



State of New Mexico

Higher Education Department

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

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

May 30, 2008

State of New Mexico
Higher Education Department

Information Technology
Agreement
Contract No. 08-950-00417

THIS Information Technology Agreement ("Agreement") is made by and between the State of New Mexico, Higher Education Department hereinafter referred to as the "Procuring Agency" and Blackboard Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the New Mexico Statewide eLearning System (NMSELS) RFP #08-950-00417 are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. "Acceptance" shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.
- B. "Blackboard" means Blackboard Inc., a Delaware corporation with its principal office and place of business at 1899 L Street, NW, Fifth Floor, Washington, D.C. 20036, U.S.A, including its wholly owned subsidiaries. After June 30, 2008, Blackboard's principal office and place of business shall be 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20001
- C. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work.
- D. "Chief Information Officer ("CIO")" shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.
- E. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- F. "DoIT" shall mean the Department of Information Technology.
- G. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- H. "Escrow" shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- I. "Enhancement" means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application,

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

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

ARTICLE 2 – SCOPE OF WORK

A. **Scope of Work.** The Contractor shall perform the Scope of Work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

B. **Schedule.** The due dates, as set forth in Exhibit A, shall not be altered or waived by the Procuring Agency without prior written approval, through the Change Management process, as defined in Article 14.

C. **License.** Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, perpetual license to use, modify, and copy the Blackboard Software meaning the blackboard learning system-enterprise, blackboard community system, blackboard content system, and blackboard learning system-vista enterprise, including updates, upgrades, corrections, application packs, and revisions thereto as defined in Article 2 and Exhibit A.

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

D. **Escrow.**

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the Procuring Agency as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the Procuring Agency to top load, compile and maintain the software in the event of a breach.

2) In the event of (i) failure of a trustee or Contractor in any bankruptcy case hereafter filed by or against Contractor either to assume this Agreement within sixty (60) days after the filing of the initial bankruptcy petition or to perform this Agreement within the meaning of Section 365(n)(4)(A)(i) of Title 11 of the United States Code; or (ii) the termination of substantially all of Contractor's (or its successors, if applicable) ongoing business operations relating to the Software and (iii) cessation of Contractor's business operations, the Contractor shall make available to the Procuring Agency: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the source code and documentation.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage as identified in Paragraph D.

B. Payment. The total compensation under this Agreement shall not exceed \$7,790,860 including all expenses. The Procuring Agency agrees to reimburse Contractor for 50% of any applicable New Mexico gross receipts tax paid by Contractor relating to the foregoing payment up to a maximum reimbursement of \$125,000.

Contractor may be reimbursed for reasonable travel expenses provided contractor has received prior approval for the anticipated travel from the Procuring Agency and provided the travel expenses are within allowable amounts under the per diem and mileage act of New Mexico. Said travel expenses are within the total compensation payable to the contractor.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes.

Except as specifically provided for in Article 3B, the Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. The Procuring Agency shall retain twenty percent (20%) of the fixed-price Deliverable cost for deliverables 1, 3, 4, 8, 9, 10 and 12 that are subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained relating to a particular Deliverable shall be released to the Contractor upon Acceptance of said Deliverable.

E. Performance Bond. Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a performance bond in the amount of \$1,000,000 in the name of the Procuring Agency. The bond shall be in effect for the duration of this Agreement and any renewals thereof. The required bond shall be conditioned upon full

Acceptance of each and every Deliverable other than Deliverables waived by Procuring Agency. The Procuring Agency's right to recover from the bond shall include all costs and damages associated with the transfer of services provided under this Agreement to another contractor or to the State of New Mexico as a result of Contractor's failure to perform. The bond shall be released upon earliest of (i) Acceptance of all Deliverables under this Agreement, (ii) the termination of the Agreement or (iii) the third anniversary of the Agreement.

ARTICLE 4 – ACCEPTANCE

A. **Submission.** Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less twenty percent (20%) retainage for deliverables 1, 3, 4, 8, 9, 10 and 12 that are subject of this Agreement.

B. **Acceptance.** Procuring Agency shall have a period of five (5) business days unless otherwise agreed to by the parties, commencing on the installation date of the Software licensed pursuant to the applicable Contractor Software to test that such Software operates substantially in accordance with the Documentation ("Acceptance Period"). Procuring Agency shall notify Contractor of any Nonconformities during the Acceptance Period ("Nonconformance List") by providing in writing, a list of Nonconformities, such list to be received by Contractor during the Acceptance Period. Upon receipt of the Nonconformance List, Contractor shall have a period of ten (10) business days or as otherwise agreed by the parties ("Cure Period") to repair any Nonconformities listed on the Nonconformance List at its own expense, such that such Software affected by the Nonconformity operates substantially in accordance with the Documentation. Notwithstanding anything herein to the contrary, in no event shall acceptance ("Acceptance") be postponed beyond two months from schedule effective date ("Final Date"). Upon: (i) Procuring Agency's delivery to Contractor of written notice of Acceptance; or (ii) conclusion of the Acceptance Period, if Procuring Agency has not notified and provided to Contractor a list of Nonconformities; such Software shall be deemed to have reached Acceptance. If Acceptance has not been deemed to have occurred, and Nonconformities listed on a Nonconformance List have not been resolved on the Final Date, Procuring Agency shall have the option of terminating this Agreement by notifying Contractor in writing of its intent to terminate the Agreement on or before the Final Date, and, upon receipt of such Software by Contractor, receiving the license fees paid to Contractor. "Nonconformities" shall mean a material failure of the Software licensed pursuant to this Schedule, or any component thereof, to substantially conform to the Contractor's official published specifications.

In accord with Section 13-1-158 NMSA 1978; the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will determine that the Deliverable:

- 1.) Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
- 2.) Complies with all the requirements of this Agreement.

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

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

ARTICLE 5 – TERM

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

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

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

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

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

termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

D. Effect of Termination. Upon termination of this Agreement, all licensed perpetual licenses granted under this Agreement shall remain in force. Upon termination, Procuring Agency will pay to Blackboard amounts due and payable as of the intended date of termination. Each Party: (i) will immediately cease any use of the other Party's Confidential Information not licensed under the perpetual licensing agreement; (ii) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries not covered by the perpetual licensing agreement; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession other than items covered by the perpetual licensing agreement.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1.) Transfer, deliver, and/or make readily available to the Procuring Agency work product or documentation created for Procuring Agency under this Agreement.
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
- 4.) Protect and preserve all property and all records required by this Agreement;
- 5.) Reasonably cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency programs;
- 6.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall transfer files, computer software, documentation, system turnover plan, Intellectual Property and other materials to which Procuring Agency has a right to use after termination of the Agreement and for which Procuring Agency has made full payment, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency.

B. Procuring Agency. In the event this Agreement is terminated or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall 1) other than a termination for Procuring Agency's breach, be granted a license to use and modify documentation created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for Deliverables Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from

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

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

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

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

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

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

1. Ownership of Procuring Agency Property. As between Procuring Agency and Contractor, Procuring Agency Property, together with all Derivative Works therefrom, are and shall, subject to the provisions of Contractor Use of Procuring Agency Property section below, remain the sole and exclusive property of Procuring Agency, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein.
2. Ownership of Contractor Property and Software. As between Procuring Agency and Contractor, Contractor Property and Software, and all other content not deemed to be Procuring Agency Property, together with any and all Derivative Works therefrom, are and shall remain the sole and exclusive property of Contractor or its licensors or suppliers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto. Nothing in this Agreement shall be construed to grant Procuring Agency any ownership right in Contractor Software, Contractor Property or any other software owned or licensed by Contractor.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. **Intellectual Property Indemnification.** The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall (1) defend and settle such claim, including paying all costs, any settlement amounts, damages and attorneys fees that may be awarded as a result of such claim or (2) satisfy one of the options under Article 10(B). In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

- 1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2.) Allow the Contractor to control the defense and settlement of the claim; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. **Procuring Agency Rights.** If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

- 1.) Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
- 2.) Replace or modify the product or service so that it becomes non-infringing; or
- 3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

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

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

ARTICLE 11 - WARRANTIES

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

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

ARTICLE 12 – CONTRACTOR PERSONNEL

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

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

David Marr – President & COO

B. Personnel Changes. Replacement of any personnel for professional services shall be made with personnel of equal ability, experience, and qualification and shall be agreeable by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to agreement. If the number of Contractor's personnel assigned to the Project for professional services is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency agreement. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE CONTROL

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such changes may be made only with mutual agreement of Contractor and Procuring Agency except pursuant to an amendment of this Agreement, under no circumstance shall such changes cause:

- 1) Compensation due under the terms of this Agreement to exceed the maximum compensation listed in Article 3(B); or
- 2) Due Date of any Deliverable to change in a manner, which would cause the term of this Agreement to be extended.

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

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

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

ARTICLE 16 – DEFAULT/BREACH

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

ARTICLE 17 – EQUITABLE REMEDIES

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

ARTICLE 18 - LIABILITY

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

equipment, either at the Contractor's site or the Procuring Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Procuring Agency or for losses occasioned by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL CONTRACTOR OR ITS LICENSORS BE LIABLE TO PROCURING AGENCY FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, EQUIPMENT OR SERVICES, WHETHER OR NOT CONTRACTOR WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE:(A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CONTRACTOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS OF THE PROCURING AGENCY ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED \$7,800,000. For avoidance of doubt, the parties agree that in the event that Procuring Agency incurs expenses resulting from work on the Blackboard software which the State incurs to remedy Blackboard's failure to meet its obligations under the contract would not be deemed indirect or consequential damages.

ARTICLE 19 – ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other party, except that Contractor may assign this Agreement to: (a) a subsidiary, affiliate, or parent company; or (b) an entity which succeeds to all or substantially all of a party's assets whether by merger, sale or other transaction.

ARTICLE 20 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment to the subcontractor from the Procuring Agency.

ARTICLE 21 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New

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

ARTICLE 22--CONFIDENTIALITY

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

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

ARTICLE 23 –CONFLICT OF INTEREST

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

ARTICLE 24 - RECORDS AND AUDIT

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

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

- (1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
- (2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;
- (3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 27 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or

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

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

ARTICLE 28 – NOTICES

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

For PROCURING AGENCY

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

For CONTRACTOR

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

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

ARTICLE 29– GENERAL PROVISIONS

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

B. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

C. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

E. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

F. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 30 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Limitation of Liability, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement.

ARTICLE 31 – TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless otherwise specified; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 32 – FORCE MAJEURE

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

ARTICLE 33 – EXISTING CONTRACTS BETWEEN CONTRACTOR AND ELIGIBLE ENTITIES

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

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

By: Reed Dasenbrock Date: 5/30/2008
Dr. Reed Dasenbrock
Secretary of Higher Education Department

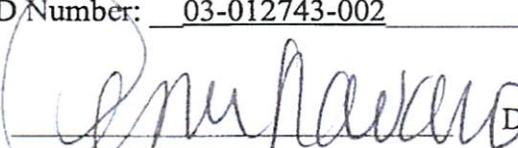
By: Justin Tan Date: 5/28/2008
Justin Tan
Vice-President, Blackboard Inc.

By: Veronica Chavez-Neuman Date: 5/30/2008
Veronica Chavez-Neuman, MBA
Chief Information Officer for Higher Education Department

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

CRS ID Number: 03-012743-002

By:

 Date: 5/30/08

Taxation & Revenue Department

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

By:



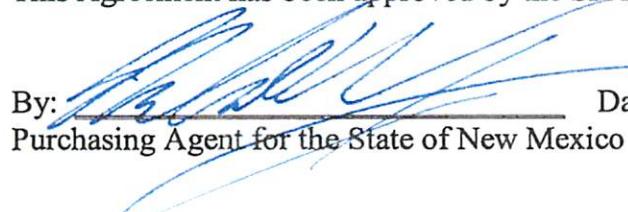
Date: 5/30/08

Roy Soto, Secretary

Department of Information Technology

This Agreement has been approved by the SPA:

By:

 Date: 5/30/08

Purchasing Agent for the State of New Mexico

EXHIBIT A –AGENCY PERFORMANCE MEASURES AND SCOPE OF WORK

I. Agency Performance Measures

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

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

A. Goals.

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

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

5. Efficient Use of Technology to Increase Educational Access - The demand for increased access comes from a number of different pressures: sharing resources between districts, an increasing percentage of the population participating in higher education, workforce retraining for a dispersed population, population growth in a specific geography, and global demand and opportunities for specialized programs.

B. Objectives

Implementation of this contract will create a centralized statewide eLearning system for the Procuring Agency that is intended to implement the provisions of the statewide Cyber Academy Act, and the long term goals of eLearning in New Mexico to:

- Develop a more skilled workforce to support New Mexico economic development
- Minimize barriers of location (distance) and schedule (time) to accessing educational opportunities
- Create a collaborative, scalable, and cost-effective eLearning system for K-12, higher education, state agencies, and workforce development
- Provide highly qualified eTeachers (both in subject and eLearning methods) and expanded course choices for rural (and urban) schools
- Increase just-in-time workforce development opportunities while minimizing travel costs
- Build capacity and skill for eLearning in NM using national best practices

C. Activities

The Contractor is expected to support the Procuring Agency with the implementation of a Commercial off the Shelf (COTS), standards-based Learning Management System (LMS) that includes learner tools (communication tools, productivity tools, and student involvement tools) and support tools (administration tools, course delivery tools, and curriculum design tools) that enable the delivery of online learning.

The Contractor will establish a common infrastructure for online learning for the three major components. Here are some examples within these components:

Higher Education	Public Education (PK-12)	State Agencies
<ul style="list-style-type: none">• Common LMS• eLearning Course Clearinghouse• Distance and Extended Learning programs• Dual Enrollment• Online College Credit	<ul style="list-style-type: none">• K12 Courses• Professional Development• Teacher Training• Statewide Collaboration• Web-Socialization Software• Dual Enrollment	<ul style="list-style-type: none">• Children Youth and Families Professional Development• Department of Corrections Inmate Education Program• Tele-health programs• Workforce Training Opportunities• State Personnel Office Employee Training• Other State Agencies

This contract includes perpetual software (the Blackboard Learning System—Enterprise, Blackboard Community System, Blackboard Content System, and Blackboard Learning System-Vista Enterprise

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

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

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

Product Description Overview	Year One (May 15, 2008 to May 14, 2009)	Year Two (May 15, 2009 to May 14, 2010)	Year Three (May 15, 2010 to May 14, 2011)
Blackboard Enterprise Software Solution including standard maintenance and support consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System) (Deliverable 11)	\$4,199,160	\$0	\$0
Blackboard ASP Service One Time Set Up (Deliverable 2)	\$20,000	\$0	\$0
Blackboard ASP Annual Service (Deliverable 13)	\$853,900	\$853,900	\$853,900
Blackboard Training Services (Deliverable 5)	\$29,250	\$8,000	\$8,000
Blackboard Training Materials License (Deliverable 6 & 7)	\$30,750	\$7,000	\$7,000
Blackboard Professional Services (Deliverables 1, 3, 4, 8, 9, 10 and 12)	\$620,000	\$100,000	\$100,00
TOTAL FEES	\$5,753,060	\$968,900	\$968,900
Designated Server Site: Hosted By Blackboard			
Procuring Agency's FTE: up to 200,000.			

The following sections describe the required Task Items to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task, but is not limited to performing only the task. The Parties hereby agree that the Deliverables are the controlling items and that the Contractor's obligation is to perform and deliver the Deliverable as described in the following Sections.

The table below provides the summary of planning and implementation services to be provided.

Integration and Customization Maintenance (ICM) in Deliverable Twelve will be activated in year one. The actual timing of integration activities and ICM activation will be determined during the planning phase of the program and is dependent on institution/school district/agency decision and/or ability to move to NMSELS.

III. DELIVERABLES:

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

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

B. Deliverable Number 2 – Professional Services: ASP Service Setup (please refer to Exhibit E for detailed specifications associated with this Deliverable.)

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

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

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

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

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

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

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

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

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

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

<u>DELIVERABLE SEVEN</u>		<u>PERIOD</u>	<u>COMPENSATION</u>
TRAINING MATERIALS LICENSE UPDATES		YEAR 2	\$7,000.00 ON JUNE 30, 2009
		YEAR 3	\$7,000.00 ON JUNE 30, 2010
TASK ITEM	SUB TASKS	DESCRIPTION	
Training Material License Updates	Sub 1	Training Materials License Updates for face to face workshops with rights to brand, customize and reproduce for IDEAL-NM.	
	Sub 2	Training Materials License Updates for online workshop with rights to brand, customize and reproduce for IDEAL-NM.	

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>DELIVERABLE THIRTEEN</u>		<u>PERIOD</u>	<u>COMPENSATION</u>
3 YEAR HOSTING & TECHNICAL SUPPORT		YEAR 1	\$853,900.00 due June 15, 2008
		YEAR 2	\$853,900.00 due June 15, 2009
		YEAR 3	\$853,900.00 due June 15, 2010
TASK ITEM	SUB TASKS	<u>DESCRIPTION</u>	

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

EXHIBIT B

BLACKBOARD ENTERPRISE SOFTWARE SOLUTION including standard maintenance and support (consisting of the Blackboard Learning System-Enterprise, Blackboard Learning System-Vista Enterprise, Blackboard Community System, and Blackboard Content System):

1. ADDITIONAL SOFTWARE LICENSE TERMS AND CONDITIONS

1.1 Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants Procuring Agency a limited, non-exclusive, non-transferable non-sublicenseable right and perpetual license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Procuring Agency's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Procuring Agency Content to Procuring Agency's Authorized End Users and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (a) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers or (a) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained. Procuring Agency acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Procuring Agency's Authorized End Users, Procuring Agency will be required to obtain additional license rights from Contractor pursuant to a separately executed Exhibit and payment of additional license fees. Procuring Agency will use its reasonable efforts to cause access information to the Blackboard Software (including user identification data and passwords) not to be provided to third parties except as expressly permitted under this Agreement. Under no circumstances shall Procuring Agency permit any third party to host the Software.

1.2. General Usage Restrictions. Procuring Agency agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in the Grant of License section above. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Procuring Agency shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Procuring Agency shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Procuring Agency reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software is compiled or interpreted, and Procuring Agency hereby acknowledges that nothing in this Agreement shall be construed to grant Procuring Agency any right to obtain or use such source code (except as provided for in Article 2, D-2); (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Contractor; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Contractor, provided that the foregoing shall not be construed to prohibit Procuring Agency from

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

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

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

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

published specifications) for the Software level. Procuring Agency may not use any Supported Interface in a manner that is inconsistent with the Contractor's official published specifications.

1.5 Third Party Software/Content. Procuring Agency acknowledges that the Software may utilize Third Party Software (the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software). Pursuant to its agreements with these third parties, Blackboard hereby grants to Procuring Agency a non-exclusive, non-transferable license or sublicense, as applicable, to load and/or operate and use the Third Party Software solely in connection with the Software and Procuring Agency's own instructional activities.

1.6 Ownership of Software. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Software and Contractor's official published specifications, and Procuring Agency acknowledges that it neither owns nor acquires any additional rights in and to the Software and Contractor's official published specifications not expressly granted by this Agreement, and Procuring Agency further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Agreement, including, without limitation, the right to use the Software or Contractor's official published specifications for any purpose in Blackboard's sole discretion.

1.7 Permissible Licensed Use.

(1) When Contractor is hosting the Contractor Software for Procuring Agency, the maximum number of users which may, at any particular time, be permitted to be registered to access one (1) or more educational courses provided through the Hosted Software shall not exceed 200,000 users.

(2) In the event that Contractor is not hosting the Contractor Software, the FTE of the institutions utilizing the Contractor Software shall not exceed 200,000.

(3) Upon request, Procuring Agency will inform Contractor of any increase in its FTE or users. In the event that Procuring Agency has exceeded the permissible FTE or users, Procuring Agency shall have the option to promptly (1) pay additional license fees for the Software for such increases in accordance with Contractor's then-current pricing via amendment to this contract or other authorized means under state law or (2) decrease the usage below the applicable cap and use good faith efforts to obtain state authorization to pay the applicable license fees for the period that the usage was above the cap.

