

**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 1899 L Street, NW, Fifth Floor, Washington, D.C. 20036, U.S.A, including its wholly owned subsidiaries.

**2.4 "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, transaction data, 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 "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.

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

**2.9 "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.

**2.10 "Master Terms"** means these Blackboard Master Terms.

**2.11 "Party"** means either Blackboard or Customer.

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

**2.13 "Software"** means the object code version of the Blackboard software as described on the applicable Software Schedule(s).

**2.14 "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.

**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.

VOID IF EXECUTED AFTER JUNE 25, 2007

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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

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 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 delivery of any  
Software or Equipment or the performance of Services by  
Blackboard to Customer. Customer will be responsible for  
payment of such applicable sales, use, excise, import or  
export, value-added or similar tax or interest at point of sale.  
All payments due under this Agreement shall be made  
without any deduction or withholding, unless such deduction  
or withholding is required by any applicable law of any  
relevant governmental revenue authority then in effect. If  
Customer is required to deduct or withhold, Customer will  
promptly notify Blackboard of the requirement, pay the  
required amount to the relevant governmental authority,  
provide Blackboard with an official receipt or certified copy  
or other documentation acceptable to Blackboard evidencing  
payment, and pay to Blackboard, in addition to the payment  
to which Blackboard is otherwise entitled under this  
Agreement, such additional amount as is necessary to ensure  
that the net amount actually received by Blackboard equals  
the full amount Blackboard would have received had no such  
deduction or withholding been required. If Customer is  
exempt from any such taxes or fees, then such taxes or fees  
shall not be charged to Customer upon Blackboard's receipt  
of a copy of Customer's tax exemption certificate or number.

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.

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,  
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 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.

**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

indemnify, and, at its own expense and option: (i) defend and settle such claim, (ii) procure Customer the right to use the Software or Equipment, (iii) modify or replace the Software or Equipment to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event 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 supplied by Blackboard (including, without limitation, any software produced by Customer for use with the Software) to the extent such claim is directed against such combination; (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

"commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 500, Washington, DC 20036. All rights not specifically granted in this 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

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constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

**9.12 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

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

This *Blackboard Learning System CE™—Enterprise License* Software Schedule (“Schedule”) is made as of the last date indicated below, by and between Blackboard and Central New Mexico 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 following promises, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**1. ADDITIONAL DEFINITIONS**

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

**2. LICENSE**

- 2.1     Grant of License. Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a limited, non-exclusive, non-transferable, non-sublicenseable right and license to install and use one (1) production copy and (1) unsupported Test Copy of the Software, for one (1) installation at Customer’s Designated Server Site, solely in the form of machine-readable, executable, object code or byte code, as applicable and to use the Documentation. Customer shall be authorized to install the applicable licensed Software for application server clustering purposes only, (a) on a single group of up to two (2) 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 two (2) managed node servers. Each such grouping of servers and/or nodes shall hereinafter be defined as a “Server Cluster”. Customer acknowledges and understands that in the event it wishes to use the Software or Documentation for any purposes other than those expressly permitted by the foregoing, including, without limitation, clustering or load balancing, or to provide course materials or other content to any end users who are not Customer’s Authorized End Users, Customer will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.

- 2.2     General Usage Restrictions. Customer agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in Section 2.1. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Customer shall not (i) copy or duplicate the Software, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software to the extent permitted by the Software’s standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer’s rights under the license granted in Section 2.1; or (vii) use the Software or Documentation to provide services to third parties other

than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other purpose. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Customer add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Customer shall not use the Software in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Customer of such obligation. Customer shall not provide access to the Software or Documentation to anyone other than Authorized End Users without Blackboard's prior written consent; provided, however, that Customer may provide access to *Blackboard PowerLinks™* partners that are subject to a valid Blackboard developer's license agreement for the limited purpose of installing, maintaining and supporting their respective *Blackboard PowerLinks™* applications. Customer shall ensure that its use of the Software and Documentation complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Customer warrants that its Authorized End Users will comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section 2.2.

