

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of 31 May 2012 (this "Agreement"), is entered into by and between BLACKBOARD INC., a Delaware Corporation ("Blackboard"), THE STATE OF NEW MEXICO HIGHER EDUCATION DEPARTMENT ("Assignor"), and Luna Community College (Assignee).

WHEREAS, Blackboard and Assignor entered into an Information Technology Agreement, Contract No. 08-950-00417 on May 30, 2008 ("ITA"); and

WHEREAS, pursuant to the ITA, Blackboard licensed to Assignor the Blackboard Learning System – Enterprise, Blackboard Community System, Blackboard Content System, and Blackboard Learning System-Vista Enterprise propriety software ("Software"), perpetual license, for 200,000 full-time equivalent users ("FTE"); and

WHEREAS, Assignor and Blackboard entered into an Amendment to the ITA on July 30, 2010 (Amendment No. 709500000399-01) ("Amendment 1"); and

WHEREAS, Assignor and Blackboard entered into an Amendment to the ITA on June 9, 2011 (Amendment No. 709500000399-02) ("Amendment 2"), which, inter alia, extended the ITA to May 30, 2012; and

WHEREAS, Assignor which wishes to assign Software licenses for 2000 FTE to Assignee, effective as of the Effective Date (as defined below).

WHEREAS, Blackboard wishes to consent to the assignment of the Software licenses to Assignee, effective May 31, 2012, subject to the execution of a license and services agreement between Assignee and Blackboard.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Effective as of the Effective Date (as defined below), Assignor hereby assigns, transfers and conveys all of its rights to Software licenses for 2000 FTE to Assignee. Blackboard consents to such assignment, subject to the execution of a license and services agreement between Assignee and Blackboard. Assignor may revoke the assignment at any time upon 90 days' written notice to Assignee and Blackboard.

2. Acceptance of Assignment. Effective as of the Effective Date (as defined below), Assignee hereby accepts the assignment of the Software licenses, subject to the execution of a license and services agreement between Assignee and Blackboard.

3. Effectiveness of Assignment. The transactions described in this Agreement shall be effective on May 31, 2012 (the "Effective Date").

4. References; Additional Actions. Assignor further agrees with Assignee to sign, seal, execute and deliver, or cause to be signed, sealed, executed and delivered, and to make or cause to be done or made, upon the reasonable request of Assignee, any and all instruments, papers, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by Assignee, for the purpose of, or in connection with, the assignment by Assignor of the Software licenses.

5. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New Mexico (without giving effect to principles of conflicts of laws).

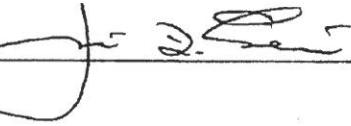
6. Counterparts. This Agreement may be executed in counterparts (including facsimile counterparts), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have duly caused this **ASSIGNMENT AND ASSUMPTION AGREEMENT** to be executed as of the date first above written.

ASSIGNOR:

THE STATE OF NEW MEXICO HIGHER EDUCATION DEPARTMENT

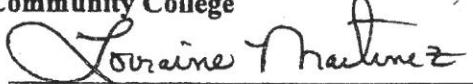
By: 

Name: _____

Title: _____

ASSIGNEE:

Luna Community College

By: 

Name: _____

Title: Site V Project Director

BLACKBOARD INC:



By: _____

Name: Ted Borris

Title: Senior Counsel



Blackboard

**BLACKBOARD LICENSE AND SERVICES AGREEMENT
COVER PAGE**

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

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

CUSTOMER INFORMATION:	
Name/Company:	Luna Community College
Fax:	
Address:	366 Luna Drive Las Vegas, NM 87701-9838 USA
Billing Contact:	Title:
Address:	366 Luna Drive Las Vegas, NM 87701-9838 USA
Phone:	Email Address:
Fax:	
Initial Term of Agreement:	One (1) year

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

BLACKBOARD

Signature
TERRI FRAZIER - VICE PRESIDENT
Print Name and Title
Date: 5/31/12

LUNA COMMUNITY COLLEGE

Signature
LORRAINE MARTINEZ, Title V Director
Print Name and Title
Date: 5-31-12

Luna Community College Pricing Summary

Product Description	Product ID	Qty	Units	List Price	Price Reduction	Net Price
LRN ACAD COLLAB HENA < 2K Includes: * COURSE DELIV HENA < 2K * CMTY ENGAGE HENA < 2K * CONTENT MGMT HENA < 2K	AS-LAC-HENA01	1	EA	\$ 13000	\$ 0	\$ 13000
HOSTING CONTENT MGMT HENA	AS-ASPCS-HENA	1	YR	\$ 28800	\$ 28800	\$ 0
HOSTING CD HENA 2000	AS-ASPLS-HENA04	1	YR	\$ 22000	\$ 0	\$ 22000
DATA INTEGRATION ICM -MII	AS-ICMINTASP	1	YR	\$ 7000	\$ 0	\$ 7000
			TOTALS	\$ 70800	\$ 28800	\$ 42000

Academic Suite-Site; Schedule of Fees Table

Designated Server Site (Physical Location of the Software):	Database Version:	Operating System:	Hardware Model
Hosted by Blackboard			
Customers FTE/User Band: Up to 2,000			

BLACKBOARD MASTER TERMS

Blackboard offers software and services that are useful for a range of educational purposes, from development of course websites to development of an entire online campus, and Blackboard also offers technology that allows institutions to establish and manage accounts for a stored value card system and security access system. Customer wishes to use such Blackboard software, services and other technology to enhance its own educational programs, and Blackboard is willing to grant to Customer a license for this purpose in accordance with the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of the following mutual promises and agreements, the Parties agree as follows:

1. SCOPE OF AGREEMENT.

1.1 Exhibits and Schedules. These Master Terms describe the general terms by which Customer may license Software and purchase Services and/or Equipment (each as defined below) from Blackboard as set forth in any Schedule (as defined below). The pricing related to the license of software and the purchase of services is outlined in the Pricing Summary and the specific terms related to the license of Software or purchase of Services and/or Equipment are described in the appropriate Software Schedules or Service Schedules which have been separately executed by the Parties, and Exhibits to such Schedules (collectively referred to as "Schedules"). Schedules may be added or deleted from time to time by the agreement of the parties, but Customer acknowledges that it only has rights to use Software or receive Services/Equipment to the extent provided pursuant to one or more applicable Schedules which has been executed and remains in force.

1.2 Order of Precedence. In the event a conflict arises between these Master Terms and the provisions of any Schedule, these Master Terms will govern unless the relevant Schedule expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either Party.

2. DEFINITIONS

2.1 Agreement means the License and Services Agreement including, the Cover Page, the Pricing Summary and all Schedules (and exhibits to Schedules) attached to these Master Terms, as amended from time to time.

2.2 Available Date means, with respect to any particular Software, Equipment, or Support Services, the date upon which the relevant Software or Support Services are made available to Customer pursuant to the terms of the relevant Schedule, regardless of whether Customer utilizes the Software, Equipment, or Support Services and for Equipment, the date a valid Purchase Order is accepted by Blackboard.

2.3 Blackboard means Blackboard Inc., a Delaware corporation with its principal office and place of business at 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20001 U.S.A. including its wholly owned subsidiaries.

2.4 Confidential Information means any non-public information disclosed by either Party to the other or related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party's business, vendors, customers, end users, end users' grades or other educational information, end users' financial information, transaction data, results from any benchmarking tests or analyses related to the licensed Software and services, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literal elements, capabilities and functionality, source code and object code, as well as research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices, computer software programs and other information licensed or otherwise disclosed to a Party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known.

2.5 Customer means the customer identified on the cover page to which these Master Terms are attached.

2.6 Customer Content means any data, information, graphics or other media files or other content, including, but not limited to, course materials, provided by or for Customer or any end user of the

Software through use of the Software, excluding any portion of the Software or Documentation.

2.7 Designated Server Site means the physical location where the Software will be installed, either a location operated by Customer, or hosted by Blackboard.

2.8 Documentation means, with respect to any particular Software or Equipment, any applicable standard end user specifications and/or operating instructions provided by Blackboard for such Software and/or Equipment, which may be amended from time to time. Documentation does not include any sales or marketing materials.

2.9 Effective Date means the date upon which both Parties have executed the cover page to which these Master Terms are attached.

2.10 Equipment means any hardware and/or firmware provided by Blackboard to Customer pursuant to any Schedule, including, without limitation, hardware and/or firmware related to the stored value card system and security access system. Unless otherwise specified, Equipment shall be provided to Customer upon receipt and acceptance by Blackboard of a valid Purchase Order.