(4) In no event may Procuring Agency permit any access to the Contractor Software other than by Authorized End Users, as defined below.

"Authorized End User" means any Higher Ed, K-12 or New Mexico state agencies user as described in A, B, or C, below.

A. In Higher Education institutions, Authorized End User means any individual who is a student resident in a degree- or certificate- granting program of Procuring Agency, prospective student, alumni, consortia student registered to take one of Procuring Agency's regularly offered courses of instruction, employee, trustee or collaborating

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

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

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

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

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

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

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

2. SUPPORT AND MAINTENANCE

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

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

object code software utility release(s) that are designed to work with the Software that may be, in Blackboard's sole discretion, issued in between Upgrades, designated by AP#, and/or later incorporated into Upgrades), Corrections (a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects Software Errors (a failure of any Software materially and substantially to conform to applicable Contractor's official published specifications, provided that such failure can be reproduced and verified by Blackboard using the most recent version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Procuring Agency, and further provided that Software Errors do not include any nonconformity to applicable Contractor's official published specifications caused by: (i) Procuring Agencies or its end users' negligence; (ii) any modification or alteration to the Software not made by Blackboard; (iii) data that does not conform to Blackboard's specified data format; (iv) operator error; (v) use on any system other than the operating system specified in the Contractor's official published specifications, (v) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule) in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update), or Updates to the Software that Blackboard may develop from time to time; and (iv) return all Contractor's official published specifications and related training materials to Blackboard within a reasonable time at Procuring Agency's cost.

EXHIBIT C

BLACKBOARD TRAINING SERVICES

SCHEDULE OF TRAINING SERVICES (YEAR ONE)

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

SCHEDULE OF TRAINING SERVICES (YEARS TWO & THREE)

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

1. BLACKBOARD ONSITE TRAINING SERVICES

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

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

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

A computer lab containing one computer for each student. Each computer must have at least 800 MHz processors and 256 MB or RAM and monitors capable of at least 1024x768 of resolution.
A high bandwidth Internet connection from each computer
Microsoft Internet Explorer 6.0 or later installed on each computer
Microsoft 2000 or later installed on each computer
<p><u>Recommended:</u></p> <ul style="list-style-type: none"> ➤ Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer. ➤ A video projection device capable of 1024x768 of resolution attached to a “lead” computer. ➤ Access to the locally installed version of Blackboard software or a Blackboard ASP installation.

2. BLACKBOARD ONLINE TRAINING SERVICES

A. Blackboard, upon request of Procuring Agency and in accordance with exhibit A (Deliverable 5), shall provide Online Training Services to Procuring Agency. To request enrollment in an online training course for Procuring Agency, Procuring Agency shall contact its Blackboard Account Manager, who will be designated upon execution of the Agreement.

B. Online training course/workshop class sizes are restricted to a maximum of 20 authorized end users to maintain an effective instructor-student ratio.

C. While there are no course prerequisites for enrollment, each participant must possess basic Web navigation and file management skills, internet access, and an email address. Students in online training courses should expect to spend eight to fifteen hours per week reading assignments, completing exercises, and participating in Discussion Board forums. The Procuring Agency must provide the name(s) and email address(es) of each participant in advance of the course start date.

3. CANCELLATION. Participants are encouraged to complete the course(s) which begin on the dates(s) selected. If a participant needs to reschedule before the course start date, please email training@blackboard.com.

A. In extraordinary circumstances, participants may be allowed to withdraw and participate in an online training workshop at a later time.

B. Blackboard reserves the right to cancel online courses/workshops due to low enrollment. Registered participants will be notified one week prior to the start of the course/workshop of any cancellation.

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

5. SECURITY.

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

6. TRAINING DELIVERABLES

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

EXHIBIT D
BLACKBOARD TRAINING MATERIALS

TRAINING MATERIALS (YEAR ONE)

Blackboard Training Services
Blackboard Vista Face-to-Face Training Materials Package*
Blackboard Learning System Face-to-Face Training Materials Package: K-12 Edition*
Blackboard Learning System Face-to-Face Training Materials Package*
Blackboard Vista Online Training Series Package*
Blackboard Learning System Online Training Series Package*
Blackboard Content System Training Package*

* Each Materials License training package listed above are to be used solely by IDEAL-NM staff, from NMHED or NMPED to train training contacts at each participating agency. Individual institutions or agencies who wish to locally brand materials and train their faculty or staff using Blackboard Inc. licensed materials will need to purchase their own Materials License training package at prices not to exceed those depicted on Exhibit A.

\$ 30,750⁰⁰ - initial 1st yr.
\$ 7,000⁰⁰ per year renewal

TRAINING MATERIALS SUBSCRIPTION* (YEARS TWO & THREE)

Blackboard Face to Face Training Materials Package subscription for Application Pack Upgrades
Blackboard Online Training Series Package subscription for Application Pack Upgrades

1. LICENSE

A. **Grant of License.** Subject to the terms and conditions and payment by Procuring Agency as provided in this agreement, Blackboard grants to Procuring Agency a perpetual, non-exclusive, non-transferable, limited, Version-specific, internal use license to (i) use and copy the Blackboard Materials (the Blackboard training materials, instructor's manuals, product documentation and all other instructional materials (or on any Procuring Agency purchase order or other payment documentation accepted by Blackboard and delivered to Procuring Agency. For purposes of the Training Materials herein, unless otherwise expressly stated, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard) and (ii) to conduct the Blackboard courses related thereto, if applicable. Procuring Agency is authorized hereunder to use the Blackboard Materials on an internal basis only for the sole benefit of Procuring Agency, solely for purposes of training its employees, contractors, and/or students on the use of the Blackboard software and for conducting development sessions for its faculty that are sponsored and delivered by Procuring Agency.

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

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

agrees that Blackboard shall own all right, title and interest in and to any and all Derivative Works developed by Procuring Agency or Procuring Agency's employees, contractors, agents and other related parties ("Procuring Agency Derivative Works"). Subject to the patent and copyright act, NMSA 1978, Section 57-3c-1 to 5 and any required approval of the Economic Development Department, Procuring Agency agrees to, and does hereby, assign to Blackboard all right, title and interest, including, without limitation, worldwide copyrights, patents and other intellectual property rights, in and to any and all Procuring Agency Derivative Works, and agrees to execute and deliver to Blackboard all documentation reasonably requested by Blackboard to reflect such assignment. Except for the license rights expressly set forth herein, Blackboard does not hereby convey and Procuring Agency shall not obtain any right, title or interest in or to all or any part of the Blackboard Materials or the Derivative Works. Notwithstanding anything to the contrary contained herein, Blackboard shall not obtain any rights with respect to any Confidential Information of the Procuring Agency or any Procuring Agency-developed content or other Procuring Agency materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof.

C. License to use Trademarks. During the term of this Agreement, Blackboard grants to Procuring Agency a license to use Blackboard's trademarks and trade names only for the purpose of identifying Blackboard's rights in and to the Blackboard Materials and the Procuring Agency Derivative Works. Procuring Agency agrees that it will reproduce Blackboard's name, trademark, trade name and copyright notices on all copies of the Blackboard Materials and any Procuring Agency Derivative Works in addition to any IDEAL-NM branding in use by the Procuring Agency. Procuring Agency shall acquire no rights to Blackboard's copyrights, trademarks or trade names by virtue of their use. Procuring Agency shall not use any trade name, trademark or other marks that are confusingly similar to those used by Blackboard or use Blackboard's trademarks or trade names in connection with any goods or services other than the Blackboard Materials and the Procuring Agency Derivative Works. Procuring Agency acknowledges that all copyrights, trademark, trade name, or any other proprietary mark applied to or used by Blackboard in reference to the Blackboard Materials, the Procuring Agency Derivative Works or other Blackboard products or services are the sole and exclusive property of Blackboard, whether registered or not. Blackboard grants Procuring Agency the right to brand materials for agency training under IDEAL-NM. Procuring Agency owns the trademark or trade name IDEAL-NM.

D. Delivery. After the Effective Date, Blackboard will make an electronic source file of the applicable licensed Blackboard Materials available to the Procuring Agency for downloading and Procuring Agency's use. Delivery of the Blackboard Materials shall be deemed complete when Blackboard notifies Procuring Agency that the Blackboard is available for download. Procuring Agency acknowledges that the download site will be made available to Procuring Agency for a period not longer than ninety (90) days from the date of such notice, and Procuring Agency will have no right to download the Blackboard Materials after this ninety (90)-day period.

E. TRAINING MATERIALS MAINTENANCE AND UPGRADES

The Procuring Agency shall pay to Blackboard an annual subscription fee as specified in Deliverable number 6 and 7, for maintenance and upgrade of materials licenses. Upon payment of this fee the Procuring Agency shall be eligible to receive access to the most current version of the Blackboard materials licenses as specified in Deliverable number 6 and 7.

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

ASP - SCHEDULE OF SERVICES

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

1. BLACKBOARD RESPONSIBILITES.

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

agreement, including all right, title and interest in and to any derivative work created by Blackboard. Blackboard agrees to, and does hereby, assign to Procuring Agency and to the entities participating under this agreement all right, title and interest including, without limitation, worldwide copyright, patent and other intellectual right, in and to any and all such derivative work, and agrees to execute and deliver to Procuring Agency and to the entities participating under this agreement all documentation reasonably requested by Procuring Agency or the entities participating under this agreement to reflect such assignment. As between Procuring Agency and Blackboard, Procuring Agency retains ownership of the Procuring Agency Content. Blackboard shall maintain the confidentiality of all Procuring Agency Content and participating entities content that is stored on its servers in accordance with this Agreement.

1.2 Availability and Operational Specifications. Blackboard will undertake commercially reasonable measures to ensure that, from and after the Available Date and for so long as this Agreement remains in effect, the ASP Services (Application services provided by Blackboard pursuant to this Agreement provided pursuant to this Agreement) will: (i) be available and accessible as contemplated herein twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Attachment 2 to this Exhibit; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Attachment 2 to this Exhibit. Attachment 2 to this Exhibit may be modified from time to time, upon notice to Procuring Agency. Notwithstanding the foregoing, Blackboard will have no liability under this Section to the extent any nonconformity with the standards set forth in Attachment 2 arises, in whole or in part, from: (i) any use of the Hosted Software by Procuring Agency other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Procuring Agency to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to this Agreement; or (iii) any causes beyond the control of Blackboard or which are not reasonably foreseeable to Blackboard, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. Blackboard does not warrant or guarantee the ASP Services except as expressly stated in this Agreement.

1.3 Data Restoration Policy. Blackboard will back-up and archive Procuring Agency Content at a secure location for the retention period(s) specified in Attachment 2. In the event that Procuring Agency requests recovery of any lost or damaged Procuring Agency Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Procuring Agency), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Procuring Agency has provided to Blackboard all information necessary to enable Blackboard to perform such services. Blackboard shall perform up to four (4) data restorations at no charge to Procuring Agency; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the ASP Services, Procuring Agency agrees to pay Blackboard its then-standard applicable rates for such restoration services.

1.4 Data Archiving and Cleanup Policy. Blackboard will undertake commercially reasonable efforts to accommodate Procuring Agency's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Procuring Agency's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a

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

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

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

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

2. PROCURING AGENCY RESPONSIBILITIES.

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

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

ATTACHMENT 1 TO EXHIBIT E
ASP SPECIFICATIONS

+ Blackboard Learning System™:- Enterprise License & Learning System – Vista License Production Environment Hosting

- Set Up Fee includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Annual Fee includes service for up to **200,000 total Active Users** and **4 TB** of storage and **20 Mbps** of bandwidth measured using the **95th percentile calculation** (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)

+ Blackboard High Availability/High Performance ASP Service on the Production Environment

- Oracle RAC (Real Application Clusters) clustered database nodes configuration pointing to a separate Procuring Agency-dedicated RAID-4 (Redundant Array's of Independent Disk) protected storage volumes for redundant and load balanced database servers configuration.
- Oracle RAC license included
- Minimum of two (2) dedicated database servers as database nodes
- Includes Oracle Recovery Manager (RMAN) database backup service, which allows point-in-time database backup and restore capability.

+ Blackboard Non-Production Test Environment:

- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
- Fee includes **20 GB** of server storage and **burstable bandwidth** provided through Blackboard's broadband connection, and grants Procuring Agency full root access to servers.
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Test Environment by its nature DOES NOT meet the Service Level specifications under Attachment 2, and therefore, DOES NOT qualify for Service Level Guarantees.

+ Blackboard Staging Environment

- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
- Fee includes **100 GB** of storage and **512 kbps** of bandwidth measured using the **95th percentile calculation** (as defined above) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- The Staging Environment (hosting additional test copy of the licensed Blackboard Software used for Procuring Agency to test new updates/upgrades to the Software. The staging environment may not be used for production purposes) is not designed to fully replicate or clone the production environment in terms of physical infrastructure.

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

+ Complex Hosting Technical Manager – 25% Time Commitment

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

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

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

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

- Contact: Be fully dedicated to Procuring Agency's Systems Administrators and Operations staff through a dedicated phone number for day-to-day ASP support requests and status reporting
- Project Communication: Build two-way communication processes in coordination with Procuring Agency for project management, support issue escalation, and other communication procedures as necessary
- Regular Reporting: Coordinate and facilitate regularly scheduled (weekly or monthly or quarterly) and ad-hoc project and status update meetings
- Channel Management: Modify and update communication processes and channels as deemed necessary
- On-site Support: CHM will make two on-site visits within the one year contract period.

C. Documentation - Document and report on Procuring Agency's ASP infrastructure, projects status, escalation issues, and other Procuring Agency ASP environment-relevant knowledge. Complete and thorough documentation will be a key aspect of meeting the management and communications objectives of the CHM. As such, the CHM will provide the following documents during the life of the relationship between the CHM and Procuring Agency:

- Operations and Plans: Develop detailed documents including Escalation process, Operations Handbook, Infrastructure test and implementation plans
- Regular Status Reporting: Document and provide weekly reports to Procuring Agency on all project plans and updates
- Infrastructure Reporting: Document and provide monthly updated reports to Procuring Agency on Infrastructure design, hardware inventory, monitoring and management infrastructure, change management logs and other relevant materials
- Change Management/Status (I): Provide timely and detailed reports of planned infrastructure changes; planned or unplanned service outages, or degradation of services; and issue resolution reports
- Change Management/Status (II): Document and communicate any procedural changes that regulate the flow of code fixes, patches to the production environment
- SLA Performance Reporting/Analysis: Provide monthly reports (and as often as necessary to manage system stability) on system utilization and performance, including MRTG graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Procuring Agency, a standard set of reporting for overall systems management.

+ Secure Socket Layer –

- Secure Socket Layer (SSL) is an encryption protocol that prevents eavesdropping of data that passes between a web server and an end-user's browser. SSL enabled websites encrypt data before it is transmitted from the web server to the end user and from the end user to the web server. Blackboard's Learning System 6.1 and higher versions contain SSL Choice feature, which once turned on allows Procuring Agency to choose which parts of the site should be encrypted and which should not, which in turn effectively reduces unnecessary CPU usage associated with SSL software. In order to take advantage of the SSL Choice, Procuring Agency must have SSL software enabled.

Data Restoration Policy – per restore fees are separately charged per chargeable restore incident. See I.3 of Exhibit E.

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

**ATTACHMENT 2 TO EXHIBIT E
ASP SERVICES SPECIFICATIONS**

NOTE: PROCURING AGENCY ACKNOWLEDGES THAT NOTHING IN THIS ATTACHMENT 2 CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE AGREEMENT AS APPLICABLE.

SERVICE LEVEL

Security:

- Single point of entry to co-location is guarded 24 hours a day with access controlled by an access database and video surveillance
- Monitoring of the co-location area and only those persons authorized by Blackboard's access list are allowed past a central point.
- Surveillance cameras located throughout the facility capture activity to help ensure no unauthorized entry to protected areas.

Power:

- State-of-the-art generators clean and condition commercial electrical power to remove irregularities in the signal. Power is run through the generators before being passed into the facility.
- In the event of a loss of power from the grid, power backups are utilized in the following order: commercial utility underground conduits, two-hour battery backup (industry standard only 15 minutes), diesel generator with full-load capability and additional fuel supply.

Network:

- Redundant Internet connections through dual Tier-1 Internet Service Providers

Startup:

Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Procuring Agency server(s). This includes but not limited to, the server hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Hosted Software.

Initial Access Date:

The Hosted Software is typically accessible from the hosting site within 7 business days after execution of the Agreement provided that Procuring Agency has provided to Blackboard a URL and any other information required by Blackboard. Blackboard shall provide Procuring Agency with procedures for access; the procedures may include, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Procuring Agency to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Agreement.

Availability/Service Credit:

The Hosted Software is accessible 24/7, with a 99.7% targeted uptime. 99.7% uptime means that for 99.7% of the time during any calendar month, the ASP Services shall be available. Unavailability is a condition in which there is unavailability of the Hosted Software due to hardware failure OR sustained packet loss in excess of fifty percent within the Blackboard hosting facilities for at least fifteen consecutive minutes due to a failure of Blackboard to provide ASP Services during such period; unavailability does not include packet loss or network unavailability due to scheduled

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

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

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

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

Backup and Disaster Recovery:

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

Outages

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

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

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

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

MONITORING AND PERFORMANCE

Blackboard will make network performance reports available to the Procuring Agency via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment.. Upon request by Procuring Agency, Blackboard will provide Procuring Agency with monthly reports including information on ASP Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Procuring Agency with the following report:

Specific System Outage Details:

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

Ongoing:

The hardware, software and network are monitored and maintained by Blackboard and will be accessible twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which the Procuring Agency shall be notified by email.

- Blackboard maintains responsibility for all day-to-day server maintenance. Server maintenance may include, but is not limited to, hardware upgrades, OS upgrades, patch installations, database administration, server user administration and performance tuning.
- Blackboard maintains a software monitoring system to provide real-time information about the ASP environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the ASP environment.
- Blackboard maintains the functioning of all hardware components for which it is responsible under this Exhibit and will replace any failed components. Hardware replacement will begin immediately upon identification of the hardware failure and if cannot be completed with a reasonable amount of time, the access to the Hosted Software will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily backups with a retention period of 1 month. Where possible, data is replicated to an offsite location.
- Blackboard collects bandwidth usage and web hit statistics on all Procuring Agency-hosted machines. This information will be provided upon request.

DATA CENTER SPECIFICATIONS

Blackboard houses servers in a facility that offers environment control, security, and backup power, as more specifically described below:

Environment:

- The data center is designed to maintain a constant temperature of 68½F, plus or minus 2½F, 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.

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

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

EXHIBIT F

SUPPLEMENTAL SERVICES – FEE SCHEDULE FOR IDEAL-NM AND PARTICIPATING INSTITUTIONS

Supplemental Storage and Bandwidth Policy: As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Procuring Agency's storage and bandwidth usage. In the event Procuring Agency has exceeded Initial Storage and/or Initial Bandwidth in a sustained period of sixty (60) days or more, Blackboard will provide a report to Procuring Agency concerning the current storage and bandwidth usage. In the event Procuring Agency or participating institutions desire to purchase supplemental storage, user capacity, ASP services and/or bandwidth, the price which Blackboard agrees to charge is listed below.

In the first three years of the Agreement, additional hours for consulting services will be billed at a blended rate of \$205 per hour. Supplemental Consulting Services procured by the Procuring Agency will be within the total compensation under this agreement. Participating Agencies and Institutions desiring to procure supplemental services may do so at prices not to exceed those depicted in this exhibit.