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

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

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

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

**2.7 Expansion of Licensed Use.** The Software is priced annually based upon Customer's FTE (as defined below). Customer represents and warrants that the FTE provided to Blackboard and set forth on the Pricing Summary is correct and accurate to the best of its knowledge, and agrees that it will inform Blackboard of any increase in its FTE prior to the beginning of any Renewal Term (as defined below). Blackboard will assess additional license fees for the Software for increases in Customer's FTE.

"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.

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 Blackboards then-current pricing.

### **3. DELIVERY**

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

### **4. FEES**

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

### **5. TERM**

This Schedule shall become effective on June 25, 2007, and shall continue until December 29, 2007 (the "Initial Term"), unless earlier terminated. 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 applicable Documentation for a period of ninety (90) days after the relevant 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/supportsvccguide.ndf>

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

BLACKBOARD INC.

CENTRAL NEW MEXICO COMMUNITY COLLEGE

Signature  
TESS FRAZIER, VICE PRESIDENT

Print Name and Title

Date:

8/15/07

Signature  
LUCCIA LOZANO HARNESS, ASSOC. DIRECTOR ITIS.

Print Name and Title

Date:

8/15/07



Central New Mexico Community College  
Purchasing Department  
525 Buena Vista SE  
Albuquerque, NM 87106  
Ph: 505-224-4549  
Fax: 505-224-4548  
Email: grivera22@cnm.edu  
Web: www.cnm.edu

## WRITTEN DETERMINATION FOR SOLE SOURCE

DATE: December 13, 2012

TO: PO # BO305981, Blackboard Inc., Procurement File

FROM: Gil Rivera, Sr. Buyer 

SUBJECT: Written Determination in accordance NMSA #13-1-126. Sole Source procurement.

The purpose of this procurement is for the purchase of Blackboard Hosting and Learn Academic Suite for Collaboration.

CNM is using Blackboard hosting products for over 650 distance learning courses per term, and has been using this service since 2007. This procurement includes adding the Communities and Content modules to allow greater, more consistent functionality for credit courses and WTC the ability to deliver customized training for business and industry. It would be a significant financial and human resource burden on CNM to replace Blackboard hosting for use in CNM's Distance Learning environment.

It is the determination of the buyer that this is a Sole Source procurement and that it is in the best interest of CNM that these products be procured as such.

Blackboard Inc.  
650 Massachusetts Ave NW  
6<sup>th</sup> Floor  
Washington DC 20001  
  
P +1.202.463.4860  
F +1.202.466.4863  
  
blackboard.com



December 14, 2012

**RE: BLACKBOARD SOLE SOURCE MANUFACTURER CERTIFICATION**

Dear Mr. Rivera:

By copy of this correspondence, Blackboard Inc. does hereby certify that it is the sole manufacturer of the Blackboard Learn™ and Blackboard Collaborate software. Additionally, Blackboard certifies it is the sole provider of the Blackboard Technical Support Services, Blackboard Managed Hosting Services, Blackboard Professional Services, and the sole provider of Blackboard Training Services for the Blackboard software. Furthermore, the Blackboard software and associated services cannot be obtained at a lower price than is offered directly by Blackboard.

Product Description	Product ID	Qty	Unit	List Price
<b>Learn Products</b>				
COURSE DELIV HENA 15-25K	AS-LS-HENA05	1	Year	\$95,000
CMTY ENGAGE HENA 15-25K	AS-CM-HENA05	1	Year	\$66,700
CONTENT MGMT HENA 15-25K	AS-CS-HENA05	1	Year	\$84,000
HST SETUP CONTENT MGMT NA	AS-SETASPCS-NA	1	Each	\$10,000
HOSTING CONTENT MGMT HENA	AS-ASPCS-HENA	1	Year	\$28,800
HOSTING PLATINUM PKG NA	AS-ASPPLP-NA	1	Year	\$215,300
CMTY/CONTENT STANDARD	AS-CCSTANDARD	1	Each	\$40,000
CMTY ENGAGE TEST	AS-CMFREETEST	1	Year	\$13,100
CONTENT MGMT TEST	AS-CSFREETEST	1	Year	\$11,100
<b>Collaborate Products</b>				
COLLAB VIRTUAL CLASSROOM CLASSROOM 15-25K	WB-WC-5-SAAS	1	Year	\$97,495
COLLAB VOICE AUTH 15-25K	WB-WV-5-SAAS	1	Year	\$165,850
COLLAB ENTERPRISE IM 15-25K	WB-WP-5	1	Year	\$58,600

If you have any questions or require additional information, please feel free to contact me at 202-463-4860 ext. 2282. We look forward to meeting your online teaching and learning needs!