2.11 Master Terms means these Blackboard Master Terms.

2.12 Party means either Blackboard or Customer.

2.14 Services means any services provided by Blackboard to Customer pursuant to any Schedule, including, without limitation, consulting, educational, managed hosting installation and managed hosting, system administration, training or maintenance and support services.

2.15 Software means the object code version of the Blackboard Learn™, Blackboard, Transact™ or Blackboard Connect™ software as described on the applicable Software Schedules)

2.16 Test Copy shall mean one (1) copy of the Software for use solely for the purposes of testing the Software. Under no circumstances shall a test copy be used for production purposes. Unless otherwise indicated in an attached Schedule, test copies are unsupported.

3. APPLICATION OF SCHEDULES.

3.1 Provision by Blackboard. Blackboard agrees to make available and/or provide, as applicable, the Software, Equipment or Services required by any Schedule duly executed, attached and incorporated into this Agreement.

3.2 No Further Obligations. Except as required by any applicable Schedule or as otherwise agreed between the Parties, Customer acknowledges that Blackboard has no obligation under this Agreement to provide Software, Equipment or Services of any nature to Customer.

4. CONFIDENTIALITY

4.1 Nondisclosure and Nonuse. Each Party will keep the other Party's Confidential Information confidential. Specifically, each Party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information. Each Party receiving Confidential Information further agrees that it will not use such Confidential Information except for the purposes set forth in this Agreement. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.

4.2 Notice. The receiving Party will promptly notify the disclosing Party in the event the receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing Party may reasonably request, at the disclosing Party's expense, in any litigation against any third parties to

protect the disclosing Party's rights with respect to the Confidential Information.

4.3 Terms of Agreement. Except as otherwise provided by law, neither Party shall disclose the terms of the Agreement to any third party, provided, however, that either Party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 4 to keep such terms confidential.

4.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 4 will not apply to information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a Party's rights under this Agreement.

4.5 Contact Information. Customer hereby authorizes Blackboard to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from Blackboard relating to Blackboard-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services Customer has purchased through Blackboard for the purpose of providing those products and services or support or maintenance for the products and services. Customer acknowledges that it has the right to provide such consent, and Blackboard acknowledges that it will not use or distribute the contact information except as explicitly set forth above.

4.6 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Software in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

5. TERM; TERMINATION

5.1 Term. This Agreement shall commence as of the Effective Date and shall continue in effect until either: (i) the expiration of the minimum term, as specified on the Cover Sheet, or (ii) the expiration or termination of all Schedules, whichever occurs later.

5.2 Termination for Breach. In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety, or, at the non-breaching Party's option, it may terminate solely the relevant Schedule pursuant to which such breach has occurred, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Without limiting the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party materially breaches the provisions of Section 4 or the license usage restrictions in any Software Schedule.

5.3 Termination for Insolvency. Without prejudice to any other available remedies, either Party may terminate this Agreement immediately upon written notice if: (i) the other Party becomes insolvent, files for relief under any bankruptcy law, or makes an assignment for the benefit of its creditors generally or has a liquidator or a receiver appointed over a substantial part of its business or assets or commences to be wound up (other than for the purposes of a solvent amalgamation or reconstruction) or (ii) any other circumstances arise in any jurisdiction which entitle a Court or a creditor to appoint a liquidator, receiver, administrative receiver or administrator or equivalent officer or make a winding up order in relation to such Party.

5.4 Effect of Termination. Upon termination of this Agreement, all Schedules shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Blackboard all amounts due and payable hereunder. Each Party: (i) will immediately cease any use of the other Party's Confidential Information, (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; 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. Without limiting the foregoing, upon termination of any Schedule (including upon termination of this Agreement in its entirety), the provisions of such Schedule regarding the effect of such Schedule's termination shall also apply.

5.5 Survival. The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability accrued hereunder prior to or subsequent to such termination, nor affect or impair the rights of either Party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided in this Agreement. Without limiting the foregoing, the provisions of Sections 1, 2, 4, 5.4, 5.5, 6, 7, 8 and 9 of these Master Terms shall survive the termination of this Agreement for any reason.

6. FEES; EXPENSES

6.1 Fees; Payments. In consideration for Blackboard's performance under this Agreement, Customer agrees to pay Blackboard all fees required by the Schedules, as applicable, which fees will be due in accordance with the provisions of the relevant Schedules, but in no event later than thirty (30) days after the date of an invoice from Blackboard. Blackboard expressly reserves the right to change the fees payable under any Schedule with respect to any renewal of such Schedule upon expiration of its then-current term. Customer will pay all fees in U.S. dollars. Payments shall be sent to the address indicated on the invoice. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated.

6.2 Late Fees. Blackboard may charge interest on any overdue amounts at the lower of: (i) the highest permissible rate or (ii) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment.

6.3 Audit. For the sole purpose of ensuring compliance with this Agreement, Blackboard shall have the right, at its expense, to audit Customer's use of the Software upon not less than seven (7) days' advance notice. Any such audit shall be during Customer's normal business hours and shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, Blackboard may conduct such audits on a quarterly basis until such audits confirm that the relevant breach has been cured. The cost of any such audit shall be borne by Blackboard unless the audit reveals that Customer has underpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case Customer shall, in addition, reimburse to Blackboard the reasonable costs of conducting the audit.

6.4 Taxes. The fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any Software or Equipment or the performance of Services by Blackboard to Customer. Customer will be responsible for payment of such Taxes at point of sale. If Customer is exempt from any such Taxes, then such Taxes shall not be charged to Customer upon Blackboard's receipt of a copy of documentation acceptable to Blackboard that satisfies the requirements of the relevant tax authority to exempt such fees from such Tax (such as Customer's tax exemption certificate or number). All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law, regulation, or rule then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, timely pay the required amount to the relevant tax authority, provide Blackboard with an official receipt, certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard the amount to which Blackboard is otherwise entitled under this Agreement.

less the amount required to be deducted or withheld. In the event, and to the extent, that Blackboard is unable to claim an income tax credit for the full amount deducted or withheld (the "Un-recouped Withholding"), Customer shall pay Blackboard, within thirty (30) days following receipt of an invoice from Blackboard, the Un-recouped Withholding.

6.5 Expenses. Except as provided in these Master Terms or any Schedule, each party will be responsible for its own expenses incurred in rendering performance under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. In addition, if Blackboard is required by applicable law, legal process or government action or for a Customer audit to produce information, files, documents or personnel as witnesses with respect to this Agreement or the products or services provided to Customer by Blackboard, Customer shall reimburse Blackboard for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless Blackboard is a party to the proceeding or the subject of the investigation.

6.6 Purchase Orders. Customer agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Blackboard, it will timely issue such purchase order and inform Blackboard of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations under this Agreement, including payment of amounts owed to Blackboard.

7. DISCLAIMERS AND REMEDIES. THE FOLLOWING PARAGRAPHS OF THIS SECTION 7 ARE IMPORTANT LEGAL LANGUAGE. PLEASE READ THESE PARAGRAPHS CAREFULLY, AS THEY LIMIT BLACKBOARD'S LIABILITY TO CUSTOMER.

7.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED SCHEDULE(S) (A) THE SOFTWARE, EQUIPMENT AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS," TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; (B) NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE.

7.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL BLACKBOARD OR ITS LICENSORS BE LIABLE TO CUSTOMER 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 BLACKBOARD 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). IN NO EVENT SHALL BLACKBOARD'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, EQUIPMENT AND/OR SERVICE WITH RESPECT TO WHICH THE RELEVANT

CLAIM AROSE DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.3 Liability Not Excluded. Nothing in this Section 7 excludes or limits the liability of Blackboard to the Customer for death or personal injury caused by the negligence of Blackboard or any other liability which cannot be excluded by law.

7.4 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. INFRINGEMENT

8.1 Blackboard Infringement Obligations. If any third party brings a claim against Customer alleging that the use of the Blackboard-manufactured Software or Equipment authorized under this Agreement infringes: (1) a U.S. or European patent issued prior to the Effective Date; or (2) a copyright under applicable law of any jurisdiction Customer must promptly notify Blackboard in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that Customer has promptly fulfilled all of the foregoing obligations and is not in material breach of the Agreement, Blackboard shall at its own expense and option: (i) indemnify, defend, and settle such claim; (ii) procure Customer the right to use the Software or Equipment; (iii) modify or replace the Software or Equipment to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event that Blackboard exercises option (i) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Blackboard will keep Customer informed of, and will consult with any independent legal advisors appointed by Customer at Customer's own expense regarding the progress of such defense.