Supplemental ASP Services: In the event that Procuring Agency desires to receive ASP Services in addition to the particular services specified in the table above, including, by way of example, incremental storage capacity and/or additional bandwidth capacity and/or higher Active User Capacity, Procuring Agency may submit a written and executed purchase order requesting such additional ASP Services. Subject to Procuring Agency's payment of all applicable fees, and further subject to all applicable provisions of this Agreement, Blackboard agrees to make such additional ASP Services available to Procuring Agency for so long as this Agreement and ASP service remains in effect after acceptance of such purchase order. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Procuring Agency with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

Description of Service	Price
Supplemental Consulting Services	\$205 per hour
Supplemental ASP Services	
• Additional Service Unit – to support additional 10,000 Active Users	\$47,000/Yr
• Additional 1 TB Storage	\$30,000/Yr
• Additional 2 TB Storage	\$58,000/Yr
• Additional 5 TB Storage	\$140,000/Yr
• Additional Bandwidth – in 1 Mbps increments	\$480/month/1 Mbps
• Additional CHM Commitment – 25% Increment	\$60,000/Yr
• Test and Development Environment	\$1,000/setup

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

Issue Date: September 14, 2007

Title: New Mexico Statewide Learning System (NMSEL'S)
Of the IDEAL-NM Project

REF#80-950-00-00399
REQUEST FOR PROPOSALS



New Mexico Higher Education Department (NMHED)
STATE OF NEW MEXICO

STATE OF NEW MEXICO

New Mexico Higher Education Department (NMHED)

REQUEST FOR PROPOSALS (RFP)

**NEW MEXICO STATEWIDE ELEARNING SYSTEM (NMSELS)
Of the IDEAL-NM Project**

RFP #80-950-00-00399

DATE OF ISSUE: September 14, 2007

Pursuant to NMSA 1978 15-1C-1 *et. seq.*, the State Chief Information Officer has reviewed the request for proposal (RFP) for technical sufficiency and hereby approves the document for release.

Chief Information Officer

Date:

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Department of Higher Education (NMHED) or “Agency” seeks proposals from prospective offerors for the acquisition of software and services for a New Mexico Statewide eLearning System (NMSELS) to support the goals of the IDEAL-NM eLearning project. The NMSELS learning management system must be a Commercial off the Shelf (COTS) solution that can be procured as either a vendor-hosted or agency-hosted solution. It must support a range of applications that can supplement traditional classroom instruction, integrate online and face-to-face instruction, and deliver totally online courses and programs.

This RFP defines the State’s minimum requirements for the learning management system portion of the eLearning system, solicits proposals, provides proposal requirement details, and outlines the evaluation and selection process. Only proven system software products will be considered. The Agency is not interested in purchasing professional services to design and develop a new custom proprietary application.

The electronic version of this document is available for download from the State Purchasing Division website at <http://www.generalservices.state.nm.us/spd/>.

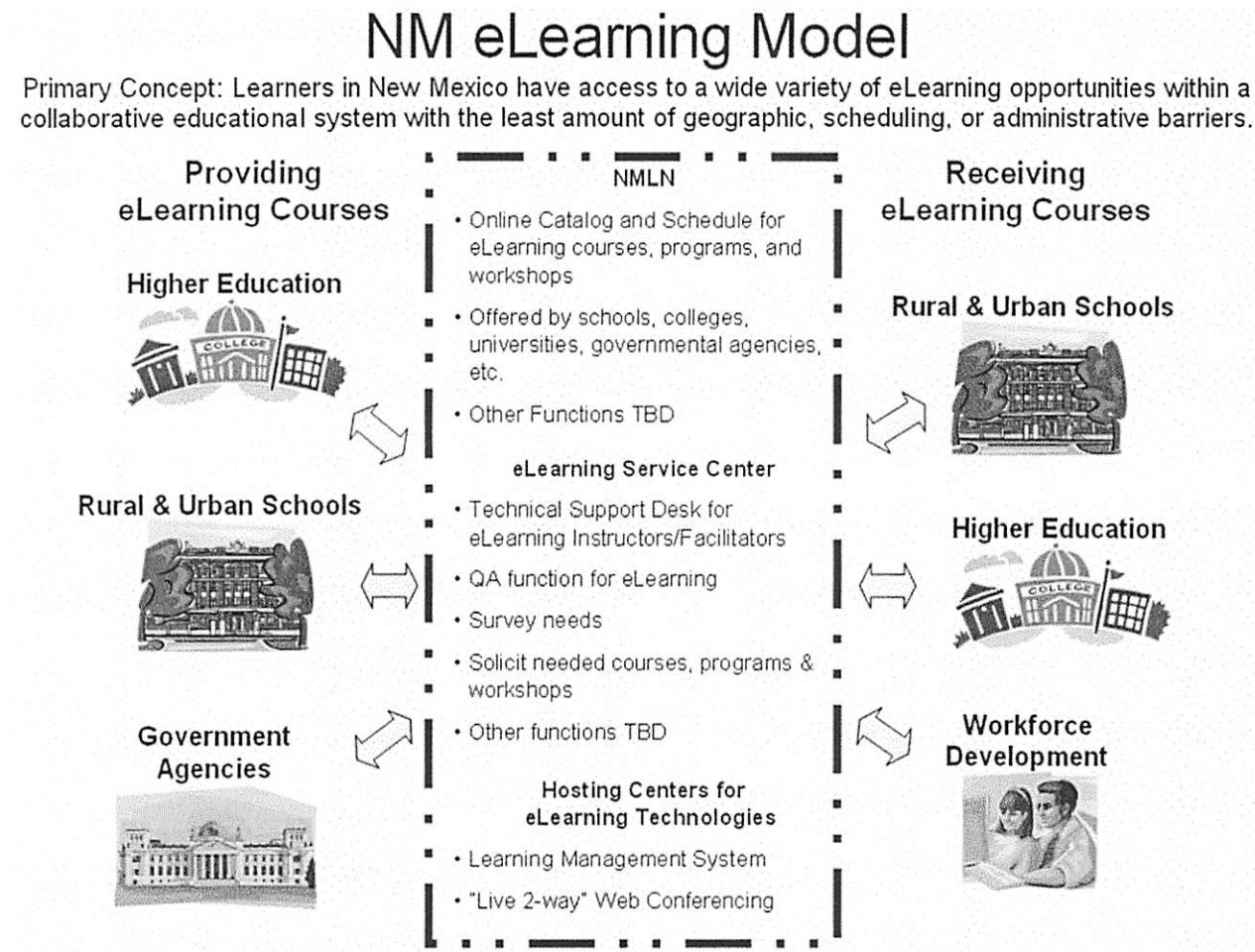
B. VISION

The Agency’s vision is to implement a statewide eLearning system to support the vision of IDEAL-NM (Innovative Digital Education and Learning in New Mexico). IDEAL-NM is Governor Richardson’s initiative to establish a statewide eLearning support system for all learners served by PK-12, higher education, and state agencies through an advanced technology infrastructure. The statewide project will reduce geographic, schedule, and administrative barriers to educational opportunities for NM learners while increasing their technological literacy and enhancing their ability to participate in a digital information economy. Coordinated through the New Mexico Learning Network (NMLN), IDEAL-NM establishes new eLearning services in New Mexico based on state-of-the-art technologies and quality eLearning practices. IDEAL-NM places New Mexico among the leading innovative states that are addressing the rapidly expanding demand for eLearning options.

IDEAL-NM Goals

- Create a statewide Cyber Academy (mid/high school) with initial focus supporting rural schools and teacher professional development (within 5 years all New Mexico students will take eLearning courses before high school graduation)
- Utilize the New Mexico Learning Network (NMLN) to coordinate IDEAL-NM and to provide a statewide eLearning Portal that utilizes the capacity of existing schools, colleges, and Universities
- Implement a shared eLearning technology infrastructure using consistent, state-of-the art, enterprise solutions.
- Sharing of other educational resources including subject matter expertise, instructional content, and support services
- Coordinate with other statewide technology initiatives

The following chart conceptually illustrates the vision of IDEAL-NM.



C. BACKGROUND INFORMATION

New Mexico is largely a rural state with population centers concentrated along the Rio Grande corridor. There are 89 public school districts (pre-kindergarten through grade 12) supporting more than 328,000 students (Appendix E). New Mexico's higher education system consists of three high quality research universities, four comprehensive universities, seventeen two-year colleges, ten of which operate as branch campuses of the universities and seven as independent community colleges and three special schools. Collectively, these higher education institutions serve more than 128,000 students annually.

Two agencies, the Public Education Department (NMPED) and the Higher Education Department (NMHED), oversee New Mexico's educational system. See <http://www.ped.state.nm.us/> and <http://www.hed.state.nm.us/> for more information.

New Mexico's current eLearning environment consists of a myriad of solutions. Public education eLearning solutions range from Moodle rooms and Blackboard Learning System to leasing courses to developing courses in-house. Online course management systems range from vendor supplied solutions to open source solutions. Almost all of the higher education institutions use the same online course

management system (WebCT/Blackboard) but all have separate subscriptions and different software versions. The New Mexico Learning Network website http://www.nmln.net/nmln/partner_list.php serves as a clearinghouse for all online courses and degrees offered at New Mexico colleges and universities. In addition to these online courses, each institution uses its learning management system to provide online enhancements to traditional campus courses in a blended format.

D. SUMMARY SCOPE OF WORK

The NMSELS project includes the following components:

Learning Management System (LMS)

A COTS, standards-based "Learning Management System" (LMS) that includes learner tools (communication tools, productivity tools, and student involvement tools) and support tools (administration tools, course delivery tools, and curriculum design tools) that enable the delivery of online learning. All proposals will offer core features specifically related to "course development" and the capability of interfacing with student records systems. A more detailed description is offered later in this RFP. Successful solutions must provide the following core requirements:

- The solution must operate in both vendor-hosted and agency-hosted environments.
- The application must include tools that support the learner, the teacher, and course designers to enable the delivery of online learning.
- The solution must address the need to migrate existing online course content from a variety of LMS platforms.
- The solution must accommodate a full range of content including, text, multimedia, and laboratory simulations.
- The successful solution must support a wide variety of pedagogical approaches and designs, accommodate diverse learning styles, and provide mechanisms that promote community among the learners.
- The solution must be web standards-based and comply with the most recent version of the guidelines of SCORM, IMS, QTI, IMS Enterprise, IMS LIP, IEEE, LOM, and other national and international specifications and standards organizations.
- The solution must be easy to integrate with other academic and administrative systems.
- The application must have the capacity to function in a standalone environment or in single or multiple hosted environments.

Learning Object Repository (LOR)

This RFP seeks a "Learning Object Repository" (LOR) based on industry standards for the storage and retrieval of digital or non-digital objects that may be used for learning, education, or training. A more detailed expectation is offered later in this solicitation.

Hosting Services

The NMSELS project may be implemented in a vendor-hosted and agency-hosted environment. Since hosted services may be required in some instances, the Agency seeks a vendor capable of providing hosted services. Vendor's hosted service shall provide all required robust hardware, bandwidth, and interface tools necessary to provide quality services as requested.

E. SCOPE OF PROCUREMENT

The scope of the procurement includes the planning, implementation, and delivery of the software and support services required for the installation and operation of the system. The scope will include, but not be limited to, software or additional software programs, data files, enhancements, modification, systems or control software, and utilities as well as software training, maintenance, support, documentation, and any other directly related professional services. The initial contract is projected to be awarded as specified in Section II A, Sequence of Events. Contract extensions may be offered depending upon funding available and agreement between the parties.

The contract shall be for perpetual software licensing and implementation services, and must be presented in the form of base costs or pre-packaged elements. All deliverables must be met within the projected costs; extensions or additions to scope will not be accepted.

The proposed contract shall become effective upon approval by the Department of Information Technology (DoIT) for the State of New Mexico, the New Mexico Department of Finance, State Purchasing Department (SPD) and Department of Finance (DFA). This contract is meant to be used by New Mexico Higher Education, New Mexico K-12 public education, and New Mexico State Agencies. All other groups or units are not included in this contract. The contract shall be implemented for a term of one calendar year, and may be extended on an annual basis for up to two years in one-year increments for a total of three years, contingent upon sufficient funding and satisfactory work performance provided by the selected vendor. In no case will the contract, including all renewals thereof, exceed a total of three years in duration.

This procurement shall result in a single source award.

F. FINANCIAL CONSTRAINTS

Financial constraints of the Agency appropriations will guide the selection of the successful Offeror. The cost portion of the proposal evaluation will account for 30 percent of total points awarded.

All responses must break out the total costs of ownership for a three (3)-year period.

G. PROCUREMENT MANAGER

The agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below:

Name: Rocky Lira
Title: Procurement Manager
Agency Name: New Mexico Higher Education Department
Address: 1068 Cerrillos Rd
Santa Fe, NM 87505-1650

Telephone: (505) 220-1958 cellular
Fax Number: (505) 476-6511
E-mail: Rocky.Lira1@state.nm.us

All deliveries via express carrier should be addressed as follows:

Name: Rocky Lira
Title: Procurement Manager
Agency Name: New Mexico Higher Education Department
Address: 1068 Cerrillos Rd
Santa Fe, NM 87505-1650

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing or email. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Agency.

H. DEFINITION OF TERMINOLOGY

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Agency” means the New Mexico Higher Education Department (NMHED)

“Base System” means the assembly of an operational group of computer programs that will perform, without modification, a significant portion of the functional requirements contained in this RFP. The base system may include system interfaces as well as contractor supplied third party software required for the maintenance or operation of the base system.

“Close of Business” means 5:00 PM Mountain Daylight Time

“Contract” means an agreement for the procurement of items of tangible personal property or services.

“Contractor” means successful offeror who enters into a binding contract.

“Determination” means the written documentation of a decision of a procurement manager including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable”—The terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“DoIT” – means the Department of Information Technology.

“DFA” means the Department of Finance and Administration for the State of New Mexico.

“Evaluation Committee” means a body appointed by the Agency management to perform the evaluation of offeror proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for submission to the State Purchasing Agent for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

“Finalist” is defined as an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.

“FTE” is defined as a full-time equivalent student.

“Interface” – means the transmission of data that will allow for efficient and logical interaction with other applicable systems.

“Learning Management System (LMS)” – A standards-based “Learning Management System” (LMS) that includes learner tools (communication tools, productivity tools, and student involvement tools) and support tools (administration tools, course delivery tools, and curriculum design tools) that enable the delivery of online learning.

“NMHED” – New Mexico Higher Education Department.

“NMPED” – New Mexico Public Education Department.

“NMSELS” – New Mexico Statewide eLearning System.

“Mandatory”—The terms “must,” “shall,” “will,” “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror’s proposal.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Request for Proposals” or **“RFP”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources production, or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

“Responsive Offeror” or **“Responsive Proposal”** means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.

“State Purchasing Agent” or **“SPA”** means the purchasing agency for the State of New Mexico or a designated representative.

“SCORM” or Sharable Content Object Reference Model (SCORM) - a collection of standards and specifications for web-based e-learning. It defines communications between client side content and a host system called the run-time environment (commonly a function of a learning management system). SCORM also defines how content may be packaged into a transferable compressed file.

“IMS” or IP Multimedia Subsystem (IMS) - an architectural framework, originally designed by the wireless standards body 3GPP, for delivering IP multimedia services to end-users. IMS is a standardized reference architecture that consists of session control, connection control, and an applications services framework along with subscriber and services data.

“IMS Enterprise” or IMS Enterprise Services Specification (IMS Enterprise) - a standardized set of structures that can be used to exchange data between different systems. These structures provide the basis for standardized data bindings that allow software developers and implementers to create Instructional Management processes that interoperate across systems developed independently by various software developers. The major classes of Enterprise applications supported by this model are Training Administration, Student Administration, Library Management, and Human Resource systems.

This section contains LMS definitions.

LMS DEFINITIONS:

Accessibility Compliance: Accessibility compliance means meeting the standards that allow people with disabilities to access information online. Persons with disabilities (e.g., the blind) use a device to “read” the screen. Accessibility for persons with disabilities entails providing for a version that can be processed by a screen reader such as JAWS. Many screen readers have difficulty rendering frames, tables, and images (without alt text tags). The practical accessibility difficulties are compounded by the fact that many persons with disabilities do not have the recent equipment and software

Archive: the ability to store the contents of a course in a compressed file format when the course is inactive. Archived courses can be stored within the system, exported, imported, or restored.

Instructional Standards Compliance: Instructional standards compliance concerns how well a product conforms to standards for sharing instructional materials with other online learning systems and other factors that may affect the decision of whether to switch from one product to another. Instructional standards compliance involves trying to make it possible for applications from different product producers to work well together. There are presently several proposed standards but the most prominent are the standards developed by the IMS Global Learning Consortium that define the technical specifications for interoperability of applications and services in distributed learning and support. The IMS standards can be found at www.imsproject.org. The SCORM standards-in-progress integrate the industry specifications from IMS, AICC, IEEE and ADRIANE and are operational standards with corresponding compliance test suites for learning objects (www.adlnet.org/main.html). In terms of compliance there appear to be three levels: awareness of the standards, claimed partial compliance, and self-tested compliance with the SCORM test suites. Other migration considerations are situations that would make switching to another application more complicated, such as proprietary data formats for content, which make it difficult to import course content into another application. To the extent that student data is maintained in the system there can be separate complications in migrating non-course information to other versions or platforms.

Learner Communication Tools

Discussion Forums: Discussion forums capture the exchange of messages over time, sometimes over a period of days, weeks, or even months. Threaded discussion forums are organized into categories so that the exchange of messages and responses are grouped together and are easy to find. Discussion forums tools are very similar to Usenet newsgroups where text conversations over time are displayed. The organization of the messages can be a simple temporal sequence or they can be presented as a threaded discussion where only messages on a specific topic called a thread are displayed in sequence.

File Exchange: File exchange tools allow learners to upload files from their local computers and share these files with instructors or other students in an online course. Note: File attachments to messages are part of Internal Email and Discussion Forums. File Exchange tools enable downloading files and upload or posting files over the Web from within the course (e.g., assignment drop box or collaboration/group tools).

Internal Email: Internal email is electronic mail that can be read or sent from inside an online course. Email tools enable messages to be read and sent exclusively inside the course or alternatively the tools enable links to external email addresses of those in the course so that contacting course members is facilitated. Internal email may include an address book and some address books are searchable.

Online Journal/Notes: Online Journal/Notes enable students to make notes in a personal or private journal. Students can share personal journal entries with their instructor or other students but cannot share private journal entries. This tool can be used to facilitate writing assignments in which parts are written over time and then later assembled into a document. This tool also can be used to make personal annotations to pages of a course that can later be used as a study aide. The Online Journal/Notes tool can also be used to record reflections about personal learning accomplishments and how to apply this new knowledge.

Real-Time Chat: Real-time chat is a conversation between people over the Internet that involves exchanging messages back and forth at virtually the same time. Chat includes facilities like Internet Relay Chat (IRC), Instant Messenger, and similar text exchanges in real time. Some chat facilities

allow the chats to be archived for later reference so that they may be more easily used as part of a course grading system.

Video Services: Video services enable real-time voice and picture (video) interaction as part of the course. Video services include tools for broadcasting video to those without a video input device. Some video services provide for two-way or multi-way video conferencing, which may be point-to-point connections or mediated through a central server.

Whiteboard: Whiteboard/video tools include an electronic version of a dry-erase board used by instructors and learners in a virtual classroom (also called Smartboard or electronic whiteboard) and other synchronous services such as application sharing, group browsing, and Voice over IP (also called VoIP or voice chat). Application sharing allows a software program running on one computer to be viewed and sometimes controlled from a remote computer. For example, an instructor using this feature can demonstrate a chemistry experiment or a software utility to an online student and allow the student to use the demonstration software from his/her own computer. Group web browsing allows an instructor to guide learners on a tour of web sites using a shared browser window. Voice over IP tools enable two or more to communicate via microphone and speaker conference call style over the Internet connection in real time. Alternatively, a functionally similar tool is used to set up and manage a conference call using the telephone system.