Warmest Regards,

A handwritten signature in black ink, appearing to read "Tess Frazier".

Tess Frazier  
Vice President - Contracts  
Blackboard Inc.

## SOLE SOURCE/SOLE BRAND JUSTIFICATION

**Instructions:** Briefly describe the items or services requested and list in detail the reasons for requesting the Sole Source designation. Include substantiating data such as: companies contacted and the reason for elimination, technical data, etc. Since this is a request to depart from the mandated procedure for competition, request without support cannot be considered. The CNM buyer may require additional information, and remains the final authority in the determination of a sole source acquisition.

### **ITEM/SERVICE DESCRIPTION:** Blackboard Learn Academic Suite for Collaboration

#### **REASON(S) FOR SOLE SOURCE/BRAND:**

CNM has used the Blackboard (Bb) Learning Management System (LMS) for many years. Blackboard LMS provides a secure web platform for CNM to deliver more than 650 Distance Learning (DL) courses per term to more than 7,000 unique students who currently use the system 24 hours a day, 7 days a week and provides a platform for classroom courses to delivery web enhanced instruction. Bb LMS supports more than 800 faculty teaching both DL and face-to-face courses. Bb analytics data reports CNM usage of 18,506 active users daily and 4304 active courses. Blackboard complies with federal regulations that govern online course delivery, most importantly meeting FERPA guidelines. This service is a mission critical instructional application and an integral part of CNM.

The Blackboard Learn LMS is the single platform for delivery of DL courses and web- enhanced courses for the largest secondary system, Albuquerque Public Schools, as well as the two largest post secondary-institutions in New Mexico, CNM and UNM. Students benefit greatly from attending institutions with consistent learning management systems, increased familiarity, lower learning curve, and reduction of technological barriers as they transition into higher education and fulfill their degree requirements.

The Fall 2012 term saw 661 dual credit students enrolled in Bb hosted CNM courses, such as the grant-funded Making Money Work program, and another 1,114 dual credit students using Bb for instructional delivery in other academic programs. As legislated by the New Mexico legislature in 2009, all NM high school students are required to take a Dual Credit, Distance Learning and/or Advanced Placement course in order to fulfill graduation requirements. Dual Credit students can earn credit hours toward graduation at both their APS high school or Charter School and CNM for degree credits when enrolled in dual credit courses at CNM. Bb Learn is provided as a consistent platform for dual credit students as it is the standard web-based learning platform at APS, CNM, and UNM. Through the STEM initiative, CNM and UNM share instructional courses via Bb Learn, achieving seamless integration of course materials and content between institutions.

Unique to the Bb Learn LMS is the assessment/item analysis tool which allows faculty to assessment the quality and validity of assessments and test items. Testing and assessment validation, for many Career Technical programs, (specifically those programs in Health Wellness and Public Safety) is required by their accrediting bodies specifically for the National League of Nursing Accrediting Commission; NM Joint Organization on Education (JOE) in Emergency Medical Services Accreditation and the Commission on Accreditation of Allied Health Education Programs (CAAHEP) to name a few. Just as CNM relies solely on Banner to provide data to our non-academic applications for student services, budget, business office and purchasing, so too does Academic Affairs rely on Blackboard to provide a single, consistent platform for instruction.

Adding the Communities and Content modules will allow greater, more consistent, functionality for credit courses and will give Workforce Training Center a platform for delivering customized training for business and industry. Also, CNM will be able to use Bb for any type of web based or online instruction for all employees. Blackboard Academic Suite is currently the only true LMS portal software available on an enterprise level.

**Substantiating Data:** Your response to this section must substantiate your comments in the previous section, i.e: What other makes, models, or suppliers did you consider and why did you reject them? What adverse effects would result from the use of other equipment, supplies or services? Is this your own evaluation or did you rely on a colleague's judgment?