8.2 Exceptions. Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement or violation of applicable privacy or publicity laws based upon: (i) any use of the Software or Equipment in a manner other than as specified by Blackboard; (ii) any combination of the Software or Equipment with other products, equipment, devices, software, systems or data not manufactured by Blackboard (including, without limitation, any software produced by Customer for use with the Software) to the extent such claim is directed against such combination; (iii) the Customer Content, or the use of the Customer Content; or (iv) any modifications or customization of the Software or Equipment by any person other than Blackboard (any of the foregoing, separately and collectively, "Customer Matters").

8.3 Customer Infringement Obligations. Customer shall, at its own expense, indemnify and, at Blackboard's option, defend Blackboard against any losses, damages or expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, suit or proceeding brought by a third party against Blackboard arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter (any of the foregoing indemnifiable matters, each a "Blackboard Claim"), provided that Customer will not settle any Blackboard Claim unless such settlement completely and forever releases Blackboard with respect thereto or unless Blackboard provides its prior written consent to such settlement. Blackboard agrees (i) to provide Customer with prompt written notice of any Blackboard Claim and (ii) to provide such assistance as Customer may reasonably request, at Customer's expense, in order to settle or defend any such Blackboard Claim.

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

9. MISCELLANEOUS MATTERS

9.1 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (i) to have been modified and limited

(or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and (ii) to give effect to the intent of the Parties (including, without limitation, with respect to the economic effect of the Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

9.2. Conflict Resolution. Except with respect to controversies or claims regarding either Party's Confidential Information or proprietary rights under this Agreement, in the event any controversy or claim arises in connection with any provision of this Agreement, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either Party may seek the remedies available to such Party under law. Notwithstanding the foregoing, nothing in this Section 9.2 will be construed to limit either Party's rights under Sections 5 and 9.6.

9.3 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of New York without reference to its conflicts of law provisions, and each Party irrevocably submits to the non-exclusive jurisdiction of the courts in or for the District of Columbia. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

9.4 Modification and Waiver. No modification, amendment, supplement, or other change to this Agreement, including, without limitation, changes to any Schedule will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the Party against whom enforcement thereof is sought. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving Party to enforce any other provision or right herein.

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

9.6 Remedies. The Parties agree that any breach of this Agreement would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 5, 7 and 8. If any legal action is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

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

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

import license or other approval or authorization of any government authority.

9.9 U.S. Government Users. The following applies to any end user that is a U.S. Government entity. Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2 101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20011 All rights not specifically granted in this Agreement are reserved by Blackboard.

9.10 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the express, prior, written consent of Blackboard and except in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.

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

9.12 Employment. Customer hereby agrees that during the Term, Customer will not, except with prior written approval of Blackboard, directly or indirectly hire (including hiring as an independent contractor) or attempt to solicit for hire, or encourage to end their relationship with Blackboard, any persons who are employed by Blackboard or have been employed by Blackboard at any time within one year preceding such attempts to hire or solicit for hire. For purposes of this Agreement, "Blackboard" includes Blackboard Inc. and its subsidiaries.

9.13 Entire Agreement. This Agreement and Exhibit(s), constitutes the entire, full and complete Agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. This means that Customer may not and should not rely on any sales or marketing materials provided to it by Blackboard. Blackboard's only obligations to Customer related to the subject matter of this Agreement are set forth in this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall exclude or restrict the liability of either party arising out of fraud or fraudulent misrepresentation. This Agreement, and any Schedule thereto, may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Facsimile signatures will be considered original signatures.

END OF MASTER TERMS

**SOFTWARE SCHEDULE
BLACKBOARD LEARN™ SOFTWARE SCHEDULE**

This Blackboard Learn™ Software Schedule ("Schedule") is made as of the last date indicated below, by and between Blackboard and Luna Community College ("Customer") and is an addendum to the Blackboard License And Services Agreement between Blackboard and Customer, including the Master Terms, the applicable Pricing Summary and other Schedules incorporated therein (collectively, the "Agreement"). Capitalized terms used in this Schedule that are not otherwise defined in this Schedule shall have the meaning set forth in the Master Terms. In consideration of the foregoing premises, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

I. ADDITIONAL DEFINITIONS

- 1.1 **"Blackboard Learn™ Software"** consists of the following packages, each of which is licensed separately:
(a) "Blackboard Learn™ for Course Delivery" consisting of the course delivery module.
(b) "Blackboard Learn™ for Community Engagement" consisting of the course delivery and community engagement modules.
(c) "Blackboard Learn™ for Academic Content" consisting of the course delivery and content management modules.
(d) "Blackboard Learn™ for Academic Collaboration" consisting of the course delivery, community engagement, and content management modules.
(e) "Blackboard Learn™ for Outcomes Assessment" consisting of outcomes assessment.
- 1.2 **"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 API, and/or later incorporated into Updates or Upgrades
- 1.3 **"Authorized End User"** means any individual(s) who is/are:
(a) a student resident in a degree- or certificate-granting program of Customer;
(b) a prospective student, alumni, consortia student registered to take one of Customer's regularly offered courses of instruction;
(c) an employee, trustee or collaborating researcher of Customer;
(d) a Customer employee (solely to the extent any such employee use the Software for Customer's internal training purposes);
(e) non-enrolled students participating in non-revenue generating, non-credit bearing courses or community outreach programs;
(f) not students, faculty or employees of the Customer participating in academic or research collaboration sponsored by Customer;
(g) accessing the Software through guest access accounts or "guest" role designations;
(h) financial, technical, or academic auditor; or
(i) representative of certification bodies.
- Customer's Authorized Users will not exceed Customer's FTE listed on the Pricing Summary. For purposes of clarification, the Authorized End Users defined in subsection c-i will not count toward the ten (10%) percent excess as outlined in Section 2.7, Expansion of Licensed Use, below.
- 1.4 **"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.
- 1.5 **"Designated Server Site"** means the physical location where the Software will be installed, as identified in the Pricing Summary
- 1.6 **"Pricing Summary"** means the pricing attributable to the software and services provided pursuant to the Schedule as set forth on the cover page to the Agreement.
- 1.7 **"Software"** means, for purposes of this Schedule only, the Blackboard Learn proprietary software, as identified in the Pricing Summary, which contains one or more of the following packages: Blackboard Learn for Course Delivery, Blackboard Learn for Community Engagement, Blackboard Learn for Academic Content, Blackboard Learn for Academic Collaboration, and Blackboard Learn for Outcomes Assessment, including Updates, Upgrades, Corrections, and Application Packs thereto. Each package is licensed separately.
- 1.8 **"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.
- 1.9 **"Supported Interface"** means 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 Documentation
- 1.10 **"Third-Party Software"** means the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software
- 1.11 **"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 solution, including Application Packs.
- 1.12 **"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 solution.

II. LICENSE

- 2.1 **Grant of License.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicenseable right and license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Customer'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 Customer Content to Customer's Authorized End Users (unless otherwise expressly stated in the special provisions of the Pricing Summary) 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 (b) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained nodes. Customer 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 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 or, if applicable, any special provisions set forth on the Pricing Summary. 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 or Documentation, 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 (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. 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 to anyone other than Authorized End Users without Blackboard's prior written consent, provided, however, that Customer may provide access to *Blackboard Building Blocks* partners that are subject to a valid Blackboard developer's license agreement for the limited purpose of installing, maintaining and supporting their *Blackboard Building Blocks* applications. Customer shall ensure that its use of the Software 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 Further Restrictions. Customer 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. 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.

2.4 Interoperability. To the extent permitted by the specifications as outlined in the Documentation for the Software at <http://behind.blackboard.com>, 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 2.4 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.

2.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties, which shall constitute "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 Customer's own instructional activities.

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 or 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.

2.7 Expansion of Licensed Use. Blackboard Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE (as defined below) of licensing institution PLUS the number of Users in outside programs. Pricing is based on Customer's FTE. Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below and Blackboard will assess additional license fees for increases in Customer's FTE. Blackboard's User Bands are as follows:

BLACKBOARD LEARN™ SOFTWARE:

Blackboard Band

1-2000
2,001 to 4,000
4,001 to 8,000
8,001 to 15,000
15,001 to 25,000
25,001 to 50,000

ADDITIONAL bands of 25,000 will be priced separately

"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 Customer 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 Blackboard 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 Customer. Notwithstanding the foregoing, the Authorized End Users defined in subsection e-i of Section 1.3 will not count toward the ten (10%) percent excess as outlined herein.