Learner Productivity Tools

Bookmarks: Bookmarks allow students to easily return to important pages within their course or outside their course on the web. In some cases bookmarks are for an individual student's private use, and in others can be shared with an instructor or with an entire class. Some systems also allow bookmarks to be annotated. Bookmarks allow students to easily return to important pages within their course or outside their course on the web. Systems vary in allowing students to store their bookmarks in a course folder, a personal folder, or a private folder. Course folders are open to all students and instructors in a course. Personal folders contain bookmarks that individual students can share whereas bookmarks in private folders are for the student's own use.

Orientation/Help: Orientation/Help provides tools to help students learn how to use the online learning software, often in the form of a self-paced tutorial, guide, or student helpdesk. Orientation/Help tools enable the student to make the best use of the software. These tools provide tutorials or guides to the various aspects of the software. Sometimes additional tools are included to support effective study practices, which can range from simple review tools to mini courses in how to study effectively. Student helpdesk tools facilitate the tasks of an operator responding to requests for help by student users of the application and may include some online resources directly available to students such as context sensitive helpful hints and wizard style assistants. A student helpdesk does not typically offer help with course content.

Plan/Progress Review: Student progress review tools enable students to plan for their workload and assignments typically through a course calendar. This may include the use of an online calendar. Student progress review tools enable the student to check marks on assignments and tests as well as their progress through the course material. In some tools there are additional provisions to support student workload planning as well by means of a calendar type of tool.

Searching within Course: Searching within a course is a tool that allows users to find course material based on key words. Searching tools enable students to locate parts of the course materials on the basis of word matching beyond the user's current browser page (which can be searched using the browser>edit>find menu).

Work Offline/Synchronize: This feature provides the ability to work in the course environment offline, and for the work to be synchronized with the next log-in to the course environment. In some products the resume course function also lets users save their place in an online course. This applies to work on PDAs (e.g., Palm, Handspring). The ability to work in a course environment offline is especially useful in situations where communication links are unreliable or expensive. This offline environment is essentially a local client application that embodies the important features of the online product without the constant connection to the Internet. When the user resumes the course, the resume course tool could be used to take the user directly to the page of the course or the Sharable Content Object where they had stopped working.

Student Involvement Tools

Group Work: Group Work is the capacity to organize a class into groups and provide group workspace that enables the instructor to assign specific tasks or projects. Some systems also enable groups to have their own communications features like real-time chat and discussion forums.

Self-Assessment: Self-Assessment tools allow students to take practice or review tests online. These assessments do not count toward a grade. When self-assessment tools are combined with pedagogical skill in preparing the content of the test items and response feedback there can be positive effects on student motivation.

Student Community Building: Student community building tools enable online instructors to create community for students to share ideas or build knowledge. Student community building tools can include facilities to encourage and enhance morale. These tools allow the instructor to create and manage small groups using discussion threads, chats, or other course tools in a larger class so that small group members can interact with each other enough to develop friendships.

Student Portfolios: Student portfolios may be used by students as personal homepages or may be a place for them to showcase their work in a course.

Support Administration Tools

Authentication: Authentication is a procedure that works like a lock and key by providing access to software or a computer system by a user who enters the appropriate user name and password. The term also can refer to the procedure through which user names and passwords are created and maintained. Authentication systems can involve a single logon, which is the most user-friendly and most vulnerable to hacking. More complicated systems can involve layers with separate logins for each layer and secure socket layer transaction (SSL) encryption.

Course Authorization: Course authorization tools are used to regulate who can use the software and in what way. Authorization tools assign access privileges and other privileges to specific users or user groups (e.g., teaching assistants and designers).

Hosted Services: Hosted services mean that the online learning application provider furnishes the application with the server and technical support from their location so the institution does not provide any hardware. Off-site hosting is the service of course hosting from servers at the application provider's location so that the local institution does not need an application server or the associated network hardware and software (a.k.a. outsourcing web services). An important aspect of outsourcing course hosting is that it includes outsourcing the associated technical support and maintenance as well as the actual web service of providing courses.

Registration Integration: Registration tools support the enrollment of students in an online course either by the instructor or through self-registration of the students themselves or through integration with the Student Information System. Registration tools also include tools for secure credit card transactions. Some registration tools allow instructors to enroll students in batches through the use of formatted text files. Time limited student self-registration may also be available to shift the data entry process to the students. This feature includes the integration of the online learning system with an administrative student registration or information system. Integration with Student Information System tools provides the ability for the application to work with known Student Information Systems (e.g., SCT Banner, PeopleSoft, and Datatel). Typically, integration will allow for the following types of functionality: shared common student information, ability to transfer grades back and forth, and ability to have common accounts. The registration tools for secure transactions may also involve making additional arrangements with financial institutions for the funds to be transferred to the institution, and these arrangements may have a separate cost structure.

Course Delivery Tools

Automated Testing and Scoring: Automated testing and scoring tools allow instructors to create, administer, and score objective tests. Some products provide support for proctored testing in a suitable computer lab classroom as an approach to ensuring academic honesty.

Course Management: Course management tools allow instructors to control the progression of an online class through the course material. Course management tools are used to make specific resources in a course, such as readings, tests, or discussions, available to students for a limited time only or after some prerequisite is achieved. This deliberate unfolding of the course resources can be used to prevent students from being overwhelmed and discouraged. Some systems enable this course management to be individualized so that course experience can be tailored to accommodate individual learner situations.

Instructor Helpdesk: Instructor helpdesk tools include resources available for instructors who need help using the product software. This does not typically include assistance with content. Instructor helpdesk tools may enable instructors to create a community with other instructors to share ideas or build knowledge.

Online Grading Tools: Online grading tools help instructors mark, provide feedback on student work, and manage a grade book. Online grading tools enable instructors to mark assignments online, store grades, and delegate the marking process to teaching assistants. Some tools allow instructors to provide feedback to students, to export the grade book to an external spreadsheet program, and to override the automatic scoring.

Student Tracking: Student Tracking is the ability to track the usage of course materials by students and to perform additional analysis and reporting both of aggregate and individual usage. Student tracking tools include facilities for statistical analysis of student-related data and the display the progress of individual students in the course structure. The data generally consists of both activities and the time stamps of when the activity occurred.

Curriculum Design Tools

Course Templates: Instructors use templates to go through a step-by-step process to set up the essential features of a course. Course templates are artifacts of particular pedagogical approaches to instructional content and process. The local value of particular templates will depend in part on the match between the template designer's approach and the specific instructor's approach.

Curriculum Management: Curriculum management provides students with customized programs or activities based on prerequisites, prior work, or testing. Curriculum management includes tools to manage multiple programs, to enable skills/competencies management, and to handle certification management. These tools may be similar to the tools used in student services as part of providing academic advising to students.

Customized Look and Feel: Customized look and feel is the ability to change the graphics and how a course looks. This also includes the ability to provide institutional branding for courses. Customized look and feel also includes the branding of content with institutional logos and navigation to provide a consistent look-and-feel across the entire institutional site and integration with additional institutional resources, such as the library.

Instructional Design Tools: Instructional design tools help instructors create learning sequences, for example, with lesson templates or wizards.

I. PROCUREMENT INFORMATION

A procurement library has been established that contains information listed below. Offerors are encouraged to review the material as listed below.

- Procurement Regulations, 1.4.1 NMAC. A copy may be obtained from the following website address: <http://www.generalservices.state.nm.us/spd/>
- Information Technology requirements for the State of New Mexico. Copies may be obtained from the following website address: <http://www.doit.state.nm.us>.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

	Action	Responsibility	Date
1.	Issuance RFP	Agency	09/14/07
		State Purchasing	
2.	Pre-Proposal Conference	Agency	09/18/07
3.	Acknowledgment of Receipt Form	Potential Offerors	09/18/07
4.	Deadline To Submit Questions	Potential Offerors	09/18/07
5.	Response to Questions/RFP Amendments	Agency	09/20/07
6.	Submission of Proposal	Offerors	09/25/07
7.	Proposal Evaluation	Evaluation Committee	09/26/07 – 10/10/07
8.	Oral Presentation and/or Product Demonstration Agenda to Finalists	Evaluation Committee	10/10/07
9.	Selection of Finalists	Evaluation Committee	10/10/07
10.	Oral Presentation and/or Product Demonstrations by Finalists	Offerors	10/16/07 – 10/17/07
11.	Best and Final Offers from Finalists	Offerors	10/19/07
12.	Selection of the Most Advantageous Offer	Agency	10/19/07
13.	Contract Award	State Purchasing Agent	10/26/07
14.	Protest Deadline (15 Days)	Offerors	11/10/07

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

1. Issuance of RFP

This RFP is being issued by the Agency and the State Purchasing Division of the General Services Department. Additional copies of the RFP can be obtained from the Purchasing Division website at <http://www.generalservices.state.nm.us/spd/>

2. Pre-Proposal Conference

A pre-proposal conference will be held as specified in Section II A, Sequence of Events, beginning at 1:30 pm Mountain Daylight Time (MDT) in the conference room on the 1st floor of the Joseph Montoya Building located at 1100 South Saint Francis Drive, Santa Fe, New Mexico. Potential offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph E). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential offerors that attended the pre-proposal conference. Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

3. Acknowledgment of Receipt Form

Potential offerors are encouraged to hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document (see Appendix A) to have their organization placed on the procurement distribution list. This form should be signed by an authorized representative of the organization, dated, and returned by close of business on date specified in Section II A, Sequence of Events to the procurement manager.

4. Deadline to Submit Questions

Potential offerors may submit additional questions as to the intent or clarity of this RFP until close of business on date specified in Section II A, Sequence of Events. All questions must be submitted by email directly to the Procurement Manager.

5. Response to Written Questions/RFP Amendments

Questions, answers, and any RFP amendments will be posted to the State Purchasing Division web site and a notice emailed to all potential offerors whose organization name appears on the procurement distribution list by the date specified in Section II A, Sequence of Events. An Acknowledgement of Receipt Form will accompany the distribution. The form must be completed by the offeror's representative, dated, and returned by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror's organization name shall be deleted from the procurement distribution list.

Additional requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than seven (7) days after the date specified in Section II A.5 (Response to Questions/RFP Amendments).

6. Submission of Proposals

All proposals must be received by the Procurement Manager (Rocky Lira) or his designee no later than **2:00 PM MOUNTAIN DAYLIGHT TIME on September 25, 2007** at the following address:

Name: **Rocky Lira**
Title: **Procurement Manager**
Agency Name: **New Mexico Higher Education Department**
Address: **1068 Cerrillos Road**
Street Zip Code: **Santa Fe, NM 87505-1650**

Proposals received after this deadline will not be accepted. Proposals submitted by facsimile or other electronic means will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the “**New Mexico Statewide eLearning System (NMSELS)**” Request for Proposals. Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to § 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. The evaluation process will take place on dates specified in Section II A, Sequence of Events. During this time, the Procurement Manager may, at his option, initiate discussion with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the offerors.

8. Demonstration Agenda

To ensure that offerors have an equal opportunity for adequate preparation, the demonstration agenda will be distributed by the Procurement Manager to all offerors on date specified in Section II A, Sequence of Events. The demonstration agenda will identify the functions to be performed and the data to be used during the demonstration. This material will be the foundation for the evaluation of the demonstration phase of the procurement. The Evaluation Committee may, at its option, request that an offeror demonstrate any function, product, or system capability included in the offeror’s proposal.

9. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist offerors on date specified in Section II A, Sequence of Events. Only finalists will be invited to participate in the subsequent steps of the procurement. The demonstration will be part of the best and final offer. The schedule for the oral presentations/demonstrations will be determined at this time.

10. Oral Presentation/Demonstration by Finalists

Finalist offerors will be required to demonstrate their systems to the Evaluation Committee. The Procurement Manager will schedule the actual time and date for each offeror’s presentation and

demonstration from within the date-range specified in Section II A, Sequence of Events. All offeror demonstrations will be held in Albuquerque, New Mexico at a site(s) specified in the Finalist Notification Letter. Any special equipment configuration requirements or other offeror needs must be stated in the offeror's proposal. Each offeror will be given one (1) hour for setup and each presentation and demonstration will be limited to three (3) hours in duration.

11. Best and Final Offers from Finalists

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the date specified in Section II A, Sequence of Events. Best and final offers may be clarified and amended at the finalist offeror's oral presentation/demonstration.

12. Selection of the Most Advantageous Offer

The contract will be finalized with the most advantageous offer as specified in Section II A, Sequence of Events. In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous offer without undertaking a new procurement process.

13. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Agency management, and the signed contract, the State Purchasing Agent will award the contract by the date specified in Section II A, Sequence of Events. This date is subject to change at the discretion of the State Purchasing Agent.

This contract shall be awarded to offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

14. Protest Deadline

Any protest by an offeror must be timely and in conformance with § 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15)-day protest period for responsive offerors shall begin on the day following the contract award and will end as of 5:00 PM Mountain Daylight Time as specified in Section II A, Sequence of Events. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the State Purchasing Agent.

Michael C. Vinyard
State Purchasing Agent
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87505
Mailing Address: P.O. Drawer 26110
Santa Fe, NM 87502-0110

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State Purchasing Agent's procurement code regulations, 1.4.1 NMAC

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

Any cost incurred by the offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the offeror.

3. Prime Contractor Responsibility

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments only to the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

An offeror may submit an amended proposal before the deadline for Submission of Proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collage, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the offeror's organization and data that qualify as a trade secret in accordance with the Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 NMSA 1978]. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the State Purchasing Agent shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

The procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the Agency in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of offeror proposals.

15. Contract Terms and Conditions

The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in Appendix B, "Contract Terms and Conditions." However, the Agency reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into and become part of the contract.

Should an offeror object to any of the Agency's terms and conditions, as contained in this Section or in Appendix B, the offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed changed followed by the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the agency.

17. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between the Agency and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.

18. Offeror Qualifications

The Evaluation committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, meeting its needs adequately.

21. Notice

The Procurement Code, §13-1-28 through §13-1-199 NMSA, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

22. Agency Rights

The Agency reserves the right to accept all or a portion of an offeror's proposal including the right to purchase software or services from approved price agreements.

23. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors, offerors, and contractors must secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall be available to be picked up by the offerors after the expiration of the protest period with the following exception. One complete copy of the selected offeror's proposal including the Best and Final Offer, if one was submitted, shall be placed into the procurement file. Those documents will become the property of the Agency and the State of New Mexico.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agree to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions/RFP Amendments)

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the SPA, the version maintained by the SPA shall govern.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall provide 6 identical copies of their proposal (Binder 1), 2 copies of the cost proposal (Binder 2), and optionally 6 copies of supporting technical documentation (Binder 3) to the location specified in Section I, Paragraph D on or before the Submission of Proposal date specified in Section II A Sequence of Events.

C. PROPOSAL FORMAT

All proposals must be printed on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Each binder will be physically separate.

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated. All Binders must be clearly labeled and numbered with the original copy of each binder identified on the front cover.

Binder 1:

- a. Letter of Transmittal (Binder 1)
- b. Table of Contents (Binder 1)
- c. Proposal Summary (Binder 1)
- d. Response to Mandatory Specifications (Binder 1)
- e. Response to Functional and Technical Specifications (Binder 1)
- f. Response to Agency Terms and Conditions (Binder 1)
- h. Offeror's Additional Terms and Conditions (Binder 1)
- f. Copy of Offeror's License and Maintenance Agreements (Binder 1)

Binder 2 *:

- g. Completed Cost Response Form (Binder 2)

Binder 3 - Optional:

- h. Other Supporting Material Including Technical System Documentation (Binder 3)
- i. Training and Other Materials, Samples or Examples (Binder 3)

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

*** All discussion of proposed costs, rates, or expenses must occur only in Binder 2 with the cost response form.**

NOTES:

- Binder #1 may be submitted in multiple parts (1A, 1B, etc.), if desired.
- Submission of Binder #3 is optional, at vendor's discretion.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f. Be signed by the person authorized to contractually obligate the organization;
- g. Acknowledge receipt of any and all amendments to this RFP.

IV. REQUIREMENTS

Unless otherwise specified, Offerors must respond in the form of a thorough narrative to each mandatory requirement and to each desirable item that the Offeror proposes to provide. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

A. GENERAL INFORMATION

1. Agency Resources

Agency resources will not be provided to contractor personnel for use on this contract.

2. Work Performance

For the purpose of preparing proposals, offerors are to assume that all on-site work will be performed at the following location: Education Institutions and Schools throughout New Mexico.

3. Technical Resources

For the purpose of preparing proposals, offerors are to assume that the software systems will be installed and operated in the technical environment described in Section I., above.

4. Timeframe

The contract is scheduled to begin on or about the Contract Effective Date (CED) of November 5, 2007. For the purpose of preparing proposals, offerors are to assume that the software systems will be installed and in operation by June 1, 2008.

5. Operational Strategy

The Agency recognizes that future operational strategies will influence an optimal conversion and implementation strategy for the proposed new system.

The Agency is interested in receiving creative and realistic proposals to provide the most cost effective and operationally efficient services for the proposed system across all institutions, districts, and agencies.

Offerors must propose operational strategies that reflect best practice experiences of other large systems that have successfully migrated multiple institutions to a common software suite.

In response to this RFP, offerors are encouraged to think creatively in order to propose an *agency-hosted* system and a *vendor-hosted* solution which they believe would be functionally and economically advantageous to New Mexico.

B. MANDATORY REQUIREMENTS

Mandatory requirements must be met. Offerors must respond in narrative format to each mandatory specification. If the mandatory specification has been met, offerors shall receive points based on quality of response. If a mandatory requirement is not met, the entire offer will be eliminated from further evaluation.

Unless otherwise specified, Offerors must respond in the form of a thorough narrative to each mandatory requirement that the Offeror proposes to provide. Narratives must include details as to how Offeror proposes to accomplish each item. The narratives, along with required supporting materials, will be evaluated and awarded points accordingly.

Note: Below and for all requirements on the following pages, each mandatory requirement is identified by a checkmark (✓) in the “M” column and generally includes the word “must.” Desirables are indicated by checkmarks in the “D” column and generally include the word “should.”

1. Corporate Experience	<u>M</u>	<u>D</u>
Offerors must thoroughly describe, in the form of a narrative, its experience and success as well as the experience and success of major subcontractors in providing a system that meets the specifications in this RFP.	✓	
2. Corporate References	<u>M</u>	<u>D</u>
Offerors proposals must include three external client references from clients who received similar services. The minimum information that should be provided for each reference is: a) Name of individual or company services where provided b) Address of individual or company c) Name of contact person d) Telephone number of contact person e) Type of services provided and dates services were provided At least ONE of the references must be a site where the base system has been installed and is in current operation.	✓	
3. Financial Stability	<u>M</u>	<u>D</u>
Offerors must submit copies of the most recent years independently audited financial statements, as well as those for the preceding three years if they exist. If independently audited financial statements do not exist for the offeror, the offeror must state the reason and, instead, submit sufficient information to enable the Evaluation Committee to determine the financial stability of the offeror.	✓	
4. Offeror Staff Experience	<u>M</u>	<u>D</u>
Offerors must provide a resume for the Project Manager proposed in this procurement.	✓	
5. Performance Bond	<u>M</u>	<u>D</u>
The offeror must agree to maintain a minimum of a \$1,000,000 Performance Bond through the life of the contract. A statement of concurrence is required.	✓	
6. Project Work Plan	<u>M</u>	<u>D</u>
Offeror should submit a thorough implementation plan as part of this proposal. At a minimum, the plan should address offerors approach to implementing the	✓	

contract and the key milestones with associated dates.		
7. Training Plan	<u>M</u>	<u>D</u>
The offeror's proposal must include a detailed training plan covering all training requirements and must include sample training and operations manuals for all training required by this RFP, Including the following:		
<ul style="list-style-type: none"> a) Method of training b) Length of training c) Scope of training d) A list of training materials and samples 	✓	
8. License Agreement	<u>M</u>	<u>D</u>
The offerors must describe the licensing approach and explain why this is most advantageous for the State of New Mexico.	✓	
9. Cost Specifications	<u>M</u>	<u>D</u>
Offerors must complete and submit the Cost Response Form located in Appendix C of the RFP to include cost proposals for <u>both</u> a Vendor Hosted and Agency Hosted solution.	✓	
The proposed costs must directly relate to the Project Work Plan . The proposed cost must include:	✓	
<ul style="list-style-type: none"> a) Software License fees or costs: <ul style="list-style-type: none"> 1) Base System – software as defined by the Offeror 2) 3rd Party Software, if any, required for the system. 	✓	
<ul style="list-style-type: none"> b) Technical and User Documentation 	✓	
<ul style="list-style-type: none"> c) Installation/Conversion/Integration costs 	✓	
<ul style="list-style-type: none"> d) Training including Training materials. 	✓	
<ul style="list-style-type: none"> e) Maintenance Costs. (Offerors must include a copy of their maintenance agreement in their proposals) 	✓	
<ul style="list-style-type: none"> f) Technical Support/Customer Service, per year. 	✓	
<ul style="list-style-type: none"> g) Unlimited phone technical support for the technical staff. 	✓	
<ul style="list-style-type: none"> h) The consulting and other value added service hourly rates or costs shall be listed separately by type of service. Travel and lodging expenses, if any, must be thoroughly described. 	✓	

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C. ORAL PRESENTATION AND SYSTEM DEMONSTRATION

Oral Presentation and System Demonstration	M	D
If selected as a finalist, offerors must agree to present their proposals and demonstrate their proposed systems to the Evaluation Committee as set out in the Demonstration Agenda provided by the Agency at the time of notification. The offerors proposed Project Manager is expected to conduct the oral presentation. A statement of concurrence is required.	✓	

D. FUNCTIONAL REQUIREMENTS

Respondents must include responses to the functional requirements below with each proposal. Any features that are not immediately available upon installation must be clearly identified.