GW

CNM has significant financial and human resources invested in the Blackboard Learning Management System. More than \$600,000 per year is expended in software licensing, managed hosting and staff salaries to support the Bb LMS and training for faculty, staff and students. This annual investment does NOT include: course shell development, curriculum content developed by CNM faculty, technical resources, support, and training for overall use by both faculty and students. To replace the Blackboard system would result in a severe disruption of CNM's delivery of quality education both in the classroom and for our distance learning courses.

Additionally, replacing Blackboard would result in excessive implementation, testing, training time and human resource expenses. Implementation of a new LMS would cause faculty and students to retool and relearn an LMS causing unnecessary chaos and confusion. The estimated time, based on experiences of other post secondary institutions to review and recommend LMS procurement is two years. Faculty investment to reconstruct more than 600 DL courses to a new LSM is estimated at more than two million dollars. (600 x 120 hours course development time X \$32 hourly rate for faculty comp = \$2, 534,400). Additional costs for staff training and retooling (based on actual staff costs from 2010) would be nearly \$250,000. Based on experience in Fall 2011, when CNM upgraded to a new version of Bb, it took the college fully four terms to stabilize and train faculty, staff and students on the new software WITHIN the same LMS.

Faculty interest in learning another LMS would result in disinterest and likely reduce the number of distance learning offerings at CNM. Further, adopting a new LMS would negatively impact students who enter CNM with a mastery of the Blackboard Learn learning management system and inevitably reduce the FTE and enrollment in DL courses at CNM.

**FOR THE REASONS STATED HEREIN,**

Audrey Gramstad  
Administrative Director, DL and Instructional Support

Requestor Name and Title

*S. Gramstad*  
Dean/Chairman/Director  
*Executive Director ITS*

**COST/PRICE ANALYSIS REQUIRED IF GREATER THAN \$25,000.00 (13-1-138).** Following attached:

- Published catalog/price list     Cost Analysis     Price Comparison  
 Professional Service (13-1-76). Exempt per (13-1-139)

*13-1-138*  
Buyer

*SMW*  
Purchasing Director

(P)

## **CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

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

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

Name(s) of Applicable Public Official(s) if any:

CNM's Governing Board including, District 1 Ms. Pauline J. Garcia, District 2 Mr. Robert P. Matteucci, Jr., District 3 Ms. Deborah Moore, District 4 Mr. Mark Armijo, District 5 Mr. Blair L. Kaufman, District 6 Ms. Penelope S. Holbrook, and District 7 Mr. Michael DeWitte.

### DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Title (position) \_\_\_\_\_

--OR--

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



Signature \_\_\_\_\_

06/12/13 \_\_\_\_\_

Date \_\_\_\_\_

Vice President

Title (Position) \_\_\_\_\_

(Attach extra pages if necessary)

BLACKBOARD AGREEMENTS:

LEARN AGREEMENT: 10-164440 v3 ALB 12/11/12

COLLABORATE AGREEMENT # 10-166852v2 ALB 12/14/12

CNM PURCHASE ORDER # BO305981

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 1 of 9

TO: V22684  
VENDOR CODE

BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

Destination Freight Included		Net 30		PAYMENT TERMS	
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED
	<p>REFERENCE: NMSA 13-1-126 AND 13-1-150          REFERENCE: BLACKBOARD AGREEMENTS          LEARN AGREEMENT: 10-164440 v3 ALB 12/11/12          COLLABORATE AGREEMENT # 10-166852v2 ALB 12/14/12          ORDER EFFECTIVE: DEC 13, 2012 - DEC 12, 2013 WITH          OPTION TO RENEW PER NMSA 13-1-150.</p> <p>SERVICE TERM: DEC 30, 2012 - DEC 29, 2017, THE          INITIAL TERM IS FOR FIVE (5) YEARS WITH OPTION TO          RENEW IN ONE (1) YEAR INCREMENTS FOR A MAXIMUM          TERM OF UP TO EIGHT (8) YEARS PER NMSA 13-1-150.</p> <p>EACH TWELVE (12) MONTHS OF SERVICE SHALL BE FUNDED          AND INVOICED ON A YEARLY BASIS</p> <p>*****</p>				

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
 THE TERMS AND CONDITIONS PRINTED ON BACK.  
 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

*VENDOR*

*Gilbert M. Rivera*  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

CONTINUED

*Gilbert M. Rivera*  
 TOTAL

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 2 of 9

TO: V22684  
VENDOR CODE

BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

PURCHASE ORDER NO. MUST APPEAR ON ALL INVOICES,  
 CLAIMS, SHIPPING PAPERS, PACKAGES AND CORRESPONDENCE.