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

2.8 Ordering Procedure. Once the Agreement has been signed, should Customer desire to license additional Software solutions or Equipment from Blackboard, Customer may do so by providing a purchase order to Blackboard. The request for purchase/upgrade shall be made to Blackboard, via fax at 202-318-2619, pursuant to the Agreement and shall include:

- (a) A purchase order
- (b) Description of the product(s) and/or solution(s) desired
- (c) Billing contact information
- (d) Technical Contact Information

(c) Any information relevant and deemed necessary by Blackboard for the license of the Software.

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, and 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 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. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated. 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 (i) when executed by authorized representatives of both Parties (the "Schedule Effective Date"), or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue in effect for a period of one (1) year (the "Initial Term"). Thereafter, the Schedule will renew automatically upon the conclusion of each twelve (12) month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as applicable. 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.

6. LIMITED SOFTWARE WARRANTY

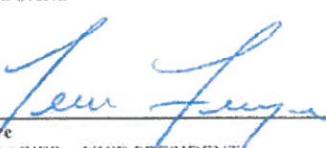
Blackboard warrants, solely for the benefit of Customer, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to the applicable Documentation for a period of ninety (90) days after the initial Available Date, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Customer is not in material breach of this Agreement; (iii) Customer has installed any Corrections, Upgrades and Updates made available to Customer; and (iv) Customer has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. CUSTOMER ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS REPAIR OR REPLACEMENT (AT BLACKBOARD'S OPTION) OF THE RELEVANT SOFTWARE IN A TIMELY MANNER.

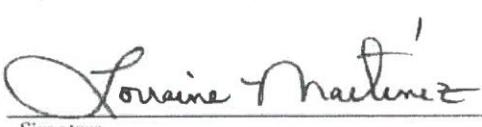
7. SUPPORT AND MAINTENANCE

Product Support. Customer is eligible to receive Product Support from Blackboard as described in the Blackboard Client Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/supportsguide.pdf>, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link, such posting to constitute effective notice of changes.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date written below

LUNA COMMUNITY COLLEGE


Signature
TESS FRAZIER - VICE PRESIDENT
Print Name and Title
Date: 5/31/12


Signature
LORRAINE MARTINEZ, Title Director
Print Name and Title
Date: 5-31-12

BLACKBOARD MANAGED HOSTING SCHEDULE

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

1. ADDITIONAL DEFINITIONS

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

2. BLACKBOARD RESPONSIBILITIES

- 2.1 **Provision of Access to Hosted Software**. As soon as commercially practicable after the Schedule Effective Date, Blackboard will make access to the features and functions of the Hosted Software available to Customer's Authorized End Users. Blackboard will specify to Customer procedures according to which Customer and/or its Authorized End Users may establish and obtain such access.
- 2.2 **Responsibility for Hosting**. Blackboard shall install and operate the Hosted Software on computer servers and systems under its direct or indirect control. Blackboard will also install and store the Customer Content for purposes of access by the Hosted Software, provided that nothing in this Managed Hosting Schedule shall be construed to require Blackboard to provide for, or bear any responsibility with respect to, the design, development, operation or maintenance of any Web site owned or operated by Customer, or with respect to any telecommunications or computer network hardware required by Customer to provide access from the Internet to any such Customer Web site. Nothing in this Managed Hosting Schedule shall be construed to grant to Customer a license to access and/or use Blackboard's systems except for purposes of accessing and using the Hosted Software and except pursuant to the procedures and protocols specified by Blackboard pursuant to Section 2.1. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Schedule, Customer grants to Blackboard a royalty-free, non-exclusive, worldwide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the Hosted Software, modify and create derivative works from the Customer Content. As between Customer and Blackboard, Customer retains ownership of the Customer Content. Blackboard shall maintain the confidentiality of all Customer Content that is stored on its servers in accordance with Section 4 of the Master Terms.
- 2.3 **Availability and Operational Specifications**. Blackboard will undertake commercially reasonable measures to ensure that, from and after the Available Date and for so long as this Managed Hosting Schedule remains in effect, the Managed Hosting Services provided pursuant to this Managed Hosting Schedule will: (i) be available and accessible as contemplated in this Managed Hosting Schedule twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Exhibit B, and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit B. Exhibit B may be modified from time to time, upon notice to Customer. Notwithstanding the foregoing, Blackboard will have no liability under this Section 2.3 to the extent any nonconformity with the standards set forth in Exhibit B arises, in whole or in part, from: (i) any use of the Hosted Software by Customer or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Customer or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to Section 2.1 of this Managed Hosting Schedule; or (iii) any causes beyond the control of Blackboard or which are not reasonably foreseeable to Blackboard, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. It is agreed and acknowledged that the service credits referred to in Exhibit B shall be Customer's sole remedy, and Blackboard's sole obligation, with respect to failures of the Managed Hosting Services to meet the technical specifications and performance parameters set forth in Exhibit B. Blackboard does not warrant or guarantee the Managed Hosting Services except as expressly stated in this Managed Hosting Schedule.
- 2.4 **Data Restoration Policy**. Blackboard will back-up and archive Customer Content at a secure location for the retention period(s) specified in Exhibit B. In the event that Customer requests recovery of any lost or damaged Customer Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Customer), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Customer has provided to Blackboard all information necessary to enable Blackboard to perform such services. Blackboard shall perform up to four (4) data restorations at no charge to Customer; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the Managed Hosting Services, Customer agrees to pay Blackboard its then-standard applicable rates for such restoration services.
- 2.5 **Data Archiving and Cleanup Policy**. Blackboard will undertake commercially reasonable efforts to accommodate Customer's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Customer's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a database query. Blackboard will make reasonable efforts to perform up to four (4) data archiving and cleanup related tickets per Customer per year (the tasks can be grouped together as one support ticket to be addressed at once per semester or per quarter). After four (4) free services per year, Blackboard reserves the right to charge a flat fee of \$1,000 per ticket created for data archiving and cleanup related tasks. If Customer requires Blackboard to batch archive data

on to a hard-drive and ship to Customer. Blackboard will charge \$300 for the cost of each of 320 GB hard-drive required. The hard-drive can be shipped back to Managed Hosting at the time of next task for reuse.

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

2.7 Additional Managed Hosting Services. In the event that Customer desires to receive Managed Hosting Services in addition to the particular services specified in the table above, including, by way of example, incremental storage capacity and/or additional bandwidth capacity and/or higher Active User Capacity. Customer may submit a written and executed purchase order requesting such additional Managed Hosting Services. Subject to Customer's payment of all applicable fees required by Section 4, and further subject to all applicable provisions of this Agreement, including, without limitation, the Master Terms and this Managed Hosting Schedule, Blackboard agrees to make such additional Managed Hosting Services available to Customer for so long as this Managed Hosting Schedule remains in effect after acceptance of such purchase order. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Customer with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

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

3. CUSTOMER RESPONSIBILITIES.

3.1 General Usage Limitations. Customer acknowledges that use and operation of the Hosted Software by Customer and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding the Software Schedule, for so long as this Managed Hosting Schedule remains in effect, Customer may not install, host or operate the Hosted Software, nor may Customer or its Authorized End Users otherwise use the Hosted Software, except as hosted and made available by Blackboard under this Agreement. In the event that Customer has installed the Hosted Software upon any computer server(s) prior to the Schedule Effective Date (as defined below), Customer agrees promptly to remove the Hosted Software from such computer server(s). Customer agrees that it may not cause or permit any third parties to access the Hosted Software other than Authorized End Users, nor may Authorized End Users in excess of the then-current Active User Capacity access and use the Hosted Software at any time, provided that the Active User Capacity may be modified in accordance with Section 2.8. Customer shall refrain from, and shall ensure that Authorized End Users refrain from, using the Managed Hosting Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Managed Hosting Services or the resources available through the Managed Hosting Services. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Customer warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

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

4. FEES

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

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

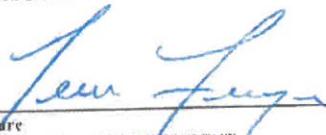
4.3 With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Managed Hosting Schedule, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Except as otherwise required by this paragraph, all amounts payable under this Managed Hosting Schedule shall be subject to applicable provisions of the Master Terms.