All costs must be clearly specified in the Cost Proposal.

1. Accessibility	M	D
a) Describe in detail how the product addresses web accessibility issues including a statement of the current level of compliance with the W3C Accessibility Initiative and/or Section 508, and/or future plans to achieve compliance.		✓
b) More specifically, describe any provision the content authoring tools have to generate web accessible content and/or prompt users to develop accessible content.		✓
c) Describe the accessibility testing completed, and provide the results. This could include output from an accessibility verification tool.		✓
2. Ease of Use	M	D
a) Describe the steps taken in the design of the product to ensure that it is easy for instructors and students to use. Also address the following specific questions:		✓
b) Identify the types of materials, such as help manuals, contextual help for user screens, tutorials, and online resources that are available to assist both students and instructors/developers (electronic manual format should be specified as html, PDF, etc.).		✓
c) Describe how the product provides for printing of content pages.		✓

d) Describe any provision for accessing content offline (such as replication capabilities).		<input checked="" type="checkbox"/>
e) Identify how the product can be accessed via text-based browsers and hand-held devices.		<input checked="" type="checkbox"/>
f) Describe how instructors are able to view and test course materials in the role of students.		<input checked="" type="checkbox"/>
g) Describe how the product enables instructors and students to search and navigate easily across relevant content, student records, assignments, etc.		<input checked="" type="checkbox"/>
3. Course Content Development and Organization	M	D
Instructors with a wide spectrum of technical skills and expectations create course content. It is important that the system can provide or smoothly integrate with tools that allow for flexibility and meet the different needs of instructors. Describe in detail how the content can be created, assessed, and modified. Address the following specific issues:		<input checked="" type="checkbox"/>
a) Creating content with/without the knowledge of HTML		<input checked="" type="checkbox"/>
b) Importing and cross linking of course materials without knowledge of HTML, including linking to materials in other courses, other sections of the same course, and examinations.		<input checked="" type="checkbox"/>
c) Formatting, editing, and reusing content easily, including adding hyperlinks and embedding images, presentations, sound, animation or movies		<input checked="" type="checkbox"/>
d) Customizing the look and feel of course pages		<input checked="" type="checkbox"/>
e) Input of music, math, science symbols		<input checked="" type="checkbox"/>
f) Foreign languages input		<input checked="" type="checkbox"/>
g) Spell-checking capability		<input checked="" type="checkbox"/>
h) Use of interactive elements such as forms and flash animation		<input checked="" type="checkbox"/>
i) Integrating off-line content such as CD and DVDs		<input checked="" type="checkbox"/>
j) Integrating other add-on features		<input checked="" type="checkbox"/>
k) Integrating with third party content development tools and multimedia development tools such as Dreamweaver Course-Builder, Lectora, and others		<input checked="" type="checkbox"/>

l) Support of WebDAV technology in the product		✓
m) Copying, moving, and re-ordering content (to the document level) within a course and across courses		✓
n) Integrating different product functions (e.g., content, assignments, quizzes, discussion forums, and links into a single course lesson or module)		✓
o) Instructors often utilize stand-alone learning objects or modules that are external to the content they create within one course.		✓
p) Describe how the product supports the use of reusable learning objects in terms of easy integration, organization, management, and delivery.		✓
q) Address the ability to export and import content in SCORM, LMS or another format.		✓
r) Address the ability to integrate course cartridges from publishers and third party content providers.		✓
s) Address the ability to release content selectively by date/time, student status, groups, test scores, and other criteria.		✓
t) List any third party content development products with which the proposed product has been proven to integrate and describe any relevant information about those products.		✓
4. Content Management	M	D
Describe in detail the content management features of the product. In particular explain:		
a) How directories and files are organized, managed, and accessed		✓
b) The flexibility available with the product's file naming conventions		✓
c) File size limitations and controls		✓
d) Smart recognition of common file types from both PC and Mac		✓
e) How student files are viewed by instructors across a course		✓
f) How student work and course content are archived in the product		✓
g) The availability of temporary work space to students for working on group projects		✓
h) How rights are assigned to the content that is contained within this system,		✓

including public viewing of course materials that must be restricted to all except students approved or pre-enrolled by the instructor, and all class data that is secure from unauthorized access. Proposals should mention here if they offer academic advisors the ability to review student performance in a variety of courses or within a virtual institution environment.		
i) How rights are enforced and fair use facilitated for content used by the system		✓
j) The product's end user backup strategies, including the ability for individual instructors to: <ol style="list-style-type: none"> 1. Backup courses on their desktop 2. Backup selective areas of a course 3. Restore content from their backup 4. Restore and repurpose content with another application 		✓
5. Communication Tools	M	D
Describe in detail the communication tools found in the software, including features such as:		
a) E-mail		✓
b) Asynchronous threaded discussions		✓
c) Archiving capabilities for threaded discussion, including the ability to import and export, monitor, modify and delete all or portions of discussions		✓
d) Search capabilities for threaded discussion		✓
e) Synchronous chat with transcripts and logs		✓
f) Instant messaging, including security		✓
g) Whiteboard capabilities with printing, images, and keyboard navigation support		✓
h) Tools for collaborative working groups		✓
i) File exchange capabilities and file types supported		✓
j) Provisions for notifying students of new communications and course changes		✓
k) List any third party communication tools with which the proposed product has been proven to integrate and describe any relevant information about those tools.		✓

6. Testing and Assessment	M	D
Describe in detail the testing and assessment features of the software, including information on		
a) Types of questions supported		✓
b) Types of feedback that can be provided		✓
c) Provisions for test security, including release time and duration time for test taking		✓
d) Capabilities for detailed item analysis of test items		✓
e) Test presentation features such as embedding equations, scientific notation, images, audio, and HTML within quiz questions		✓
f) Test development features such as batch importing questions from publisher's test banks or other popular file formats in QTI format		✓
g) The ability to randomize quiz questions, and also possible answers (A,B,C) in multiple choice questions		✓
h) The ability of instructors to assign weights to individual questions		✓
i) Ability to share and organize question pools		✓
j) Support for anonymous surveys and evaluations		✓
k) The ability to incorporate graded and ungraded testing that can be enhanced with multi-media elements such as hyperlinks, imported still or video images, and other effects		✓
l) Provide secure testing environments		✓
m) Restrict access and regulate exam time available to students, as well as the number of possible retakes		✓
n) Enable reuse and modification of existing tests/test questions easily		✓
o) Associate test items with a specific learning objective		✓
p) Select test questions randomly from a test bank.		✓
q) Make test results immediately available to students, if instructor wishes.		✓
r) List any third party assessment tools with which the proposed product has been proven to integrate and describe any relevant information about those		✓

tools.		
7. Online Grade Book	M	D
Describe in detail the online grade book and its ability to:		
a) Calculate weighted grades, percentages, total points, and letter grades		✓
b) Import and export grades to and from spreadsheets		✓
c) Allow manual grading items (columns) to be added to the grade book spreadsheet		✓
d) Allow for easy modification of auto-graded items		✓
e) Integrate with SCT Banner grading functions, specifically the submission of final grades		✓
f) Allow students to view summary and graphical display of student grade book status and course grading statistics		✓
g) Have activities/exams automatically added to grade book upon completion, and format and edit grade book manually		✓
h) Enable student performance tracking and results notification/breakdown		✓
i) Provide easy and/or automatic importation of results to grade book		✓
j) Provide the ability to do split screen grading		✓
k) List any third party grade book software products with which the proposed product has been proven to integrate and describe any relevant information about those products.		✓
8. Calendar	M	D
Describe in detail how the course calendar can function as an effective course and student organizational tool, including information on:		
a) Link directly to other course areas and student portals		✓
b) Provide for students' personal entries		✓
c) Display the calendar in multiple views		✓
d) Display events from all courses		✓
e) The ability to export and import calendar entries		✓

f) List any third party calendar products with which the proposed product has been proven to integrate and describe any relevant information about those products.		<input checked="" type="checkbox"/>
9. Student-Centered Features	M	D
Describe in detail student-centered features such as:		
a) Areas for displaying student and group project work		<input checked="" type="checkbox"/>
b) Areas for student personal web pages		<input checked="" type="checkbox"/>
c) Support for student e-portfolios		<input checked="" type="checkbox"/>
d) Support for student portal features		<input checked="" type="checkbox"/>
e) The ability to customize primary student account page		<input checked="" type="checkbox"/>
f) The ability to integrate private notes into course material		<input checked="" type="checkbox"/>
g) The ability for students, instructors, or system administrator to create working groups of students within a course and across courses		<input checked="" type="checkbox"/>
h) List any third party e-portfolio, student portal or student-centered feature systems with which the proposed product has been proven to integrate and describe any relevant information about those products.		<input checked="" type="checkbox"/>
10. Class Management	M	D
Describe in detail the class management features that can be used by instructors, course designers, or support staff. (Note that the term “class” is used here in the context of a scheduled offering for a course, sometimes also referred to as a “course section.”) Explain how the software handles:		
a) Announcements		<input checked="" type="checkbox"/>
b) Automatic notification of students to important information such as add or drop confirmation, change of class meeting time and place, and uncompleted work		<input checked="" type="checkbox"/>
c) Importing, exporting and viewing of course section lists		<input checked="" type="checkbox"/>
d) Multiple roles and permissions		<input checked="" type="checkbox"/>
e) Adding and deleting students from a class or change passwords easily		<input checked="" type="checkbox"/>
f) Student access and progress tracking (e.g., login frequency, duration, course activity, content accessed, tests completed, discussion participation),		<input checked="" type="checkbox"/>

including instructor access to all student chat logs		
g) Access by guest students		✓
h) The ability for instructors, designers, or support staff to make modifications easily across multiple sections of a course that shares common content such as: course content, announcements, discussion topics, and quizzes		✓
11. User Access Management	M	D
Describe in detail how users (e.g., students, advisors, instructors, designers, and others) can manage their accounts. Address how the software handles:		
a) Username and password security		✓
b) Default email		✓
c) User information		✓
d) Forgotten password/changing passwords		✓
e) Instructors ability to access all the activities of an individual student without having to go to various areas of the site (e.g., assignments, discussion, and quizzes)		✓
12. Site/System Administration	M	D
Describe in detail how the software handles system administration tasks including		
a) Course creation and management, including copying existing courses for a new semester		✓
b) Setting quotas at various levels (section, course, college, institution)		✓
c) Archiving		✓
d) User creation and management, including account permissions management		✓
e) Producing and tracking system statistics		✓
f) Producing usage statistics reports that includes minimally the number of courses taught, number of students in each course, number of instructors per semester, and file size of each course		✓
g) Batch utility to create, copy, archive, and delete courses and users		✓
h) Resource monitoring and management		✓

13. Library Resources Integration	M	D
a) Is the product able to integrate with institution-based online catalogs?		✓
b) Is the product able to integrate with institution-based electronic reserve?		✓
c) Is the product able to integrate with institution-based virtual reference services?		✓
In these cases:		
1) With which online library products and services is the product able to integrate?		
2) Are instructors able to integrate electronic reserves, online journal articles, and virtual reference services from within courses?		
3) Is a separate login required? What integration options are available?		
14. Additional Functionality	M	D
Describe in detail any additional functionality that the software provides for in the proposed LMS system. Explain why this functionality is important to such a system.		✓

E. TECHNICAL AND ARCHITECTURE REQUIREMENTS

Respondents must include responses to the technical and architecture requirements below with each proposal. Any features that are not immediately available upon installation must be clearly identified.

All costs must be clearly specified in the Cost Proposal.

15. Architecture	M	D
Offerors must describe the overall technical architecture that the product(s) requires, including other relevant products that the product relies upon.		
a) Clearly note the software capabilities. Descriptions should include a high level diagram.		✓
b) Along with the overview, give a more detailed description of the portions of this architecture that directly pertain to the product(s) and a discussion of what processing is done on each tier, the component-to-component communication protocols, and a description of the contents and sizes of the network packets exchanged by each tier.		✓

c) Describe the ability to support mirrored/redundant servers.		✓
d) For instructors, administrators, and students provide technical specifications for the client workstation. Include browser and workstation requirements, and a discussion of the underlying requirements of the client.		✓
e) Identify all supported protocols for communication between the various tiers. Where appropriate, identify supported standards, version numbers, and any network communication software that is required, but is not supplied, with the system.		✓
f) Describe how the system will support multiple institutions delivering courses from the same system (hardware configuration and software). Some of these courses may be delivered as a distinct offering by an institution and/or as part of an offering shared by multiple institutions.		✓
g) Provide the technical details on how the system allows individuals to work “offline” and synchronize their work with the system when they are online.		✓
16. Operating Environment	M	D
<p>This section must contain the offeror’s supported, as well as recommended hardware platforms, operating system (OS), database management systems (DBMS), and related information. In addition to the production environment, the offeror must include required or recommended configuration(s) necessary to support development, testing, and training environments. If the offeror requires additional equipment and/or software to establish separate environments for development, testing, production, or training, this must be included in the offeror’s discussion of recommended hardware and OS configurations. The offeror will specify the basic equipment configuration as required by the proposed operational models.</p> <p>Offeror must indicate all supported RDBMS environments under which the proposed software will run.</p>		
a) Identify all operating systems, including versions, for which the application server components of the system are available.		✓
b) Identify all operating systems, including versions, for which the database server components of the system are available.		✓
c) Identify all browsers, including versions, for which the web clients of the system are available.		✓
d) For new releases of the application server components of the system, identify the order, including elapsed time and versions, in which operating systems are supported.		✓

e) For new releases of the database server components of the system, identify the order, including elapsed time and versions, in which operating systems are supported.		<input checked="" type="checkbox"/>
f) For new releases of the web clients of the system, identify the order, including elapsed time and versions, in which browsers are supported.		<input checked="" type="checkbox"/>
g) Describe how the system components can operate in an environment of heterogeneous computers and operating systems. Discuss the impact on the overall application architecture of independently changing the operating system of the database server. Provide a statement of commitment to supporting open architectures.		<input checked="" type="checkbox"/>
17. Server Systems	M	D
Server systems refer to software systems that reside on a server and are fully operational as separable products. Offeror must explain its strategy for employing single or multiple server environments – for the database engine, application server, etc. The offeror must discuss its architecture in terms of scalability and clearly indicate how the Agency would correct operational problems due to the number of users, amount of data stored, or batch and report processes. The offeror must also clearly indicate how the total number of users in the database and a large number of simultaneous users during high volume periods, typical at semester start-up, impact the performance of the system. Offerors should also describe how the system will position NMSELS to take advantage of emerging technologies.		<input checked="" type="checkbox"/>
a) The proposed NMSELS must be as platform independent as possible; e.g. it must be capable of running across a variety of hardware platforms on the market today. Offeror must clearly identify all platforms capable of running its system.		<input checked="" type="checkbox"/>
b) Web		<input checked="" type="checkbox"/>
1) Identify all web servers (including versions) that work with the product.		
2) What version of HTTP does the web server use?		
3) Identify how SSL support and other security measures are provided.		
c) Server Environment		<input checked="" type="checkbox"/>
1) Interfaces: Almost all higher education institutions use SunGard SCT Banner 7.x. Offeror must provide a course management system that provides seamless, real-time integration with Banner Student, including		

<p>single sign-on authentication via Luminis for both faculty and students.</p> <p>2) Migration: The offeror must be able to provide the programs/tools/staff necessary to migrate existing WebCT/Blackboard course content to the new system. The offeror selected is required to develop and implement appropriate strategies for migrating content from the old systems to the new.</p> <p>3) Data Conversion: For the purpose of preparing proposals, offerors are to assume that data file conversion will be required.</p>		
<p>d) Application</p> <ol style="list-style-type: none"> 1) Identify any dependent products needed by the application servers. 2) List and describe the caching technologies used by the application servers. 3) Does the application server support both command line and web access for administrative functions? 4) How long does it take to restart the servers for the product? Identify typical scenarios and restart time ranges. 5) Does application require a dedicated server? 		✓
<p>e) Content Management</p> <ol style="list-style-type: none"> 1) Identify any systems used for content management. If a third party product is proposed, list the name and versions that are supported. 2) Identify and discuss how content is transferred into and out of the content management system(s). Note any Internet protocols used, such as FTP, http, or WebDAV. 3) Identify and discuss the security for the content management system(s). Clearly describe how this works with the general approach to security 		✓
<p>f) Learning Object Repository (LOR):</p> <ol style="list-style-type: none"> 1) Offeror must clearly explain its approach toward supporting internal/onboard and/or external/stand-alone repositories for learning objects. 		✓
<p>g) Media</p> <ol style="list-style-type: none"> 1) Identify which, if any, media servers (including version) that are supported by the product. 		✓

18. Other Servers	M	D
If there are other server systems used by the product that have not been covered in this section, please answer the following questions for each.		✓
a) Identify the server product (including version).		
b) Describe the function of this product.		
19. Server Side Component Technologies	M	D
Server side component technologies are similar to the server systems, but bundled within other systems and would not be run in a standalone mode.		✓
a) Email		✓
1) Which email protocols (e.g., POP3/SMTP/IMAP) are used and supported by web-based e-mail services? Include any information regarding known limitations or inconveniences to users if e-mail is exchanged between the LMS product and 3rd party POP3/SMTP servers.		
2) Is software capable of sending students automatically generated messages based on various conditional criteria? Describe any features of this kind or whether they could be added.		
3) Are instructors and students able to send e-mail with attachments to users registered for a course and to users outside the course environment? Include any limitations in this area, and indicate whether it is possible for an instructor to limit students' ability to e-mail outside the class environment.		
b) Search Engine		✓
1) Does the product provide a full-text search engine? If so, give the name of the product and list its major features.		
2) Can a different search engine be used with the product? Is there an API that provides for an alternate search engine?		
3) List the features that use this search engine.		
c) XML		✓
1) Identify the XML parser(s) used by the project.		

