---------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|
| Blackboard Learning System™ Annual License  | \$42,700                                                 | \$46,700                                                 | \$48,900                                                 |
| Blackboard Community System™ Annual License | \$24,000                                                 | \$26,100                                                 | \$27,900                                                 |
| Blackboard Managed Hosting                  | \$51,200                                                 | \$54,800                                                 | \$58,600                                                 |
| Blackboard Managed Hosting Test             | Renews 2/1/10-1/31/11<br>\$13,000                        | Renews 2/1/11-1/31/12<br>\$13,000                        | Renews 2/1/12-1/31/13<br>\$13,000                        |
| ICM Data Integration                        | \$6,444                                                  | \$6,444                                                  | \$6,444                                                  |

\*Unless otherwise indicated in Customer's Software Schedule(s), payment of annual license fees shall be due and payable Net 30 from the start of each term.

- It is understood and agreed by the Parties that the three year pricing visibility is contingent upon Customer's commitment to the three Renewal Terms outlined above. Notwithstanding this commitment, Blackboard understands that Customer's performance under this Addendum may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Customer will issue written notice to Blackboard and Customer may decline to enter into any Renewal Term without further duty or obligation hereunder. Blackboard acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Customer.
- Therewith, Customer's pricing shall be pursuant to Blackboard's then current annual pricing.
- The parties agree that should a System Wide Agreement be executed between Blackboard and the University of Texas System, Customer shall have the option, upon any of the Renewal Dates indicated above, to transfer their license and avail themselves of the terms and conditions negotiated on their behalf in that Agreement. Such transfer shall take place upon written agreement of the Parties.

All other terms and conditions of the Agreement shall remain in full force and effect.

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

BLACKBOARD

Signature

TESS FRAZIER - VICE PRESIDENT

Print Name and Title

Date:

9/28/09

CUSTOMER University of Texas - TeleCampus

Signature

Scott C. Kelley

Executive Vice Chancellor for Business Affairs

## **DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL**

**INSTRUCTIONS:**

1. The disclosure statement must be submitted by purchasing personnel prior to the award of any major contract.
  2. This statement must be submitted even if you answer "no" to questions 1 and 2 in part 2.
  3. A copy of this statement should be submitted to the administrative head of the state agency.
  4. A new or amended statement must be promptly filed with the parties listed in step 3 of these instructions whenever there is new information to report under Texas Government Code, Section 2262.004.

## PART 1: GENERAL INFORMATION

Name of business entity  
being considered for  
award of major contract Blackboard Inc.

Filer's Address 650 Massachusetts Ave. NW #10-720 Colorado St  
City Washington State TX ZIP 20001 78701 Phone 202-463-4880

## PART 2: DISCLOSURES

**Definition:** (Texas Government Code, Section 2262.004) Purchasing personnel includes an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding: (A) contract terms or conditions on a major contract; (B) who is to be awarded a major contract; (C) preparation of a solicitation for a major contract, or (D) evaluation of a bid or proposal.

*A major contract is a contract with a value of at least \$1 million. (Texas Government Code, Section 2262.001 (4))*

**Disclosure requirements for purchasing personnel of a state agency (Texas Government Code, Section 2262.004)**

**Printed Name** Dr. Darcy W. Hardy      **Job Title** Executive Director

1. Do you directly or indirectly own or control more than a 10 percent interest or pecuniary interest with a value exceeding \$25,000 in a business entity that is under consideration for an award of a major contract with your agency?

No     Yes. If yes, please explain in detail the nature of such relationships. (Attach additional sheets as needed.)

2. Do you have a relationship with an employee, a partner, a major stockholder, a paid consultant with a contract of at least \$25,000 with the business entity under consideration for an award of a major contract, or other owner of the business entity that is related within a degree described by Government Code, Section 573.002?

No     Yes    If yes, please explain in detail the nature of such relationships. (Attach additional sheets as needed.)

I hereby attest that all information provided above in questions 1 and 2 are complete and accurate to the best of my knowledge. I acknowledge my responsibility to submit promptly a new or amended disclosure statement to the party listed in step 3 of the instructions if any of the above information changes.

Purchasing  
Personnel  
Signature

in

Aug 1 1989  
R. H. Smith

Date 9/28/2009

## DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL

Printed Name Dr. Robert L. Robinson

Job Title Director

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

1. Do you directly or indirectly own or control more than a 10 percent interest or pecuniary interest with a value exceeding \$25,000 in a business entity that is under consideration for an award of a major contract with your agency?

No  Yes If yes, please explain in detail the nature of such relationships. (Attach additional sheets as needed.)

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Purchasing  
Personnel  
Signature

Date 9/28/09

Printed Name

Job Title

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Purchasing  
Personnel  
Signature

Date

Printed Name

Job Title

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## DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL

Printed Name \_\_\_\_\_ Job Title \_\_\_\_\_

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

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Purchasing Personnel Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Job Title \_\_\_\_\_

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

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Purchasing Personnel Signature \_\_\_\_\_ Date \_\_\_\_\_

## PART 3: SIGNATURE AND DATE

I hereby acknowledge receipt of the State Agency uniform nepotism Disclosure Form signed by the purchasing staff member(s) indicated above.

Administrative Head of Agency Signature Philip R. Aldridge Date 9/30/09

Printed Name Philip R. Aldridge  
Philip R. Aldridge  
Vice Chancellor for Finance and Business Development

## **DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL**

**INSTRUCTIONS:**

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  4. A new or amended statement must be promptly filed with the parties listed in step 3 of these instructions whenever there is new information to report under Texas Government Code, Section 2262.004.

## PART 1: GENERAL INFORMATION

**Name of business entity  
being considered for  
award of major contract** Blackboard Inc.

Filer's Address 201 W. 7th Street

## PART 2: DISCLOSURES

**Definition:** (Texas Government Code, Section 2262.004) Purchasing personnel includes an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding: (A) contract terms or conditions on a major contract; (B) who is to be awarded a major contract; (C) preparation of a solicitation for a major contract; or (D) evaluation of a bid or proposal.

A major contract is a contract with a value of at least \$1 million. (Texas Government Code, Section 2262.001 (4))

**Disclosure requirements for purchasing personnel of a state agency (Texas Government Code, Section 2262.004)**

Printed Name Scott C. Kelley Job Title EVCBA

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

1. Do you directly or indirectly own or control more than a 10 percent interest or pecuniary interest with a value exceeding \$25,000 in a business entity that is under consideration for an award of a major contract with your agency?

No     Yes If yes, please explain in detail the nature of such relationships. (Attach additional sheets as needed.)

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Purchasing  
Personnel  
Signature

*Sgt C Kelley*

Date

9/26/09

### DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL

Printed Name \_\_\_\_\_ Job Title \_\_\_\_\_

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

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Purchasing  
Personnel  
Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Job Title \_\_\_\_\_

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

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Purchasing  
Personnel  
Signature \_\_\_\_\_

Date \_\_\_\_\_

#### **PART 3: SIGNATURE AND DATE**

I hereby acknowledge receipt of the State Agency uniform nepotism Disclosure Form signed by the purchasing staff member(s) indicated above.

Administrative Head  
of Agency Signature \_\_\_\_\_

Date 9/30/09

Printed Name Philip R. Aldridge



Philip R. Aldridge

Vice Chancellor for Finance and Business Development