5. TERM

This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of one (1) year (the "Initial Term") or otherwise specified in Exhibit A. Thereafter, the Managed Hosting Schedule will renew automatically upon the conclusion of each twelve month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), at Blackboard's then current pricing for Customer's then current usage level, unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Renewal Term or then-current Renewal Term, as applicable. Upon termination of this Managed Hosting Schedule, all licenses granted under this Managed Hosting Schedule shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Hosted Software under this Managed Hosting Schedule, (ii) pay to Blackboard all amounts due and payable under this Managed Hosting Schedule, and (iii) return all Documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

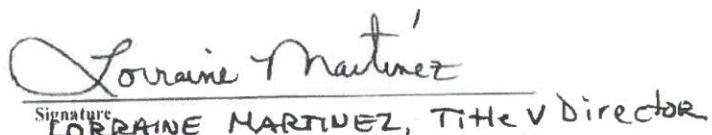
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof

BLACKBOARD



Signature
TESS FRAZIER – VICE PRESIDENT
Print Name and Title
Date:

LUNA COMMUNITY COLLEGE



Signature
LORRAINE MARTINEZ, Title v Director
Print Name and Title
Date: 5-31-12

EXHIBIT A
MANAGED HOSTING SPECIFICATIONS

+ Blackboard Learn™ for Academic Collaboration:

- Set Up Fee for each solution includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Initial Term Annual Fee for each solution includes service for up to 2,500 Active Users* and 100 GB of storage and 2 Mbps of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service
- Additional storage and bandwidth for each solution are separately charged
- Additional Service Units, which include additional Active Users*, additional bandwidth, and additional storage are separately charged

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

Data Restoration Policy – per restore fees are separately charged per chargeable restore incident

Additional Storage and Bandwidth Annual Fees are separately charged

*** Active User defined in section 1.1**

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

NOTE: CUSTOMER ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT B CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE MANAGED HOSTING SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE MASTER TERMS, AS APPLICABLE.

SERVICE LEVEL

Security:

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

Power:

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

Network:

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

Startup:

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

Initial Access Date:

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

Availability/Service Credit:

The Hosted Software is accessible 24/7, with a 99.7% targeted uptime. 99.7% uptime means that for 99.7% of the time during any calendar month, the Managed Hosting Services shall be available. Unavailability is a condition in which there is unavailability of the Hosted Software due to hardware failure OR sustained latency within the Blackboard hosting facilities where the Hosted Software is inaccessible due to a failure of Blackboard to provide Managed Hosting Services during such period. Unavailability does not include packet loss, latency or network unavailability due to scheduled maintenance, or inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the control of Blackboard. In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. In order to be eligible, Customer must be in compliance with the Agreement including the contracted Active User Capacity and storage quota. The aggregate maximum number of service credits to be issued by Blackboard to Customer for any and all downtime periods and performance problems during any given calendar month shall not exceed one month of service. Service credits are issued as followed and shall be Customer's sole remedy for failure to meet the foregoing service levels:

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

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

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

MANAGED HOSTING ENHANCED SLA

Customer is eligible for the enhanced service levels under Blackboard's enhanced service level program. The current terms of the program are described below and are subject to change by written notice to Customer 30 days in advance of any change.

1. The Availability/Service Credit in this exhibit is automatically adjusted to be calculated against a 99.9% target uptime provided that Customer meets all of the following strict requirements:
 - a. Customer has Platinum Level Service (on Blackboard Platinum Package) or Diamond Level Service (which requires having annual subscription to Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services);
 - b. The production environment of the Hosted Software is on Blackboard Learn Course Delivery 9.1 or later version and is at maximum only two application pack versions older than the then-current Generally Available version;
 - c. Customer's usage is within contracted levels for Active User Capacity and storage;
 - d. Any Building Blocks deployed on the production environment of the Hosted Software are compliant with the standard Managed Hosting Building Blocks Policy;
 - e. Any integration between the Hosted Software and Customer's student information system (SIS) was completed by Blackboard Consulting and Customer is currently subscribed to Integration and Customization Maintenance (ICM) supporting such SIS integration.
2. Alternatively, the Availability/Service Credit in this exhibit is automatically adjusted to be calculated against a 99.8% target uptime provided that Customer meets all of the following strict requirements:
 - a. Customer has Gold Level Service (subscription to Production Environment hosting other than Basic licenses, Foundations program, SchoolCentral or Prosites hosting services) or Platinum Level Service (on Blackboard Platinum Package) or Diamond Level Service (which requires having subscription to annual Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services);
 - b. Hosted Software on production environment is on Learn Course Delivery 9.1 or later version and is at maximum only two application pack versions older than the then-current Generally Available version;
 - c. Customer's usage is within contracted levels for Active User Capacity and storage.
3. If the enhanced service levels in Sections 1 or 2 above do not apply, then provided that Customer's usage is within contracted levels for Active User Capacity and storage, 99.7% targeted uptime for any version of the Hosted Software which is then currently supported under Blackboard's support guidelines.
4. The enhanced service levels described in Sections 1 and 2 of this Managed Hosting Enhanced SLA clause apply only to production environments and do not apply to staging environments.
5. For Customers that do not have Platinum Level Service (Platinum Package) or Diamond Level Service (which requires annual having subscription to Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services), the Availability/Service Credit does not apply to the 7 calendar day period following then installation of an application pack, update or upgrade on the production environment because of the lack of Blackboard's full control over the upgrade project management.

Host Latency Service Credit

The Hosted service provides a monthly average of two (2) seconds or better Host Latency. "Host Latency" is defined as the time period beginning when the first packet of data transmitted from Customer reaches the external firewall of the Blackboard datacenter environment and ending when the first packet of data responding to such transmission leaves the external firewall of the Blackboard datacenter environment. Latency measurements will not be measured during scheduled Maintenance windows. Host Latency excludes any latency incurred on the customer site or when traversing the internet between the customer site and the Blackboard datacenter environment. Upon Customer's request, Blackboard will provide a report generated by a commercial tool showing Host Latency for the preceding month. Failure to meet the Host Latency service level occurs when, during any calendar month, the average Host Latency for such calendar month is greater than two seconds. Service credits for failure to meet the Host Latency service level are as follows:

Service credits for failure to meet the Host Latency service level are as follows:

Time of Latency (per calendar month)	Service Credit
3-4 Seconds Monthly Average Host Latency	2 days of service fees credited (i.e. 1/15* monthly fees)
4-5 Seconds Monthly Average Host Latency	4 days of service fees credited (i.e. 2/15 monthly fees)
More than 5 Seconds Monthly Average Host Latency	8 days of services fees credited (i.e. 4/15* monthly fees)

In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. In order to be eligible, Customer must be in compliance with the Agreement including the contracted Active User Capacity and storage quota at the time the service credit request is made.

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 Customer's designated technical contact via email. This notice will include the reason for the system outage and estimated time for restoration of Managed Hosting Services if Blackboard knows this information when it gives this notice.

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

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

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

MONITORING AND PERFORMANCE

Blackboard will make network performance reports available to the customer 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 Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Customer with the following report:

Specific System Outage Details:

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

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

Ongoing:

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

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

DATA CENTER SPECIFICATIONS

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

Environment:

- o The data center is designed to maintain a constant temperature of 68½°F, plus or minus 2½°F, with humidity of 45%.

Server Setup:

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

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

- The Customer has full access to the Administrator Menu and is responsible for the following:
 - Creating/Removing Users including Students, Teachers, System Administrators, etc
 - Modifying all User Information
 - Creating/Removing all Course Web Sites
 - Building and Managing all Course Web Sites
 - Customization to the Site
 - System Usage Tracking Reports
 - Deciding which product features will be available or unavailable, how much functionality instructors will be allowed, etc.

- Choosing Icon Themes
- All changes to the Blackboard-named URL. All Blackboard Customers are assigned a URL that reads <http://institutionname.blackboard.com>. The institution is allowed to pick the “institutionname”. However, any re-directs to other URLs are the responsibility of the Customer and not Blackboard. For example, if the Customer chooses the URL <http://institutionname.org>, the institution is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record. Any IP addresses are allocated by Blackboard to Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

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

BLACKBOARD PROFESSIONAL SERVICES AGREEMENT

This Blackboard Professional Services Agreement ("PSA" or "Agreement") by and between Blackboard Inc. ("Blackboard") and Luna Community College ("Customer") is effective as of the last date signed below ("PSA Effective Date").

TERMS AND CONDITIONS

1. PROFESSIONAL SERVICES.

1.1 Professional Services. Blackboard shall use commercially reasonable efforts to perform the Professional Services as set forth in an SOW. Blackboard shall perform the Professional Services in a professional manner in accordance with industry standards.

1.2 Issuance of SOW and Modifications. Customer may, at any time during the term of this PSA, request that Blackboard (a) provide it with new Professional Services or (b) modify the provision of Professional Services contained in any pre-existing SOW(s) (either (a) or (b) the "Proposed Professional Services") by delivering to Blackboard a written request describing the Proposed Professional Services. Blackboard may prepare an additional SOW or modified SOW as an addendum to this PSA upon receipt of a request for Proposed Professional Services, describing the services requested, its proposed fees, costs and expenses payable by the Customer to Blackboard in connection with the performance of such services and any other terms and conditions as Blackboard reasonably deems necessary. Customer, within five (5) business days after receipt of the proposed SOW, shall notify Blackboard of its acceptance of such addendum in which case the parties shall enter into a binding SOW. Until Blackboard's acceptance, Blackboard shall have no obligation to perform the Proposed Professional Services. Additional SOWs, regardless of whether they relate to the same subject matter as the initial SOW(s), shall become effective upon execution by authorized representatives of both parties.