2) Identify any XML transformation services used by the product.		
3) List the features that use XML in the product.		
d) Message Oriented Middleware (MOM)	✓	
1) Does the product support message-oriented middleware? If so, identify the product (including versions).		
2) List the features that use MOM in the product.		
e) Web Services	✓	
1) Identify and discuss the value of any web services provided by the product.		
2) Describe the technology used by the web services.		
3) What web services standards are supported?		
4) Identify and discuss any external web services that the product uses or plans to use. (i.e., web services that are not contained within the product offerings.)		
20. API/SDK	M	D
a) Describe the technologies used to extend the functionality of the products. This includes using scripting, APIs, SDKs, and similar techniques. Provide examples documenting these extensions.		✓
b) Describe how the respondent ensures that applications written to integrate with the system using the approved integration approaches remain compatible with new releases of the system.		✓
21. Security	M	D
Offeror must clearly explain what security features and capabilities are incorporated in the proposed NMSELS. Offeror must clearly explain the security functions of any proposed third party software, including the RDBMS. Offeror must clearly explain the security processes, special skills required, structures, identified weaknesses, and the maintenance required for each.		✓
a) Describe the system's authorization system. Include a description of how the system determines authorization for initial access, module access, database access, record access, program access, and field access.		✓
b) Offeror must clearly explain how the security features/components in		✓

<p>the proposed NMSELS, as described in response to this section, perform under each of the following scenarios: common end-user security methodologies, the system administrator's security duties, and any security best-practices implementing the proposed system into the State infrastructure, and a typical institution's infrastructure or environment.</p>		
<p>c) Describe in detail how the product integrates with external authentication (e.g., LDAP, NTLM, WebISO, Kerberos, NT, Novell, UNIX, or other), and authorization services. Describe any web single sign-on techniques the product(s) support. Describe how instructor and student accounts will be created, managed, and secured when using an external authentication system.</p>	✓	
<p>d) Describe the system's encryption methods and/or its ability to interface with encryption software during communication between client stations, application servers, and database servers.</p>	✓	
<p>e) Does the product run using a firewall on the server-side? If so, list the firewall products that are used and how they fit into the overall architecture.</p>	✓	
<p>f) Describe how the product ensures that private/secure data is not left on the client station after the session ends (be sure to address the caching of data, passwords, etc.). Describe how the product ensures that user sessions that are "left logged in" are not used inappropriately.</p>	✓	
<p>g) Describe what logs and audit trails the system maintains on the system usage (posting of assignments, taking a test, changing a grade, entering a chat room, etc.) and on unauthorized attempts to access the system, system functionality, and/or specific data.</p>	✓	
<p>h) Describe how the system provides for automatic/electronic notification of our security/administration personnel when security breaches occur. Include a description of how NMSELS can define which security breaches require immediate notification and which do not.</p>	✓	
<p>i) Does the security notification feature in the question above provide for sending notifications to another security monitoring system, one that might be found in a contemporary data center? If so, identify these other security monitoring systems and give a description of how this might typically be implemented.</p>	✓	
<p>j) Does the respondent issue security alerts for the product? If so, list the number of alerts given in the past year and show an example of such an alert.</p>	✓	

k) Does the product undergo a third party security audit? If so, give the date of the last audit, the company that performed the audit, and a summary of the audit.		<input checked="" type="checkbox"/>
l) For internally maintained passwords, describe how the system provides the ability to ensure that passwords are sufficiently complex, limits access, and are changed regularly.		<input checked="" type="checkbox"/>
m) How does the product provide public courses to unauthenticated users?		<input checked="" type="checkbox"/>
n) How does the product provide authentication within a course. Can a guest access some parts and not others?		<input checked="" type="checkbox"/>
o) How does security apply to different functions within the system?		<input checked="" type="checkbox"/>
p) Can access to different portions of the course / class be controlled by different roles?		<input checked="" type="checkbox"/>
q) Offeror must clearly explain how the security supplied with the NMSELS interacts with database security. (e.g. – Is database security used, respected, by-passed?)		<input checked="" type="checkbox"/>
r) Offeror must clearly explain how the proposed NMSELS addresses externally mandated security standards such as FERPA, HIPAA, and other security compliance standards. If the response to this question is through third party software, offeror must clearly specify the vendors and products that are recommended or required to work with the NMSELS being proposed.		<input checked="" type="checkbox"/>
s) Offeror must clearly explain the security audit features/functions in the proposed NMSELS. The explanation should contain descriptions of scenarios involving multiple application administrators and audit review requirements.		<input checked="" type="checkbox"/>
t) Offeror must clearly explain how the security components of the proposed NMSELS can be adapted to enable State infrastructure, New Mexico institutions, districts, and agencies to comply with external and internal audit requirements in the future.		<input checked="" type="checkbox"/>
22. Development Environment	M	D
a) List the development tools and languages used by the developers to create the system. Are these tools available to the customers for use in modifying the system? What special training is required?		<input checked="" type="checkbox"/>
b) Does the organization have a development strategy road map and time		<input checked="" type="checkbox"/>

frame available?		
c) Describe any plans the respondent has for making changes to the development environment. What new tools and languages will be adopted for the development environment?		✓
d) List the tools available to our developers for adding additional functionality to the proposed system.		✓
e) Which tools were used to write the reports that come with the system? What types of specialized training are required?		✓

23. Administration	<u>M</u>	<u>D</u>
a) Describe the types and number (in both head count and FTE) of staff members the Agency will need to provide ongoing operational and administrative support of the system once the conversion is complete. Describe the tasks that each of these staff members will perform on a daily, weekly, monthly, academic term, and yearly basis.		✓
b) Describe how security is administered. Include a description of the system's ability to delegate administration to host or domain institutions, departments, courses, sections, and users; how users and roles are added and deleted; how passwords are maintained; and whether or not or which elements any of the administration can be automated. Also, identify any security administration that does not take effect immediately when the security rules are entered/stored.		✓
c) Describe the processes of backup and recovery. Is recovery automatic in the case of a system failure? How long does backup and recovery take for a system of the size proposed? How long is the system unavailable during a recovery or backup? How often does a typical customer experience a need to recover? What is the likelihood of data loss?		✓
d) Describe the processes and limitations of offline data archiving. Consider the following: <ol style="list-style-type: none"> 1) What tools are supplied for moving data to the archive(s)? 2) Describe how data is selected for movement to the archive(s). 3) Explain the process for accessing and/or restoring archived data. 		✓
24. Maintenance	<u>M</u>	<u>D</u>
a) What is the frequency of new releases? Provide a schedule of new releases for the past 3 years. For each release, include the date the respondent first indicated the release would be available; the date the release was actually made available to customers, and the percent of the customers currently running on each release.		✓
b) Describe the technology used by the patches. If a third party product is used, include the name and supported versions of this product.		✓
c) Describe the process for installing patches. How long does it take an implementation of our size to prepare for and install a patch, to test the new patch, and to put it into production? How is the patch affected by any of our modifications? How are our modifications affected by installing a new release?		✓

d) How long has the respondent supported old versions of the system?		<input checked="" type="checkbox"/>
e) How long does the respondent continue to provide bug fixes on prior releases? When does the respondent discontinue support of a prior release?		<input checked="" type="checkbox"/>
f) Is it possible to skip releases? In other words, is it possible to install a release without installing its immediate predecessor?		<input checked="" type="checkbox"/>
g) How are bugs reported and tracked? Are bugs that have been reported by some customers shared with all customers via the web or some other mechanism? Is a mechanism in place to allow urgent reporting of problems to customers?		<input checked="" type="checkbox"/>
h) Are interim bug fixes available between releases?		<input checked="" type="checkbox"/>
25. Standards	M	D
a) Please give as much detail as possible about the level of conformance of the product to learning interoperability and content standards (SCORM 1.2 and 1.3, LMS Enterprise, LMS Content Packaging, LMS QTI, LMS Metadata, LMS Simple Sequencing, LMS LIP, etc. - list at http://www.imsglobal.org/specifications.cfm). Please include any conformance test results that specify the type and level of conformance at which the product is certified. It is important to report this separately for each different product area that is conforming to the standards. Providing test logs would be a positive.		<input checked="" type="checkbox"/>
b) Describe the support for 1) RSS 2) Web Services (e.g., UDDI, WS*L, SOAP) 3) WebDAV 4) MARC 5) Emerging repository standards (e.g., ODRL, XrML)		<input checked="" type="checkbox"/>
c) Is the respondent a participant in any specifications and/or standards organizations? If so, describe its participation.		<input checked="" type="checkbox"/>
26. Performance/Scalability	M	D
a) For each major function of the system, define what acceptable performance is, how it is measured, and how the system software and hardware can be scaled to maintain acceptable performance. Be sure to provide a detailed description of how each tier (or server - database, application, web) can be scaled and how load is balanced.		<input checked="" type="checkbox"/>
b) Recommend hardware configurations, including a specific list of equipment that will provide acceptable performance for the needs of the		<input checked="" type="checkbox"/>

NMSELs system. The Agency plans to procure these items separately. These hardware configurations should include appropriate redundant computers to provide for high availability.		
c) Are there limitations on the maximum number of users supported?		✓
d) Describe any limitations to scalability that exists.		✓
27. Documentation/Help	<u>M</u>	<u>D</u>
a) Describe the user and technical documentation that is available for the system. Include information on documentation that provides:		✓
1) An overview of the system		
2) Installation/configuration information		
3) System and database administration		
4) Technical information on jobs or modules executed		
5) Data element documentation		
6) Description of tables and views and the relationship of database entities		
7) Context sensitive help		
b) Provide a list of the printed and electronic formats (e.g., PDF, HTML, Word, online in the application) in which each documentation set is available. If available online, indicate where and how to access.		✓
c) Provide limitations on the distribution of documentation.		✓
d) Describe how the respondent ensures that the documentation provides clear, accurate, and detailed error messages.		✓
e) Describe how the Agency can modify the help documentation to meet the needs of each institution.		✓
f) What documentation is provided with new releases?		✓
g) Does the respondent provide full documentation in an accessible format for sight disabled?		✓
28. Support/Consulting/Training	<u>M</u>	<u>D</u>
a) Describe installation support included with the purchase of this product.		✓
b) Describe the training provided with the purchase of this product including class descriptions and training objectives for end-users, technical staff, and others, including methods used (instructor led, distance learning, "train-the-trainer," CBT, etc.), locations, and frequency of offerings.		✓

c) Identify the standard training and any customized training that is available to reflect individual institution needs, and include any limitations such as class sizes, locations, and time limits.		<input checked="" type="checkbox"/>
d) Consider training requirements for system/software upgrades in the answer. Any additional costs associated with add-on or customized training should be listed separately in the Cost Proposal, not in the response to this question.		<input checked="" type="checkbox"/>
e) Describe the training materials provided with the purchase of this product including any limitations on their use.		<input checked="" type="checkbox"/>
f) Describe the on-going support available on a 24-hour/7-day basis to both technical staff and end-users including hot line or toll free numbers, day and time availability, and any restrictions. Minimum technical support response time should be indicated, with any differences clearly noted in support response time for different users or the time of day. In the Cost Proposal, specify options for levels of support (e.g., gold, etc.)		<input checked="" type="checkbox"/>
g) Describe how information releases, such as technical updates or informational releases for users are distributed or made available to clients.		<input checked="" type="checkbox"/>
h) Describe the consulting services offered for typical types of work.		<input checked="" type="checkbox"/>
i) Identify the amount of staffing and the funds as a percent of revenue that are devoted by the respondent to customer support.		<input checked="" type="checkbox"/>
29. Conversion/Implementation Services	M	D
a) Is the proposed system in current production and installed at customer sites? Provide a list of sites where this proposed product has been implemented.		<input checked="" type="checkbox"/>
1) Provide current release/version number(s) and date(s) for the system.		
2) Provide an estimated implementation/delivery schedule.		
b) What consulting services are included for system conversion and implementation? Demonstrate through documented experiences and/or client references successful use of these services.		<input checked="" type="checkbox"/>
c) Describe how the respondent will quickly and competently identify and solve problems that arise during the conversion and implementation process.		<input checked="" type="checkbox"/>
d) Describe how data and content from our existing vendor systems (i.e., Anlon, Blackboard, Ucompass, and WebCT) will be converted and loaded		<input checked="" type="checkbox"/>

into the system. Describe any limitations to this conversion that exist.		
e) Describe how data from existing student information systems will be integrated into the system and maintained.		✓
30. Reporting	<u>M</u>	<u>D</u>
a) Describe reporting the system provides to analyze system usage from a student, instructor, and/or institutional or system-wide perspective.		✓
b) Provide a complete list of all of the standard reports.		✓
c) Describe the electronic formats of reports.		✓
d) Describe the system's ability to preview reports on line, including customized reports from live data.		✓
e) Describe how security and authorization applies to reporting.		✓
31. Query Tools	<u>M</u>	<u>D</u>
a) NMSELS may require ad-hoc access to information by multiple levels of users (many of whom are not technical experts). Please describe how the system: <ol style="list-style-type: none"> 1) Provides ease of use in obtaining discrete data elements 2) Provides built in security features for the query tools 3) Uses the security rules defined in the system to govern application and data use 4) Provides the ability to query information phonetically (e.g., "sounds like") or in English 5) Describe how security and authorization applies to query tools 		✓

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of Section IV Requirements identifying points assigned to each item. These weighed factors will be used in the evaluation of the offeror proposals. Only finalist offerors will receive points for an oral presentation and demonstration.

<u>Section Reference</u>	<u>Evaluation Factor</u>	<u>Available Points</u>
IV.B. 1 through 5 & 8	<p>Offeror Qualifications</p> <p>Offeror Qualifications will be awarded points based on the depth and quality of corporate experience, corporate references, financial stability, staff experience, performance bond and license agreement.</p>	100
IV.B. 6	<p>Project Work Plan</p> <p>Project Work Plan will be awarded points based on the quality of offeror's project work plan, how well organized and detailed the plans are, how they address contingencies, the degree of the offeror's staff support, the efficiency of the plan, the use of contractor and agency resources, and quality control.</p>	50
IV.B. 7	<p>Training Plan</p> <p>The Training Plan will be awarded points based upon an evaluation of the thoroughness and applicability of the response to the specifications including the thoroughness of the plans and the quality of the proposed materials and examples provided in the offeror's proposal</p>	50
IV.B. 9	<p>Cost</p> <p>Cost will be awarded based on the formula stated and explained in Appendix C of this RFP.</p>	300
IV.C	<p>Oral Presentation and System Demonstration</p> <p>For finalists only, Oral Presentation and System Demonstration (and site visit, if conducted) will be awarded points based on the overall quality, clarity and organization of each finalist Offeror's presentation and demonstration, including the proposed Project Manager's demonstrated leadership qualities and ability to communicate effectively; the presence and contributions of proposed core team members; and responses to technical questions; with emphasis on the Offeror's demonstrated understanding of and ability to meet the requirements of the RFP.</p>	50
IV.D & E	<p>Functional, Technical and Architecture Requirements</p> <p>Functional, Technical and Architecture Requirements will be awarded points</p>	450

	based on the overall quality and completeness of Offeror's narrative responses, with emphasis on Offeror's commitment to providing maximum functionality.	
	Total	1,000

B. EVALUATION PROCESS:

The Agency realizes it may not be able to achieve all of the functionality requested in the RFP within the funding limits specified in Section I.E. "Financial Constraints." The maximum possible functionality, including both mandatory and desirable requirements, should be included by Offeror within the stated funding limitations.

Desirables that cannot be funded within the specified budget limitations must be priced separately as optional additions for consideration in the event that additional funding becomes available.

1. Offeror proposals will be awarded points based on the overall quality and completeness of the Offeror's narrative response to both mandatory requirements and desirable requirements.
2. The Procurement Manager may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible offerors determined to be most advantageous for the state of NM will be selected as finalist offerors. Finalist offerors who are asked or who choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from oral presentations and product demonstrations will be added to the previously assigned points to attain final scores. The responsible offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section IV, will be recommended for contract award to the State Purchasing Agent as specified in Section II, Paragraph B, Subparagraph 13. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

VI. APPENDICES

APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM

RFP # 80-950-00-00399

REQUEST FOR PROPOSALS

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix h.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on date specified in Section II A, Sequence of Events. Only potential offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposals.

Procurement Manager: Rocky Lira
Title: Procurement Manager
Agency Name: New Mexico Higher Education Department
Address: 1068 Cerrillos Rd
Santa Fe, NM 87505-1650

Telephone: (505) 220-1958 cellular
Fax Number: (505) 476-6511
E-mail: Rocky.Lira1@state.nm.us

APPENDIX B: CONTRACT TERMS AND CONDITIONS

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

AGREEMENT TERMS AND CONDITIONS

[NOTE: The “INFORMATION TECHNOLOGY AGREEMENT” below is included as a template only. Specifics of final contract will be subject to negotiation and will be based on the Contractor’s submitted and accepted response to the RFP.]

State of New Mexico
Higher Education Department
INFORMATION TECHNOLOGY AGREEMENT
CONTRACT No. _____

THIS Information Technology Agreement (“Agreement”) is made by and between the State of New Mexico Higher Education Department, hereinafter referred to as the “Procuring Agency” and [Insert Contractor Name], hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein; and the Procuring Agency has selected the Contractor as the Offeror most advantageous to the State of New Mexico.

WHEREAS, all terms and conditions of the RFP and the Contractor’s response to such document are incorporated herein by reference.

It is mutually agreed between the parties:

ARTICLE 1 – DEFINITIONS

“Acceptance” shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative (“Executive Level Representative”) of the Procuring Agency.

“Change Request” shall mean the document utilized to request changes or revisions within the Scope of Work.

“Chief Information Officer (“CIO”)” shall mean the Chief Information Officer for the State of New Mexico or designated representative.

“Deliverable” shall mean any verifiable, outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

"DFA CRB" shall mean the Department of Finance and Administration Contracts Review Bureau.

"Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.

"Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer disks, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

"Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

"Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a project and the project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an organization independent of the Procuring Agency.

"Payment Invoice" shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.

"Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the CIO. If applicable, under the terms of this Agreement the Project is NM MVD DL/ID CARD CPS PROGRAM

"Project Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the Project or administration of this Agreement.

"Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

"State Purchasing Agent" - shall mean the State Purchasing Agent for the State of New Mexico or designated representative.

ARTICLE 2 – SCOPE OF WORK

- A. **Scope of Work.** The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. **Performance Measures.** Contractor shall substantially perform the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its right pursuant to Article 6.

- C. **Schedule.** The due dates as set forth in Exhibit A shall not be altered or waived by the Procuring Agency without the prior written approval through the Change Management process as defined in Article 15.
- D. **License.** Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, license to use, modify, and copy the [] Insert name of software and patent number if applicable [] software and any and all updates, corrections and revisions as defined in Article 2 and Exhibit A for the term of this Agreement.

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

- 1) Contractor agrees to maintain a copy of the software source code with an escrow agent and to list Procuring Agency as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months, to ensure readability and preserve the software at the current revision level. Included with the media shall be all associated documentation to allow the Procuring Agency to top load, compile and maintain the software.
- 2) If the Contractor ceases to do business or ceases to support this Project or Agreement, and does not make adequate provision of continued support of the licensed software provided by the Contractor, or if this Agreement is terminated, or if the Contractor breaches this Agreement, the Contractor shall make available to the Procuring Agency the latest available licensed software program source code and related documentation, as specified in this Agreement for the licensed software provided or developed by the Contractor, that is listed as part of the purchase system; and the source code and compiler/utilities necessary to maintain the system and related documentation for software developed by third parties, to the extent that the Contractor is authorized to disclose such software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the source code and documentation.

ARTICLE 3 – COMPENSATION

- A. **Compensation Schedule.** The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less twenty percent (20%) retainage, excluding New Mexico gross receipts taxes.
- B. **Payment.** The total compensation under this Agreement shall not exceed [Insert Dollar Amount]; excluding New Mexico gross receipts taxes. Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.
- C. **Taxes.** The Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole

responsibility and should be reported under the Contractor's Federal and State tax identification number(s). Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- D. **Retainage.** The Procuring Agency shall retain twenty percent (20%) of the fixed-price Deliverable cost of each Deliverable that is the subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the last Deliverable.
- E. **Performance Bond** Contractor shall execute and deliver to Procuring Agency contemporaneously with the execution of this Agreement, a performance bond in the amount of [Insert Total Amount of this Agreement] in the name of the Procuring Agency. The bond shall be in effect for the duration of this Agreement and any renewals thereof. The required bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor and its officers, and employees arising under this Agreement. The Procuring Agency's right to recover from the bond shall include all costs and damages associated with the transfer of services provided under this Agreement to another contractor or to the State of New Mexico as a result of Contractor's failure to perform.