\*INVOICES MUST BE ITEMIZED SHOWING QUANTITY,  
 UNIT PRICE & TOTAL

SHIP TO: Central New Mexico Community College  
 ITS  
 MAIN CAMPUS - SHIPPING & REC  
 901 BUENA VISTA SE  
 ALBUQUERQUE NM 87106

SEND INVOICES ONLY TO:  
 ELECTRONICALLY TO:  
 CNM\_Invoices@cnm.edu  
 OR  
 BY MAIL TO:  
 CENTRAL NEW MEXICO COMMUNITY COLLEGE  
 ACCOUNTS PAYABLE  
 P.O. BOX 4586  
 ALBUQUERQUE, NM 87196-4586

NOTE: SEND ALL OTHER CORRESPONDENCE TO \*SHIP TO\* ADDRESS ABOVE

Destination Freight Included		Net 30			
F.O.B. POINT	PAYMENT TERMS		QUANTITY	U/M	UNIT PRICE
ITEM	COMMODITY DESCRIPTION				EXTENDED
1	BLANKET PURCHASE ORDER ISSUED TO BLACKBOARD INC. (CONTRACTOR) TO PROVIDE LICENSE AND HOSTING SERVICES FOR THE FOLLOWING LEARN AND COLLABORATE PRODUCTS PER THE REFERENCE BLACKBOARD AGREEMENTS. PRICE BREAKDOWN (ITEMS 1.1 - 1.12):  1.1) ONE (1) YEAR P/N AS-LS-HENA05, COURSE DELIV HENA 15-25K, UNIT PRICE: YEAR 1: \$ 75,200.00 YEAR 2: \$ 77,456.00 YEAR 3: \$ 79,779.68 YEAR 4: \$ 82,173.07		1.00	LOT	439,693.39
					439,693.39

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
 THE TERMS AND CONDITIONS PRINTED ON BACK.  
 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

CONTINUED

TOTAL  
  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

*VENDOR*

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 3 of 9

TO: V22684  
 VENDOR CODE

BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

Destination Freight Included	Net 30			
F.O.B. POINT	PAYMENT TERMS			
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE
	YEAR 5: \$ 84,638.26  1.2) ONE (1) YEAR P/N AS-CM-HENA05, CMTY ENGAGE HENNA 15-25K, UNIT PRICE: YEAR 1: \$34,920.00 YEAR 2: \$ 35,967.60 YEAR 3: \$ 37,046.63 YEAR 4: \$ 38,158.03 YEAR 5: \$ 39,302.77  1.3) ONE (1) YEAR P/N AS-CS-HENA05, CONTENT MGMT HENNA 15-25K, UNIT PRICE: YEAR 1: \$43,260.00 YEAR 2: \$ 44,557.80 YEAR 3: \$ 45,894.53			EXTENDED

SHIP TO: Central New Mexico Community College  
 ITS  
 MAIN CAMPUS - SHIPPING & REC  
 901 BUENA VISTA SE  
 ALBUQUERQUE NM 87106

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 ELECTRONICALLY TO:  
 CNM\_Invoices@cnm.edu  
 OR  
 BY MAIL TO:  
 CENTRAL NEW MEXICO COMMUNITY COLLEGE  
 ACCOUNTS PAYABLE  
 P.O. BOX 4586  
 ALBUQUERQUE, NM 87196-4586

NOTE: SEND ALL OTHER CORRESPONDENCE TO "SHIP TO" ADDRESS ABOVE

VENDOR

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TOTAL  
  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

CONTINUED

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 4 of 9

TO: V22684  
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BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

PURCHASE ORDER NO. MUST APPEAR ON ALL INVOICES,  
 CLAIMS, SHIPPING PAPERS, PACKAGES AND CORRESPONDENCE.