1.3 Execution of SOWs. Each SOW (including agreed modifications to pre-existing SOWs) must be signed by a duly authorized representative of each party or must be approved by a duly authorized representative of each party in an electronic mail which clearly identifies the SOW in respect of which approval is being given before it becomes part of this PSA and thereby becomes binding on the parties.

2. PERSONNEL.

2.1 Suitability. Blackboard shall assign employees and subcontractors with qualifications suitable for the work described in a SOW. Blackboard may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

2.2 Security. While on Customer's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer 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 Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and shall have no effect.

2.3 Nonsolicitation. Throughout the term of this PSA, and for a period of 12 months thereafter, Customer agrees not to solicit or retain the services of any person who is an employee of Blackboard and who was engaged in rendering Professional Services. The parties agree that the restrictions set forth in this Section 2.3 shall not apply to solicitations directed at the public in general or to the retention of the services of an individual as a consequence of that individual responding to such a public solicitation.

3. FEES AND PAYMENT.

3.1 Payment. Unless otherwise stated in a Statement of Work, Blackboard will bill clients monthly for Professional Services, as delivered. Unless otherwise stated in a SOW, payment for performance of Professional Services is due when and as performance is rendered. Customer will promptly pay Blackboard upon receipt of the applicable invoice, which fees shall be non-cancelable and non-refundable. Invoices not paid within thirty (30) days of the date of issue will accrue interest at the rate of one and one-half percent (1.5%) per month

(prorated for partial periods) or the maximum rate permitted by applicable law, if less. Customer will reimburse Blackboard for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Customer.

3.2 Expenses. Customer will reimburse Blackboard for (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of the Professional Services, (ii) international telephone charges (if applicable), and (iii) any other expenses contemplated in the applicable SOW. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this PSA and each applicable SOW, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Blackboard does not maintain or provide original receipts for any expense line items under \$500.

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

3.4 Records. Blackboard will keep reasonable books of account in support of charges under this PSA. All such records will be open for review or audit by Customer at reasonable times and upon reasonable notice solely to support charges based on expenses, for time or materials or similar invoice items. An audit of such records may be made only at Customer's expense, no more than once a year, by an independent firm of accountants as may be reasonably acceptable to Blackboard.

4. PROPRIETARY RIGHTS.

4.1 Ownership of Customer Property. As between Customer and Blackboard, Customer Property, together with all Derivative Works therefrom, are and shall, subject to the provisions of Section 4.5 below, remain the sole and exclusive property of Customer, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein.

4.2 Ownership of Blackboard Property and Software. As between Customer and Blackboard, Blackboard Property and Software, and all other content not deemed to be Customer Property, together with any and all Derivative Works therefrom, are and shall remain the sole and exclusive property of Blackboard 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 PSA shall be construed to grant Customer any ownership right in Blackboard Software, Blackboard Property or any other software owned or licensed by Blackboard.

4.3 Vesting of Rights. To the extent, if any, that ownership of any of the Blackboard Property or Software does not automatically vest in Blackboard by virtue of this PSA, Customer hereby transfers and assigns to Blackboard all rights, title interest and goodwill which Customer may have in and to Blackboard Property. Without prejudice to the generality of the foregoing, in the event that ownership of any Blackboard Property vests in Customer for any reason, Customer

agrees to execute all such instruments and do all such things as Blackboard may require of it to transfer or assign such ownership to Blackboard.

4.4 Non-exclusivity. Customer acknowledges that it has no rights of exclusivity as to any of the services to be provided by Blackboard under this PSA, and that Blackboard shall have the right to provide such services to any other Blackboard Customer which are the same or similar to the services provided to Customer, and to use or otherwise exploit any Blackboard Property, Software, in providing such services.

4.5 Blackboard Use of Customer Property. During the term of this PSA, Customer shall grant and hereby grants to Blackboard, solely to perform its obligations hereunder, a non-exclusive, royalty-free license (a) to modify, arrange, combine, copy, store, transmit, distribute, and otherwise use the Customer Property and each element thereof generally and in combination with other elements of the Customer Property and the Blackboard Property; and (b) to make archive or backup copies and other copies of the Customer Property. Customer hereby grants to Blackboard an unrestricted, irrevocable (subject to a material breach), non-exclusive, perpetual, worldwide license to use the Customer Property during the Term of this PSA, for the sole purpose of performing its obligations hereunder. Nothing in this PSA shall be construed to grant Blackboard any ownership right in, or license to, the Customer Property, except as provided in this Section 4.5 of this PSA. Customer warrants that Customer has all requisite authority under applicable laws to provide Blackboard with access and license to the Customer Property as provided in this Section 4.5.

4.6 Customer Use of Blackboard Property. Blackboard hereby grants to Customer, a non-exclusive, nontransferable, worldwide, royalty-free license to use the Blackboard Property solely for the purpose of operating any Blackboard Software separately licensed for the term of the applicable software license agreement.

5. CONFIDENTIALITY.

5.1 Nondisclosure and Nonuse. Each Party will keep the other Party's Confidential Information confidential. Specifically, each Party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information. Each Party receiving Confidential Information further agrees that it will not use such Confidential Information except for the purposes set forth in this Agreement. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances. The receiving party agrees that all Confidential Information furnished to the receiving party by the disclosing party shall remain the exclusive property of the disclosing party.

5.2 Notice. The receiving Party will promptly notify the disclosing Party in the event the receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing Party may reasonably request, at the disclosing Party's expense, in any litigation against any third parties to protect the disclosing Party's rights with respect to the Confidential Information.

5.3 Terms of Agreement. Except as otherwise provided by law, neither Party shall disclose the terms of the Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as onerous as those set out in this Section 5 to keep such terms confidential.

5.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 5 will not apply to Confidential Information that (i) is publicly available or in the public

domain at the time disclosed, (ii) is or becomes publicly available or enters the public domain through no fault of the recipient, (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary (a) to comply with the order of a court or competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a Party's rights under this Agreement.

6. TERM; TERMINATION.

6.1 Term. This PSA shall commence on the date of execution and shall continue unless terminated prior to expiration in accordance with Section 6.2 below.

6.2 Termination.

6.2.1 SOWs. Unless otherwise stated in the applicable SOW, the term of each SOW shall last until performance thereunder is completed, except that either party may, at its sole option and for its own convenience, terminate any or all SOWs in effect upon fifteen (15) days prior written notice. Upon such termination, the parties shall inform each other of the extent to which performance has been completed through such date, and collect and deliver all work in process. In the event of termination, the parties agree to wind up their work in a commercially reasonable manner and to preserve and deliver items of value created prior to termination. Blackboard shall be paid forthwith for all work performed and expenses incurred through the date of termination.

6.2.2 Default. Either party may terminate this PSA or a SOW upon a material or continuing breach of this PSA or such SOW by the other party by giving the breaching party thirty (30) days prior written notice of termination, stating the cause therefore, with termination becoming effective at the close of said 30-day term if the breach is not then cured to the satisfaction of the party giving notice. Without limiting the foregoing, either party may terminate this PSA immediately upon written notice to the other party in the event the other party materially breaches the provisions of Section 5.

6.2.3 Termination without cause. In the event that there are no SOWs in effect, either Party may terminate this PSA upon 30 days prior written notice to the other party.

6.2.4 Effect of Termination. In the event of termination or expiration of this PSA, Blackboard shall return all Confidential Information and materials of Customer and Customer shall return any Confidential Information and materials of Blackboard.

6.2.5 Termination for Insolvency. Without prejudice to any other available remedies, either party may terminate this PSA immediately upon written notice if (i) the other party becomes insolvent or makes an arrangement with its creditors generally or has a liquidator or a receiver appointed over a substantial part of its business or assets or commences to be wound up (other than for the purposes of a solvent amalgamation or reconstruction) or (ii) any other circumstances arise in any jurisdiction which entitle a Court or a creditor to appoint a liquidator, receiver, administrative receiver or administrator or equivalent officer or make a winding up order in relation to such party.

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

7. LIMITED WARRANTY; LIMITATION OF LIABILITY.

7.1 Blackboard Warranties. Blackboard represents and warrants that it has the power and authority to enter into and perform its obligations under this PSA.