ARTICLE 4 – ACCEPTANCE

- A. **Submission.** Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice along with the Deliverable, or description of the Deliverable, to the Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less twenty percent (20%) retainage.
- B. **Acceptance.** In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted in writing by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
 - 1) Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
 - 2) Complies with the terms and conditions of the RFP;
 - 3) Meets the performance measures for the Deliverable and this Agreement;
 - 4) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable; and
 - 5) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative, the Executive Level Representative will notify the contractor of Acceptance in writing within thirty (30) business days from the date the Executive Level Representative receives the Deliverable and accompanying Payment Invoice.

C. **Rejection.** Unless the Executive Level Representative gives notice of rejection within the thirty (30) business day period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, the Executive Level Representative will supply a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection in writing within thirty (30) business days from the date the Executive Level Representative receives the Deliverable and accompanying Payment Invoice. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made. The Executive Level Representative will again determine whether the Deliverable is Acceptable under Quality Assurance, and provide a written determination within thirty (30) business days of receipt of the Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that must include a timeline for corrective action that is acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NOT BE EFFECTIVE OR BINDING UNTIL APPROVED BY THE CIO, DFA, and CRB. This Agreement shall terminate one year from contract award, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed a total of four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

- A. **General.** By either Party upon written notice to be delivered to Contractor not less than ten (10) business days prior to the intended date of termination.
- B. **Appropriations.** By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.
- C. **Obligations and Waiver.** By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions, or property of the Procuring Agency.
- 2) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3) Terminate all purchase orders or procurements and subcontractors and cease all work, except as the Procuring Agency may direct for orderly completion and transition;
- 4) Take such action as the Procuring Agency may direct, for protection and preservation of all property and all records related to and required by this Agreement;
- 5) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the terminate of the Agreement;
- 6) Cooperate fully in the closeout or transition of any activities so as to permit continuity in the administration of Procuring Agency programs;
- 7) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction.
- 8) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred.
- 9) In the event this Agreement is terminated for any reason, or upon expiration, the Contractor shall assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Project Manager, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:

- 1) Retain ownership of all work products and documentation created pursuant to this Agreement; and
- 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 –INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its' employees from all actions, proceedings, claims, demands, costs, damages,

attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the Department of Information Technology by certified mail.

- B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Monies due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency as necessary to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

Ownership. Contractor hereby acknowledges and grants to the Procuring Agency a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property, and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. **IP Indemnification.** The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorneys' fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and or payment, the Procuring Agency shall:
- 1) Give the contractor prompt written notice within forty eight (48) hours of any claim;
 - 2) Allow the Contractor to control the defense and settlement of the claim; and
 - 3) Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. **Procuring Agency Rights.** If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its sole expense:
- 1) Provide the Procuring Agency the right to continue using the product or service and fully indemnify Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
 - 2) Replace or modify the product or service so that it becomes non-infringement; or
 - 3) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other

amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 – WARRANTIES

- A. **General.** The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same as necessary, including deficiencies found during testing, implementation, or post-implementation phases.
- B. **Software.** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for one year after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

- A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals who are considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:
[] Insert Staff Names []
- B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resume prior to approval. If the number of Contractor's personnel is reduced for any reason, Contractor shall, within ten (10) business days of the reduction replace the same or greater number of personnel with equal ability, experience, and qualification subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

- A. **Independent Contractor.** The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are

personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

- B. **Subject of Proceedings.** Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement, nor to the best knowledge of the Contractor is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 – NOTICES

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

For PROCURING AGENCY
Rocky Lira
Procurement Manager
New Mexico Higher Education Department
1068 Cerrillos Road
Santa Fe, NM 87505-1650

For CONTRACTOR
[]
[Insert Name]
[Insert Address]

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

ARTICLE 15 - CHANGE MANAGEMENT

- A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:
- 1) Deliverable requirements;
 - 2) Compensation due under the terms of this Agreement; or
 - 3) Due Date of any Deliverable as outlined in Exhibit A.
- B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
- 1) The Project Manager shall draft a written Change Request for Executive Level Representative review and approval to include: name of person requesting change, summary of required change, start date for the change, reason and necessity for change, urgency level for the change, elements to be altered, impact of change, staffing plan associated with the change, impact schedule for

implementing the change, cost impact, risk assessment and a recommended approach to the change.

- 2) The Executive Level Representative will provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final.

ARTICLE 16 – IV & V

If Independent Validation & Verification (“IV & V”) is utilized or required to be utilized with regard to the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V Offeror. Such cooperation shall include, but is not limited to:

- 1) Providing project documentation;
- 2) Allowing the IV&V Offeror to sit in on project meetings; and
- 3) Supplying the IV&V Offeror with all other material as directed by the Project Manager.

ARTICLE 17 – DEFAULT/BREACH

In case of default and/or breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs, direct damages, indirect damages, consequential damages, special damages and may seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 18 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 19 – LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to the real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment either at the Contractor’s site or the Procuring Agency’s place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor’s officers, employees or agents); made by the Procuring Agency; or for losses occasioned by the Procuring Agency’s fault or negligence. Nothing in this Agreement shall limit the Contractor’s liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligence acts or omissions of Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 20 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 21 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

ARTICLE 22 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 23 – CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 24 –CONFLICT OF INTEREST

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

ARTICLE 25 - RECORDS AND AUDIT

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

ARTICLE 26 – AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 27 - MERGER, SCOPE, ORDER OF PRECEDENCE

- A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. **Merger/Scope/Order.** This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 28– GENERAL PROVISIONS

- A. **Civil and Criminal Penalties.** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- B. **Equal Opportunity Compliance.** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
- C. **Workers Compensation.** The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.
- D. **Applicable Law.** The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in the New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.
- E. **Waiver.** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless

expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

- F. **Headings.** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 29 – SURVIVAL

The Articles entitled Intellectual Property, IP Ownership, Confidentiality; and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements that were entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

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

By: _____ Date: _____

By: _____ Date: _____
[Insert Contractor Name]
[Insert Title]

By: _____ Date: _____

Approved for legal sufficiency:

By: _____ Date: _____

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

CRS ID Number:

By: _____ Date: _____

Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Information Technology Management Act, NMSA 1978 15-1C-1 *et.seq*; Information Technology Rules NMAC 1.12 *et.seq*; and any and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico:

By: _____ Date: _____
Roy Soto
Chief Information Officer for the State of New Mexico

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

By: _____ Date: _____
Paul Kippert
DFA Contracts Review Bureau

This Agreement has been approved by the SPA:

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

APPENDIX C: COST RESPONSE FORMS

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

PROPOSAL COST FORMULA

The evaluation of each offeror's *Vendor Hosted* cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Vendor Hosted Cost}}{\text{This Offeror's Vendor Hosted Cost}} \times 150 = \text{Vendor Hosted Points}$$

The evaluation of each offeror's *Agency Hosted* cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Agency Hosted Cost}}{\text{This Offeror's Agency Hosted Cost}} \times 150 = \text{Agency Hosted Points}$$

$$300 = \text{Total Potential Points}$$

$$\text{Grand Total Points}^1 = \text{Vendor Hosted} + \text{Agency Hosted Points}$$

¹ Grand Total Points will be a summation of all three (3) years grand total costs plugged into the formula.

Sheet 1: Agency Hosted Cost Response Form

Offeror's Organization Name: _____

Fixed Cost Summary ** – fill in dollar amounts accordingly	YEARS *		
	1	2	3
a. Software License fees or costs:			
1) Base System			
2) Customization			
3) Additional Modules			
4) 3rd Party Software, if any			
b. Technical and User Documentation			
c. Installation/Conversion/Integration costs			
d. Training (and Training Materials)			
e. Maintenance Costs, to include, per year			
1) Existing Software			
2) Updates to supplemental files			
3) Revisions to documentation			
4) Utilities			
5) New functionality			
f. Technical Support/Customer Service, per year			
g. Other costs (describe)			
h. Unlimited phone technical support			
Grand Total Cost			

* All responses must break out the total costs of ownership for a three (3)-year period.

** Cost Response Forms must be submitted for both a Vendor Hosted and Agency Hosted solution.

Sheet 2: Vendor Hosted Cost Response Form

Offeror's Organization Name: _____

	YEARS *		
Fixed Cost Summary ** – fill in dollar amounts accordingly	1	2	3
a. Software License fees or costs:			
5) Base System			
6) Customization			
7) Additional Modules			
8) 3rd Party Software, if any			
b. Technical and User Documentation			
c. Installation/Conversion/Integration costs			
d. Training (and Training Materials)			
e. Maintenance Costs, to include, per year			
6) Existing Software			
7) Updates to supplemental files			
8) Revisions to documentation			
9) Utilities			
10) New functionality			
f. Technical Support/Customer Service, per year			
g. Other costs (describe)			
h. Unlimited phone technical support			
Grand Total Cost			

* All responses must break out the total costs of ownership for a three (3)-year period.

** Cost Response Forms must be submitted for both a Vendor Hosted and Agency Hosted solution.

APPENDIX D: SPECIFICATIONS EVALUATION FORM

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

SPECIFICATIONS EVALUATION FORM

LOCATION	SPECIFICATION	MANDATORY	POINTS	Reference
Section IV, B Mandatory Requirements			100	
B-1	Corporate Experience	Yes	15	
B-2	Corporate References.	Yes	15	
B-3	Financial Stability	Yes	15	
B-4	Offeror Staff Experience	Yes	15	
B-5	Performance Bond	Yes	10	
B-8	License Agreement	Yes	15	
B-9	Cost Specification	Yes	15	
IV, B-6 Project Work Plan			50	
B-6	Project Work Plan	Yes	50	
IV, B-7 Training Plan			50	
B-7	Training Plan	Yes	50	
Appendix C Cost			300	
Appendix C	Sheet 1 Agency-Hosted Cost Response Form	Yes	150	
Appendix C	Sheet 2 Vendor-Hosted Cost Response Form	Yes	150	
IV, C Oral Presentation and System Demonstration			50	

LOCATION	SPECIFICATION	MANDATORY	POINTS	Reference
Section C	Presentation & Demonstration	Yes	50	
Section IV., D & E Functional and Technical Requirements			450	
D-1	Accessibility	No	10	
D-2	Ease of Use	No	10	
E-15	Architecture	No	10	
E-16	Operating Environment	No	10	
E-17	Server Systems	No	25	
E-20	API/SDK	No	10	
E-21	Security	No	50	
E-22	Development Environment	No	10	
E-23	Administration	No	10	
E-25	Standards	No	25	
E-26	Performance/Scalability	No	10	
E-27	Documentation/Help	No	10	
E-28	Support/Consulting/Training	No	10	
E-29	Conversion/Implementation Services	No	10	
D-3	Course Content Development and Organization	No	25	
D-4	Content Management	No	50	
D-5	Communication Tools	No	10	
D-6	Testing & Assessment	No	10	
D-7	Online Grade Book	No	25	
D-8	Calendar	No	10	

LOCATION	SPECIFICATION	MANDATORY	POINTS	Reference
D-9	Student-Centered Features	No	10	
D-10	Class Management	No	10	
D-11	User Access Management	No	10	
D-12	Site/System Administration	No	10	
D-13	Library Resources Integration	No	10	
D-14	Additional Functionality	No	10	
E-18	Other Servers	No	10	
E-19	Server Side Component Technologies	No	10	
E-24	Maintenance	No	10	
E-30	Reporting	No	10	
E-31	Query Tools	No	10	
TOTAL			1,000	

APPENDIX E: INSTITUTIONAL DEMOGRAPHICS

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

Data presented in these tables represents the following periods.

- Enrollment for PK-12 based on 2005-06 student enrollment report
- Enrollment for universities and 2-year schools based on Fall 2005 data.
- Online Learning courses/sections are based on Spring 2007 data.

For additional information regarding these districts and institutions, please consult the New Mexico Public Education web site <http://ped.state.nm.us> and New Mexico Higher Education Department web site <http://hed.state.nm.us>.

	Institutional Totals		Online Learning	
	Headcount	FTE	Courses	Users
University Total	56,861	43,532	10,212	173,022
2 Year Total	71,184	36,413	1,700	22,873
K-12 Total	328,111			
NM TOTAL	456,156			

Institution	Institutional Total		
	Location	Headcount	FTE
Research Universities			
New Mexico Institute of Mining and Technology	Socorro	1,888	1,504
New Mexico State University	Las Cruces	16,079	12,652
University of New Mexico	Albuquerque	26,315	21,008
Comprehensive Institutions			
Eastern New Mexico University	Portales	4,055	3,134
New Mexico Highlands University	Las Vegas	3,484	2,217
Northern New Mexico College	Espanola/El Rito	2,196	1,139
Western New Mexico University	Silver City	2,844	1,878
Segment Total		56,861	43,532
Branch Community Colleges and Instructional Centers			
ENMU-Roswell Branch	Roswell	4,216	2,390
ENMU-Ruidoso Branch	Ruidoso	674	296
NMSU-Alamogordo Branch	Alamogordo	2,035	1,100
NMSU-Carlsbad Branch	Carlsbad	1,267	817
NMSU-Dona Ana Branch	Dona Ana	6,857	3,759
NMSU-Grants Branch	Grants	664	415
UNM-Gallup Branch	Gallup	2,936	1,662
UNM-Los Alamos	Los Alamos	816	398
UNM-Taos Branch	Taos	1,302	577
UNM-Valencia Branch	Valencia	1,739	973
Segment Total		22,506	12,387
Independent Public Community Colleges			
Central New Mexico Community College	Albuquerque	24,057	12,482
Clovis Community College	Clovis	3,937	1,773
Luna Community College	Las Vegas	2,034	936
Mesalands Community College	Tucumcari	648	341
New Mexico Junior College	Hobbs	3,104	1,687
San Juan College	Farmington	8,993	4,196
Santa Fe Community College	Santa Fe	5,412	2,067
Segment Total		48,185	23,482
Constitutional Special Schools			

Institution	Institutional Total		
	Location	Headcount	FTE
New Mexico Military Institute	Roswell	493	544
System Total:		128,045	79,944
New Mexico Public Education			
Total Enrollment		328,111	
Grades 6-12		175,460	
Grades 9-12		99,182	

For additional information regarding these institutions, please consult the HED web site
<http://hed.state.nm.us>

Table E-2 Listed below are the individual demographic information for each New Mexico institution. Online Learning data reflects total number of sections utilizing online learning components in the instruction of the course. For additional information regarding these institutions, please consult the HED web site <http://hed.state.nm.us>

Institution	Institution Contact			Online Learning		
	Name	Phone	Email	CMS/LMS	Courses	Users
Research Universities						
New Mexico Institute of Mining and Technology	Mike Topliff	(505) 835-5735	mtopliff@nmt.edu	WebCT CF4.x	315	3,200
New Mexico State University	Robbie Grant	(505) 646-3014	rogrant@nmsu.edu	WebCT CE4.x	4,157	52,114
University of New Mexico	Debby Knotts	(505) 277-9000	debby@unm.edu	Bb Vista 4.1	2,704	62,290
Comprehensive Institutions						
Eastern New Mexico University	Pam Patterson	(505) 624-7224	pam.patterson@roswell.enmu.edu	WebCT CE4.x	1,774	35,705
New Mexico Highlands University	Denise Gibson	(505) 426-2215		Blackboard CE6	300	10,365
Northern New Mexico College	Tomas Vallejos	(505) 747-5414 x418	tomas@nnmc.edu	WebCT CF4.x	49	550
Western New Mexico University	Dean Foster	(505) 538-6046	fosterd@wnmu.edu	WebCT CE4.x	913	8,798
Segment Total					10,212	173,022
Branch Community Colleges and Instructional Centers						
ENMU-Roswell Branch			Included with ENMU totals			
ENMU-Ruidoso Branch			Included with ENMU totals			
NMSU-Alamogordo Branch			Included with NMSU totals			
NMSU-Carlsbad Branch			Included with NMSU totals			
NMSU-Dona Ana Branch			Included with NMSU totals			
NMSU-Grants Branch			Included with NMSU totals			

Institution	Institution Contact			Online Learning				
	Name	Phone	Email	CMS/LMS	Courses	Users		
UNM-Gallup Branch				Included with UNM totals				
UNM-Los Alamos				Included with UNM totals				
UNM-Taos Branch				Included with UNM totals				
UNM-Valencia Branch				Included with UNM totals				
Independent Public Community Colleges								
Central New Mexico Community College	Xeturah Woodley	(505) 224-3316	xwoodley@cnm.edu	Blackboard CE6	350	3,500		
Clovis Community College	Jean Morrow	(505) 769-4930	jean.morrow@clovis.edu	WebCT CE4.x	123	2,063		
Luna Community College	Janet Maes	(505) 454-2540 x1152	jmaes@luna.edu	WebCT CF4.x	158	878		
Mesalands Community College	Christine Dougherty	(505) 461-4413 x176	christined@mesalands.edu	WebCT CF4.x	25	218		
New Mexico Junior College	Charles Adams	(505) 492-2647	CAdams@nmjc.edu	WebCT CE4.x	321	7,788		
San Juan College	Marty Hill	(505) 566-3309	hillm@sanjuancollege.edu	WebCT CE4.x	423	5,426		
Santa Fe Community College	Donna Harrington	(505) 428-1166	dharrington@sfcenm.edu	WebCT CE4.x	300	3,000		
Segment Total					1,700	22,873		
Constitutional Special Schools								
New Mexico Military Institute	Bryan Yates	(505) 624-8110	bryan@nmmi.edu	WebCT CF4.x	117	2,243		
Higher Education Total:								
New Mexico Public Education								
Total Student Enrollment								

APPENDIX F: SAMPLE-IT PROFESSIONAL SERVICES CONTRACT TEMPLATE

RFP # 80-950-00-00399

**NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS)
Of the IDEAL-NM Project**

REFERENCE LINK

<http://www.doit.state.nm.us/contracts.html>

Please visit the above link to retrieve a sample of the IT Professional Services Contract template.

APPENDIX G: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to federal, statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX H: LETTER OF TRANSMITTAL FORM

RFP # 80-950-00-00399

NEW MEXICO STATEWIDE eLearning SYSTEM (NMSELS) Of the IDEAL-NM Project

Items #1 to 4 MUST EACH BE RESPONDED TO. Failure to respond to all four items **WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!**

1. Identity (Name) and Mailing Address of the submitting organization:

2: For the person authorized by the organization to contractually obligate the organization:

Name	
Title	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-Mail Address	
Telephone Number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-Mail Address	
Telephone Number	

- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.

- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

- I acknowledge receipt of any and all amendments to this RFP.

Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

, 2007



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
 purchasing.nmsu.edu
 purchasing@nmsu.edu
 575.646.2916 (V) 575.646.1351 (F)

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

Page 1

P0165045

PO Number: P0165045	P0165045
PO Date: 07/06/16	
Requisition Number:	
Delivery Date: 06/30/17	
Payment Terms:	
Net 10	
FOB:	
Not applicable	

No: 800093750

Submit Invoices To:	New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F) E-Mail: accountspayable@nmsu.edu	Ship to:	ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-6007 Las Cruces NM 880038001 ATTN: Susanne Berger
Buyer	FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU		
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES		
Item	Description	Quantity	Unit Cost
			Total Cost
	***** Maintenance Agreement *****		
	AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.		
	Maintenance: Software Previous PO#: P0152912 Period Covered: 7/1/16 - 6/30/17 Location: ICT Renewed #303578-0022		
1	9335 Maintenance Software	LOT	10,900.00

TOTAL: CONTINUED

07/06/2016

Director of Procurement Services

Date

Index / Account	Amount	Item
120034 754200	10,900.00	1

FILE COPY



New Mexico State University
Central Purchasing and Risk Management Office
P.O. Box 30001, MSC 3890
Las Cruces, New Mexico 88003
purchasing.nmsu.edu
purchasing@nmsu.edu
575.646.2916 (V) 575.646.1351 (F)

Vendor: Blackboard Inc
Blackboard Inc-Transact
PO Box 200957
Pittsburgh PA 15251

Page 2

PO Number: P0165045	P0165045
PO Date: 07/06/16	
Requisition Number:	
Delivery Date: 06/30/17	

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Submit Invoices To:	New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F) E-Mail: accountspayable@nmsu.edu	Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-6007 Las Cruces NM 880038001 ATTN: Susanne Berger		
Buyer	FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU			
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES			
Item	Description	Quantity	Unit Cost	Total Cost
	Pharos License Support Fee, PN: PH/LICSUP1RA Billed Annually			

TOTAL: 10,900.00

07/06/2016

Director of Procurement Services

Date

FILE COPY



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
 purchasing.nmsu.edu
 purchasing@nmsu.edu
 575.646.2916 (V) 575.646.1351 (F)

Page 1

P0152912

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

PO Number: P0152912
PO Date: 07/01/15
Requisition Number:
Delivery Date: 06/30/16

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Submit Invoices To: New Mexico State University
 Accounts Payable
 P.O. Box 30001, MSC 3AP
 Las Cruces, New Mexico 88003
 575.646.1189 (V) 575.646.1077 (F)
E-Mail: accountspayable@nmsu.edu

Ship to:
 ICT, MSC 3AT
 1275 Stewart Street
 Computer Center Bldg RM 148
 (575) 646-6007
 Las Cruces NM 880038001
 ATTN: Susanne Berger

Buyer

FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU

John F. Kuckens

PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
	<p>*****</p> <p>Maintenance Agreement</p> <p>*****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0141484 Period Covered: 7/1/15 - 6/30/16 Location: ICT Renewed #303578-0019</p>			
1	9335 Maintenance Software	LOT		10,900.00

TOTAL: CONTINUED

Director of Purchasing or Designee

06/17/2015

Date

Index / Account	Amount	Item
120034 754240	10,900.00	1

FILE COPY



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
 purchasing.nmsu.edu
 purchasing@nmsu.edu
 575.646.2916 (V) 575.646.1351 (F)

Page 2

PO Number: P0152912	P0152912
PO Date: 07/01/15	
Requisition Number:	
Delivery Date: 06/30/16	

Payment Terms:

Net 10

FOB:

Not applicable

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

No: 800093750

Submit Invoices To: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F) E-Mail: accountspayable@nmsu.edu	Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-6007 Las Cruces NM 880038001 ATTN: Susanne Berger
Buyer	FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
	Pharos License Support Fee,PN: PH/LICSUP1 Billed Annually			

TOTAL: 10,900.00

Director of Purchasing or Designee

06/17/2015

Date



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
 purchasing.nmsu.edu
 purchasing@nmsu.edu
 575.646.2916 (V) 575.646.3736 (F)

Page 1

PO Number: P0141484	P0141484
PO Date: 07/01/14	
Requisition Number:	
Delivery Date: 06/30/15	

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Submit Invoices To: New Mexico State University
 Accounts Payable
 P.O. Box 30001, MSC 3AP
 Las Cruces, New Mexico 88003
 575.646.1189 (V) 575.646.1077 (F)
E-Mail: accountspayable@nmsu.edu

Ship to:
 ICT, MSC 3AT
 1275 Stewart Street
 Computer Center Bldg RM 148
 (575) 646-4241
 Las Cruces NM 880038001
 ATTN: Susanne Berger

FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU

Buyer

John F. Kuckens

PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
	<pre>***** Maintenance Agreement *****</pre> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0129498 Location: ICT Renewed #303578-0016</p>			
1	9335 Maintenance Software	LOT		11,000.00

TOTAL: CONTINUED

06/25/2014

Director of Purchasing or Designee

Date

Index / Account	Amount	Item
120034 754240	11,000.00	1

COMPLETED

7-1-14

FILE COPY



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
 purchasing.nmsu.edu
 purchasing@nmsu.edu
 575.646.2916 (V) 575.646.3736 (F)

Page 2

PO Number: P0141484	P0141484
PO Date: 07/01/14	
Requisition Number:	
Delivery Date: 06/30/15	

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Submit Invoices To: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F) E-Mail: accountspayable@nmsu.edu	Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Susanne Berger
Buyer	FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
	PERIOD COVERED: 7/1/14 - 6/30/15 Pharos License Support Fee, PN: PH/LICSUP1: \$11,000 Billed Annually			
TOTAL:				11,000.00

Director of Purchasing or Designee

06/25/2014

Date

FILE COPY



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Page 1

P0117183

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

PO Number: P0117183
PO Date: 07/01/12
Requisition Number:
Delivery Date: 06/30/13

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Billing Address: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)		Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Susanne Berger		
Buyer		SEE REVERSE SIDE FOR TERMS/CONDITIONS		
John F. Kuckens		PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES		
Item	Description	Quantity	Unit Cost	Total Cost
1	<p>*****</p> <p>Maintenance Agreement</p> <p>*****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0103342 Location: ICT Renewed #303578-0012</p> <p>9335 Maintenance Software PERIOD COVERED: 7/1/12 - 6/30/13</p>	LOT		11,000.00

TOTAL: CONTINUED

Director of Purchasing

7/2/12

Date

Index / Account	Amount	Item
120034 754240	11,000.00	1

COMPLETED

FILE COPY



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 Blackboard Inc-Transact
 PO Box 200957
 Pittsburgh PA 15251

No: 800093750

PO Number: P0117183	P0117183
PO Date: 07/01/12	
Requisition Number:	
Delivery Date: 06/30/13	
Payment Terms:	
Net 10	
FOB:	
Not applicable	

Billing Address:	Ship to:			
New Mexico State University Accounts Payable P.O. Box 30001, MSC 3AP Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)	ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Susanne Berger			
Buyer	SEE REVERSE SIDE FOR TERMS/CONDITIONS			
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES			
Item Description Quantity Unit Cost Total Cost				
	Pharos License Support Fee, PN: PH/LICSUP1: \$11,000 Billed Annually			

TOTAL: 11,000.00

Director of Purchasing

7/2/12

Date



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 22601 N 19th Ave
 Ste 200
 Phoenix AZ 85027

No: 800093750

PO Number: P0103342	P0103342
PO Date: 07/01/11	
Requisition Number:	
Delivery Date: 06/30/12	

Payment Terms:
Net 10
 FOB:
Not applicable

Billing Address: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3FO Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)		Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Susanne Berger		
Buyer		SEE REVERSE SIDE FOR TERMS/CONDITIONS		
John F. Kuckens		PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES		
Item	Description	Quantity	Unit Cost	Total Cost
1	<p>*****</p> <p>Maintenance Agreement</p> <p>*****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0090624 Location: ICT Renewed #303578-0010</p> <p>9335 Maintenance Software FY 11/12 NMSU PERIOD: 7/1/11 - 6/30/12</p>	LOT		11,000.00

TOTAL: CONTINUED

John F. Kuckens

Director of Purchasing
 Index / Account Amount Item
 113111 754200 11,000.00 1

6/14/11
 Date

COMPLETED



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 22601 N 19th Ave
 Ste 200
 Phoenix AZ 85027

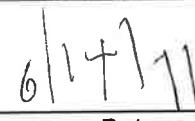
No: 800093750

PO Number: P0103342	P0103342
PO Date: 07/01/11	
Requisition Number:	
Delivery Date: 06/30/12	
Payment Terms: Net 10 FOB: Not applicable	

Billing Address: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3FO Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)		Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Susanne Berger		
Buyer John F. Kuckens		SEE REVERSE SIDE FOR TERMS/CONDITIONS PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES		
Item	Description	Quantity	Unit Cost	Total Cost
	Pharos License Support Fee, PN: PH/LICSUP1: \$11,000 Billed Annually			

TOTAL: 11,000.00


 Director of Purchasing


 Date



New Mexico State University

Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 1899 L Street NW 5th Fl
 Washington DC 20036

Change Order: 1

Page 1

PO Number: P0075190	P0075190
PO Date: 07/01/09	
Requisition Number:	
Delivery Date: 06/30/10	

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Billing Address:

New Mexico State University
 Accounts Payable
 P.O. Box 30001, MSC 3FO
 Las Cruces, New Mexico 88003
 575.646.1189 (V) 575.646.1077 (F)

Ship to:

ICT, MSC 3AT
 1275 Stewart Street
 Computer Center Bldg RM 148
 (575) 646-4241
 Las Cruces NM 880038001

ATTN: Tammy Bracamonte

Buyer

SEE REVERSE SIDE FOR TERMS/CONDITIONS

John F. Kuckens

PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
	<p>*****</p> <p>Maintenance Agreement</p> <p>*****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0060678 Location: ICT CHANGE ORDER #1: CORRECT NMSU PERIOD DATES 615/09 BC</p>			
1	9335 Maintenance Software	LOT		15,140.00

TOTAL: CONTINUED

Director of Purchasing

Index/Account	Amount	Item
113111 754200	15,140.00	1

6/11/09

Date

COMPLETED



New Mexico State University
Central Purchasing and Risk Management Office
P.O. Box 30001, MSC 3890
Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
1899 L Street NW 5th Fl
Washington DC 20036

Change Order: 1

Page 2

PO Number: P0075190	P0075190
PO Date: 07/01/09	
Requisition Number:	
Delivery Date: 06/30/10	

Payment Terms:

Net 10

FOB:

Not applicable

No: 800093750

Billing Address: New Mexico State University Accounts Payable P.O. Box 30001, MSC 3FO Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)	Ship to: ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Tammy Bracamonte			
Buyer	SEE REVERSE SIDE FOR TERMS/CONDITIONS			
John F. Kuckens	PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES			
Item	Description	Quantity	Unit Cost	Total Cost
	FY 09/10 NMSU PERIOD: 7/1/09 - 6/30/10 Pharos Software, #SW-B2TIA-PHAROS1: \$5200 Pharos License Support Fee, PN: PH/LICSUP1: \$11,000 Platinum Software Upgrade Discount: (\$1,060) Billed Annually			

TOTAL: 15,140.00

John F. Kuckens
Director of Purchasing

6/18/09

Date



New Mexico State University
 Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 1899 L Street NW 5th Fl
 Washington DC 20036

PO Number: P0060678	R 0 0 6 0 6 7 8	
PO Date: 07/01/08		
Requisition Number:		
Delivery Date: 06/30/09		
Payment Terms:		
Net 10		
FOB:		
Not applicable		

No: 800093750

Billing Address:		Ship to:						
New Mexico State University Accounts Payable P.O. Box 30001, MSC 3FO Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)		ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001						
Buyer		ATTN: Tammy Bracamonte						
John F. Kuckens		SEE REVERSE SIDE FOR TERMS/CONDITIONS						
Item	Description	Quantity	Unit Cost	Total Cost				
1	<p>*****</p> <p>Maintenance Agreement</p> <p>*****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Maintenance: Software Previous PO#: P0042054 Location: ICT</p> <p>9335 Maintenance Software FY 08/09 NMSU PERIOD: 7/1/2008 - 6/30/2009</p>	LOT		12,452.00				

TOTAL: CONTINUED

John F. Kuckens

7/1/08

Date

Director of Purchasing
 Index / Account Amount Item
 113111 754200 12,452.00 1

COMPLETED


New Mexico State University

Central Purchasing and Risk Management Office
 P.O. Box 30001, MSC 3890
 Las Cruces, New Mexico 88003
www.nmsu.edu/~purchase
 575.646.2916 (V) 575.646.3736 (F)

Vendor: Blackboard Inc
 1899 L Street NW 5th Fl
 Washington DC 20036

No: 800093750

PO Number: P0060678	P0060678
PO Date: 07/01/08	
Requisition Number:	
Delivery Date: 06/30/09	

Payment Terms:

Net 10

FOB:

Not applicable

Billing Address:		Ship to:		
New Mexico State University Accounts Payable P.O. Box 30001, MSC 3FO Las Cruces, New Mexico 88003 575.646.1189 (V) 575.646.1077 (F)		ICT, MSC 3AT 1275 Stewart Street Computer Center Bldg RM 148 (575) 646-4241 Las Cruces NM 880038001 ATTN: Tammy Bracamonte		
Buyer		SEE REVERSE SIDE FOR TERMS/CONDITIONS		
John F. Kuckens		PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES		
Item	Description	Quantity	Unit Cost	Total Cost
	Pharos Software, #SW-B2TIA-PHAROS1: \$2,710 Pharos License Support Fee, PN: PH/LICSUP1: \$9,200 Platinum Software Upgrade Discount: (\$1,208) Billed Annually			
				TOTAL: 12,452.00

John F. Kuckens
 Director of Purchasing
 f.o.

2/11/08
 Date



Blackboard

New Mexico State University Pricing Summary

Product Description	Product ID	Qty	Units	Net Price
CE ARCHIVE	AS-LSCE-ARCHIVE	1	YR	\$ 12000
TOTALS:				\$ 12000

**BLACKBOARD LEARNING SYSTEM CE™ ENTERPRISE
ARCHIVAL LICENSE SOFTWARE SCHEDULE**

This *Blackboard Learning System CE™—Enterprise Archival License Software Schedule* (“Schedule”) is made as of the last date indicated below, by and between Blackboard and New Mexico State University (“Customer”) and is an addendum to the Blackboard License And Services Agreement between Blackboard and Customer, which includes, without limitation, the Master Terms dated June 5, 2006 and other Schedules incorporated therein. Capitalized terms used in this Schedule that are not otherwise defined in this Schedule shall have the meaning set forth in the Master Terms. In consideration of the following promises, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. ADDITIONAL DEFINITIONS

- 1.1 **Application Pack** means the object code software utility release(s) that are designed to work with the Software that may be, in Blackboard’s sole discretion, issued in between Updates, designated by number, and/or later incorporated into Updates or Upgrades.
- 1.2 **Authorized End User** means any individual who is a student resident in a degree- or certificate- granting program of Customer, prospective student, alumni, consortium student registered to take one of Customer’s regularly offered courses of instruction, employee, trustee or collaborating researcher of Customer or a Customer employee (solely to the extent any such employee use the Software for Customer’s internal training purposes). Customer’s Authorized Users will not exceed 50 Users.
- 1.3 **Corrections** means 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 the permanent form of an Update.
- 1.4 **Designated Server Site** means the physical location where the Software will be installed, as identified on the Pricing Summary. Unless otherwise indicated in the Pricing Summary, the Designated Server Site shall be the physical location at the primary address of Customer.
- 1.5 **Pricing Summary** means the pricing attributable to the software and services provided pursuant to this Schedule as set forth on the Cover Page to the Agreement.
- 1.6 **Software** means, for purposes of this Schedule only, the Blackboard Learning System CE Enterprise proprietary software including Updates, Upgrades, Corrections and Application Packs thereto.
- 1.7 **Software Error** means a failure of any Software materially and substantially to conform to applicable Documentation, provided that such failure can be reproduced and verified by Blackboard using the most recent version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Customer, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Customer’s or its end users’ negligence; (ii) any modification or alteration to the Software not made by Blackboard; (iii) data that does not conform to Blackboard’s specified data format; (iv) operator error; (v) use on any system other than the operating system specified in the Documentation, (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule.
- 1.8 **Supported Interface** means application-based interfaces (API) provided pursuant to the *Blackboard PowerLinks™* program, to the extent such program is available, network protocols, data formats, database schemas, and file formats available for use in the Software as expressly specified in the Documentation.
- 1.9 **Third Party Software** means the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software or that has been shipped with the Software.
- 1.10 **Updates** means the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or module, including Application Packs.
- 1.11 **Upgrades** means the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or module.

2. LICENSE

- 2.1 **Grant of License**. Subject to the terms and conditions of this Schedule and the Master Terms, Customer shall be permitted to create one (1) unsupported copy of the Blackboard Learning System CE Software for archival, non-production purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software. Customer acknowledges and understands that, in the event it wishes to use the Blackboard Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Customer’s Authorized End Users, Customer will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.
- 2.2 **General Usage Restrictions**. Customer agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in Section 2.1. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Customer shall not (i) copy or duplicate the Software, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software to the extent permitted by the Software’s standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer’s rights under the license granted in Section 2.1; or (vii) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other purpose. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Customer add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Customer shall not use the Software in violation of Blackboard’s obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Customer of such obligation. Customer shall not provide access to the Software or Documentation to anyone other than Authorized End Users without Blackboard’s prior written consent; provided, however, that Customer may provide access to *Blackboard PowerLinks™* partners that are subject to a valid Blackboard developer’s license agreement for the limited purpose of installing, maintaining and

supporting their respective *Blackboard PowerLinks™* applications. Customer shall ensure that its use of the Software and Documentation complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Customer warrants that its Authorized End Users will comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section 2.2. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Under no circumstances shall Customer permit any third party to host the Software.

2.3 Interoperability. To the extent permitted by the specifications for the Software as outlined in the Documentation, if the Customer wishes to achieve interoperability of the Software with another software program and requires interface specifications or other information in order to do so, the Customer should request that information from Blackboard. Nothing in this Section 2.3 authorizes Customer to use any interfaces except the Supported Interfaces for the Software level. Customer may not use any Supported Interface in a manner that is inconsistent with the Documentation.

2.4 Third Party Software/Content. Customer acknowledges that the Software may utilize Third Party Software. Pursuant to its agreements with these third parties, Blackboard hereby grants to Customer a non-exclusive, non-transferable license to load and/or operate and use the Third Party Software solely in connection with the Software and Customer's own instructional activities.

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

2.6 Ownership of Software. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Software, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the Software not expressly granted by this Agreement, and Customer further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Agreement, including, without limitation, the right to use the Software for any purpose in Blackboard's sole discretion.

3. DELIVERY

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, Blackboard will make available a copy of the Software for downloading from the Internet by Customer for purposes of installation by Customer. Customer acknowledges that the Software shall be activated for the Initial Renewal Term (as defined below) by a license key consisting of identification codes to be provided by Blackboard to Customer electronically promptly after receipt by Blackboard of Customer's IP address and operating system information. A new license key will be provided by Blackboard to Customer for each Renewal Term (as defined below) upon receipt by Blackboard of Customer's renewal notice for such Renewal Term. Initial delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available for download. Customer acknowledges that the download site will be made available to Customer for a period not longer than thirty (30) days from the date of such notice, and Customer will have no right to download the Software after this thirty (30)-day period.

4. FEES

In consideration for the services provided and license(s) granted in this Schedule with respect to the Initial Renewal Term (as defined below), Customer shall pay to Blackboard all fees specified in the Pricing Summary or otherwise required in this Schedule, which fees shall be non-cancelable and non-refundable. With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such services and licenses, which amounts shall be due and payable within thirty (30) days of the date of Blackboard's invoice for such Renewal Term. Customer further agrees to reimburse Blackboard for: (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors in connection with the performance of maintenance and support services under this Schedule and; (ii) any other expenses described in this Schedule, provided that Blackboard will receive Customer's prior approval for single expenses greater than \$250, and further provided that, upon Customer's request, Blackboard will provide reasonable documentation indicating that Blackboard incurred such expenses. Except as otherwise required by this paragraph, all amounts payable under this Schedule shall be subject to applicable provisions of the Master Terms.

5. TERM

This Schedule shall become effective as of the Effective date indicated above, and shall continue in effect for a period of one (1) year (the "Initial Term"), unless earlier terminated. Thereafter, the Schedule will terminate unless otherwise permitting in writing by Blackboard. Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Customer will: (i) immediately discontinue all use of Software licensed under this Schedule; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) remove the Software from its server and provide to Blackboard proof of the destruction of the original copy and any other copies of the Software; and (iv) return all Documentation and related 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 below.

BLACKBOARD

NEW MEXICO STATE UNIVERSITY

Signature

TESS FRAZIER- VICE PRESIDENT

Print Name and Title

Date:

Signature

Rennette Apodaca, Interim Director-Purchasing

Print Name and Title

Date:

JUL 18 2012