7.2 Customer Warranties. Customer represents and warrants that it has the power and authority to enter into and perform its obligations under this PSA.

7.3 Disclaimer of Warranties. THE FOLLOWING PARAGRAPHS OF THIS SECTION 7 ARE IMPORTANT LEGAL LANGUAGE. PLEASE READ THESE PARAGRAPHS CAREFULLY AS THEY LIMIT BLACKBOARD'S LIABILITY TO CUSTOMER.

7.4 Disclaimer of Warranty. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7.1:

THE PROFESSIONAL SERVICES UNDER ANY SOW (INCLUDING BLACKBOARD PROPERTY) ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW. BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, UNDERTAKINGS, TERMS AND OBLIGATIONS EITHER MADE EXPRESSLY OR IMPLIED BY STATUTE, COMMON LAW, TRADE USAGE, COURSE OF DEALING OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT THAT ANY WORK CONTEMPLATED BY A STATEMENT OF WORK IS IN RESPECT OF DEVELOPING OR MODIFYING ANY SOFTWARE TO ENABLE A THIRD PARTY SOFTWARE APPLICATION TO INTEGRATE OR INTERFACE WITH BLACKBOARD SOFTWARE, CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT REQUIRED BY LAW, BLACKBOARD MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION (i) ANY WARRANTY OF FITNESS FOR ANY INTENDED PURPOSE OR (ii) ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PERFORMANCE, FUNCTIONALITY OR RELIABILITY OF THE THIRD PARTY SOFTWARE USED IN CONNECTION WITH THE SOFTWARE. NOTWITHSTANDING ANY COMMUNICATIONS OUTSIDE OF THIS AGREEMENT TO THE CONTRARY

7.5 Limitations of Liability. CUSTOMER'S SOLE REMEDY FOR ANY DELAY OR DEFICIENCY IN PERFORMANCE OF ANY PROFESSIONAL SERVICES SHALL BE TERMINATION OF THE APPLICABLE SOW. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLACKBOARD'S TOTAL LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS PSA OR ANY SOW OR OTHERWISE, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO BLACKBOARD FOR THE PARTICULAR SERVICES GIVING RISE TO THE CLAIM FOR DAMAGES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. NEITHER BLACKBOARD NOR ITS SUBCONTRACTORS SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST DATA) ARISING OUT OF THE PROFESSIONAL SERVICES. EVEN IF BLACKBOARD OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THE FOREGOING STATES THE ENTIRE LIABILITY OF BLACKBOARD WITH REGARD TO THIS PSA AND THE PROFESSIONAL SERVICES PROVIDED PURSUANT TO THIS PSA.

7.6 Liability Not Excluded. Nothing in this Section 7 excludes or limits the liability of Blackboard or its licensors or suppliers to the Customer for death or personal injury caused by the negligence of Blackboard, its licensors or its suppliers or any other liability which cannot be excluded by law.

7.7 Essential Basis. The parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this PSA, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this PSA, including, without limitation, the economic terms, would be substantially different.

8. MISCELLANEOUS MATTERS

8.1 Severability. Should any term or provision of this PSA be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (i) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and (ii) to give effect to the intent of the parties (including, without limitation, with respect to the economic effect of the PSA), and the remainder of this PSA (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

8.2 Conflict Resolution. Except with respect to controversies or claims regarding either party's confidential information or proprietary rights under this PSA, in the event any controversy or claim arises in connection with any provision of this PSA, the parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either party may initiate such informal dispute resolution by sending written notice of the dispute of the other party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either party may seek the remedies available to such party under law. Notwithstanding the foregoing, nothing in this Section 8.2 will be construed to limit either party's rights under Sections 6 and 8.7.

8.3 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of New York without reference to its conflicts of law provisions, and each Party irrevocably submits to the non-exclusive jurisdiction of the courts in or for the District of Columbia. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

8.4 Modifications and Waiver. Subject to the provisions of Section 1.3 above, no modification, amendment, supplement, or other change to this PSA will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. No waivers under this PSA will be effective unless expressly set forth in writing and signed by a duly authorized representative of the party against whom enforcement thereof is sought. The failure of either party to insist upon strict performance of any provision of this PSA, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

8.5 Assignment by Customer. No right or obligation of Customer under this PSA may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Blackboard, and any attempt to assign, delegate or otherwise transfer any of Customer's rights or obligations hereunder, without such consent, shall be void.

8.6 Successors and Assigns. Subject to the provisions of Section 8.5 above, this PSA shall bind each party and its permitted successors and assigns.

8.7 Remedies. The Parties agree that any breach of this PSA may cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this PSA, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 6 and 7. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

8.8 Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, or mailed by certified or registered mail, postage prepaid, return receipt requested.

8.9 Force Majeure. Except with regard to payment obligations, neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts

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

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

8.11 Entire Agreement. This PSA including SOW(s) constitutes the entire, full and complete agreement between the Parties concerning the subject matter of this PSA and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this PSA prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. Customer may not and should not rely on any sales or marketing materials provided to it by Blackboard. Blackboard's only obligations to Customer related to the subject matter of this PSA are set forth in this PSA. Notwithstanding the foregoing, nothing in this PSA shall exclude or restrict the liability of either party arising out of fraud or fraudulent misrepresentation.

8.12 Order of Precedence. In the event a conflict arises between these terms in this PSA and the provisions of any Statement of Work, the PSA will govern unless the relevant Statement of Work expressly provides otherwise. No term or provision set forth or cross-referenced in any work order, purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement. This means that the terms and conditions of any work or purchase order or payment documentation will not be binding upon either Party. This PSA, and any Statement of Work, may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Facsimile signatures will be considered original signatures.

9. DEFINITIONS.

9.1 "Affiliate" means any subsidiary, holding company and/or subsidiaries of such holding company as they may change from time to time, "subsidiary" and "holding company" having for these purposes the meaning ascribed to them in Sections 736 and 736A of the Companies Act 1985, as amended.

9.2 "Blackboard" means Blackboard Inc., a Delaware corporation having a principal place of business at 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20001.

9.3 "Blackboard Property" means all materials, including, but not limited to any computer software (in object code and source code form, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML, script, design elements, formulas, documentation, templates, formatting, CGIs, Java scripts, PL/SQL coding, other applications,

content, software or other technology made, conceived, developed or provided by Blackboard or its suppliers under this PSA and any trade secrets, know-how, methodologies and processes related to Blackboard's products or services, all of which shall remain the sole and exclusive property of Blackboard or its suppliers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto.

9.4 "Confidential Information" means any non-public information disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential information will be deemed to include, without limitation, information about a Party's business, vendors, customers, end users, end users' grades or other educational information, end users' financial information, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literal elements, capabilities and functionality, source code and object code, as well as research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices, computer software programs and other information licensed or otherwise disclosed to a Party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known.

9.5 "Derivative Work" means a work that is based upon one or more preexisting works, that, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a preexisting work.

9.6 "Customer Property" means all graphic user interface, text, images, music, designs, products, computer programs, drawings, content, end user information, documentation, notes, development aids, technical documentation, information and other materials provided by Customer to Blackboard for use in connection with the performance of Professional Services and operation of the Software and Blackboard Property, all of which shall remain the sole and exclusive property of Customer, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto.

9.7 "Materials" means all memoranda, notes, records, drawings, manuals, disks, or other documents and media (including all copies, extracts, and summaries thereof) of a party.

9.8 "Professional Services" means those professional services described in each applicable SOW.

9.9 "SOW" means a written statement of work or other instrument in the form attached hereto as an addendum.

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

BLACKBOARD

LUNA COMMUNITY COLLEGE

Signature
TESS FRAZIER - VICE PRESIDENT

Print Name and Title 5/31/12

Date:

Signature
LORRAINE MARTINEZ, Title V Director

Print Name and Title

5-31-12

Date:

**EXHIBIT TO
BLACKBOARD PROFESSIONAL SERVICES AGREEMENT**

STATEMENT OF WORK

This Work Statement is a preliminary expectation of both Blackboard and Luna Community College ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated representatives of each Blackboard and Customer. The work described below is intended to be performed on a fixed price basis.

This Statement of Work ("SOW") is an attachment to the Professional Services Agreement ("PSA") between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

1. SCOPE OF SERVICES

Integration and Customization Maintenance

Blackboard Consulting will provide Luna Community College ("Customer") with Integration and Customization Maintenance ("ICM") of the existing SIS integration as described in this agreement. Blackboard Consulting offers an annual subscription-based maintenance program for each consulting project involving the integration or customization of Blackboard products. The ICM service provides customers with Blackboard Consulting assistance, for named consulting projects, to support planned Blackboard product upgrades or ad-hoc customer questions. In either scenario, the customer initiates the process by contacting their Technical Support Manager ("TSM") and creating a support case for the maintenance event. More specifically, ICM services will provide:

- Facilitated Blackboard Consulting support and development assistance, for SIS Integration (including the SIS Feed Converter Tool) in the maintenance of minor "dot release" system upgrades and "Hotfixes."
- Continued operation of the for SIS Integration (including the SIS Feed Converter Tool) when the customer chooses to upgrade the Blackboard's Academic Suite, including any of its components. In addition, this service will provide coverage when the customer upgrades to the latest Application Pack, Service Pack or Hotfix, as defined by Blackboard
- If hosted by Blackboard, continued operation of the for SIS Integration (including the SIS Feed Converter Tool) the event of a hardware failover or in conjunction with Managed Hosting upgrades and underlying infrastructure changes, excluding Oracle RAC configurations

Issue types not covered by ICM include (but are not limited to) the following:

- Issues resulting from changes to the system architecture;
- Issues resulting from changes to the customer's external environments such as third party tools used for authentication.

Client Requirements / Assumptions

- Blackboard's ability to respond to and resolve ICM tickets is contingent upon Customer's purchase/availability of a test environment that is comparable to Customer's production environment.

2. CUSTOMER RESPONSIBILITIES

The Blackboard Consulting service model assumes active participation from the Customer team. The Customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to successfully execute required tasks.

- Customer will notify ICM four (4) weeks prior to any upgrade with upgrade plans.
- ICM hours are from 8 am to 8 pm US Eastern Monday through Friday excluding Blackboard Holidays

3. PROFESSIONAL FEES

Integration and Customization Maintenance ("ICM") is an annual maintenance fee for the named service consulting project(s). ICM will be invoiced for Year 1 fees upon execution of this agreement. Thereafter, ICM will automatically renew to align with the Blackboard Software maintenance renewal date on an annual basis at Blackboard's then current fees.

ICM Services		One Time Fee
Integration and Customization Maintenance for SIS integration (ICM)	AS-ICMINTASP	\$7,000
	Grand Total	\$7,000

4. CHANGE CONTROL

The project timeline, level of effort and associated costs specified in this document are based on the preliminary requirements and the assumptions set forth in this document. Unforeseen or requested changes in requirements, technology, scheduling and resources may cause these to change.

5. ASSUMPTIONS

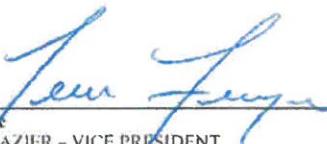
Our approach, timeline, team structure, and professional fees are based on the below assumptions:

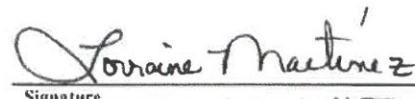
- This Statement of Services covers only the activities as described;
- ICM covers Blackboard-implemented solutions per the original scope of the project unless an approved Change Request has been processed;
- All software developed and provided to the Customer by Blackboard Consulting is maintained solely by Blackboard;
- For all upgrades, customers must have a comparable non-production environment installed with the customization. As Blackboard Consulting does not provide server hardware environments to replicate customers' solutions for development, ICM will need access to the customer's non-production environment to test and validate any required changes prior to deployment in the production environment;
- The Customer shall assign a representative to be the primary point of contact for the Blackboard Project Manager. This representative shall have full authority to make all decisions regarding project scope, overall timeline, and related projects costs, as well as ensuring the necessary customer project personnel, resources, etc. are available to successfully complete the project(s);

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work as of the date first written below.

BLACKBOARD

LUNA COMMUNITY COLLEGE

Signature	
Print Name and Title	TESS FRAZIER - VICE PRESIDENT
Date:	5/31/12

Signature	
Print Name and Title	LORRAINE MARTINEZ, Title V Project Director
Date:	5-31-12

**APPENDIX
INTEGRATION AND CUSTOMIZATION (ICM)**

1 OVERVIEW

Blackboard Consulting offers an annual subscription-based maintenance program for each consulting project involving the integration or customization of the Blackboard Learn™ software.

The Integration Customization Maintenance ("ICM") service provides customers with Blackboard Consulting assistance, for named consulting projects, to support planned Blackboard upgrades or ad-hoc Customer questions.

2 ASSUMPTIONS

- ICM covers Blackboard-implemented solutions per the original scope of the project. This service will be delivered in accordance with the complete ICM support guidelines as outlined in the ICM Support Guide located here:
<https://behind.blackboard.com/sysadmin/navcenter/docs/details/B3e2?DocumentID=385&pid=100&rid=2755&det=1>
- The following basic assumptions also apply to all ICM support agreements.
- For all upgrades, customers must have a comparable non-production environment installed with the customization. As Blackboard Consulting does not provide server hardware environments to replicate customers' solutions for development, ICM will need access to the customer's non-production environment to test and validate any required changes prior to deployment in the production environment;
- Customer will notify ICM four (4) weeks prior to any upgrade with upgrade plans;
- All software developed and provided to the Customer by Blackboard Consulting is maintained solely by Blackboard.
- ICM covers support related to planned minor releases from Blackboard such as application packs, service packs and hotfixes, as well as updates and upgrades Blackboard Learn™.

Issue types not covered by ICM include (but are not limited to) the following:

- Issues resulting from changes to the system architecture;
- Issues resulting from changes to the customer's external environments such as third party tools used for authentication, SIS systems etc.

3 INTEGRATION AND CUSTOMIZATION MAINTENANCE

- 3.1 **ICM Program**. If purchased by Customer, Blackboard may provide ICM Services as part of an annual maintenance program to support Customer's implementation, integration, and use of the Software licensed under this Schedule. All Software developed and provided to the Customer by Blackboard is maintained solely by Blackboard. ICM Services are to be provided in accordance with Blackboard's then-standard ICM policy.
- 3.2 **Nonexclusivity**. Customer acknowledges that it has no right of exclusivity as to any of the services that may be provided by Blackboard under this Agreement or this Schedule, and that Blackboard shall have the right to provide the same or similar services to third parties, and to use or otherwise exploit any Blackboard software in providing such services.
- 3.3 **Program Continuity**. If Customer purchases the ICM Services for the initial paid term and then terminates them and Customer later desires to reinstate the ICM Services, Customer shall be required to pay the total amount of all fees that would have been due had the ICM Services continued, as well as a reinstatement fee of twenty percent (20%) of the total amount of such fees. If Customer does not select the ICM Services for the Initial Term and Customer later desires to purchase the ICM Services, Customer shall be required to pay the total amount of all fees that would have been due had the ICM Services been purchased initially, as well as a late initiation fee of twenty percent (20%) of the total amount of such fees.

4 TERM AND TERMINATION

- 4.1 **Term**. This ICM shall commence upon deployment of integration/customization into Customer's Blackboard environment and shall continue in effect for a period of one (1) year (the "Initial Term") unless earlier terminated, and shall renew automatically for successive one (1) year periods (each, a "Renewal Term"), unless either party provides written notice to the other party of its intention not to renew the ICM at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term. For convenience, the Initial Term and Renewal Term may sometimes be referred to collectively as the "Term". Any renewals shall be at Blackboard's then current pricing.
- 4.2 **Termination for Cause**. Notwithstanding the perpetual nature of the license granted to Customer for use of the Downloadable Solution, either party may terminate the ICM and the associated Downloadable Solution licenses immediately upon written notice to the other party, if the other party fails to perform any of its obligations under this Statement of Work and the Agreement and fails to remedy such breach within thirty (30) days after receipt of such written notice.
- 4.3 **Effect of Termination**. In the event of termination of the Agreement, this Statement of Work or the licenses granted hereunder for any reason, Blackboard shall immediately cease providing any ICM Services purchased by Customer. Notwithstanding the perpetual nature of the license granted to Customer for use of the Software, in the event of a termination for Customer breach, Customer shall immediately (i) discontinue all use of the Software including any modifications made during the Term, as well as Blackboard trademarks, trade names and other proprietary rights, (ii) erase or destroy the Software including any modifications made during the Term, contained in the computer memory or on a computer server under control of Customer, (iii) return to Blackboard or destroy all copies of the Software in the possession or control of Customer or its employees, contractors or other related parties; and (iv) certify in writing to Blackboard, within thirty (30) days of the termination of this Statement of Work, that Customer has complied with the foregoing. In addition to those provisions which survive termination as set forth in the Professional Services Agreement, the provisions of Sections 3.2, 3.3, and 4.3 of this Appendix shall survive the termination of this Agreement or the licenses granted hereunder.