\*INVOICES MUST BE ITEMIZED SHOWING QUANTITY,  
 UNIT PRICE & TOTAL

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Destination Freight Included		Net 30				
F.O.B. POINT		PAYMENT TERMS	QUANTITY	U/M	UNIT PRICE	EXTENDED
ITEM	COMMODITY DESCRIPTION					
	YEAR 4: \$ 47,271.37 YEAR 5: \$ 48,689.51					
	1.4) ONE (1) EACH P/N AS-SETASPCS-NA, HST SETUP CONTENT MGMT NA, UNIT PRICE \$6,000.00					
	1.5) ONE (1) YEAR P/N AS-ASPCS-HENA, HOSTING CONTENT MGMT HENA, UNIT PRICE: YEAR 1: \$17,280.00 YEAR 2: \$17,798.40 YEAR 3: \$18,332.35 YEAR 4: \$18,882.32 YEAR 5: \$19,448.79					
	1.6) ONE (1) YEAR P/N AS-ASPPLP-NA, HOSTING					

VENDOR

CONTINUED

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 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

TOTAL  
  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 5 of 9

TO: V22684

VENDOR CODE

BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

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 UNIT PRICE & TOTAL

SHIP TO: Central New Mexico Community College ITS MAIN CAMPUS - SHIPPING & REC 901 BUENA VISTA SE ALBUQUERQUE NM 87106					
SEND INVOICES ONLY TO: ELECTRONICALLY TO: CNM_Invoices@cnm.edu OR BY MAIL TO: CENTRAL NEW MEXICO COMMUNITY COLLEGE ACCOUNTS PAYABLE P.O. BOX 4586 ALBUQUERQUE, NM 87196-4586					
NOTE: SEND ALL OTHER CORRESPONDENCE TO "SHIP TO" ADDRESS ABOVE					
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED
	PLATINUM PKG NA, UNIT PRICE: YEAR 1: \$ 193,770.00 YEAR 2: \$199,583.10 YEAR 3: \$205,570.59 YEAR 4: \$211,737.71 YEAR 5: \$218,089.84  1.7) ONE (1) EACH P/N AS-CCSTANDARD, CMTY/CONTENT STANDARD, UNIT PRICE \$ 40,000.00  1.8) ONE (1) YEAR P/N AS-CMFREESTEST, CMTY ENGAGE TEST, UNIT PRICE (YEARS 1-5) \$0.00  1.9) ONE (1) YEAR P/N AS-CSFREESTEST, CONTENT MGMT TEST, UNIT PRICE (YEARS 1-5) \$0.00				
VENDOR					
CONTINUED					

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
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 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

**TOTAL**  
  
 GILBERT M. RIVERA  
 (505)224-4548 (505)224-4548 (Fax)

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 6 of 9

TO: V22684

VENDOR CODE

BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

Destination Freight Included F.O.B. POINT		Net 30 PAYMENT TERMS		SHIP TO: Central New Mexico Community College ITS MAIN CAMPUS - SHIPPING & REC 901 BUENA VISTA SE ALBUQUERQUE NM 87106		
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED	
	SUBTOTAL ITEMS 1.1 THROUGH 1.9 (BLACKBOARD LEARN): YEAR 1: \$ 410,430.00 YEAR 2: \$ 375,362.90 YEAR 3: \$ 386,623.79 YEAR 4: \$ 398,222.50 YEAR 5: \$ 410,169.18  1.10) ONE (1) YEAR P/N WB-WC-5-SAAS, WIMBA CLASSROOM, ENTERPRISE OPEN ACCESS, UNIT PRICE: YEAR 1: \$0.00 (INCLUDES CREDIT APPLIED AS QUOTED) YEAR 2: \$49,807.00 YEAR 3: \$51,301.00 YEAR 4: \$52,840.00 YEAR 5: \$54,425.00					
					VENDOR	

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 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

CONTINUED

*Gilbert M. Rivera*  
 TOTAL  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 7 of 9

TO: V22684  
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BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
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ATTN: MR. BEN SCHWARZ

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Destination Freight Included		Net 30 PAYMENT TERMS				
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED	
	<p>1.11) ONE (1) YEAR P/N WB-WV-5-SAAS, COLLAB VOICE AUTH, VOICE AUTHORING/WIMBA VOICE TOOLS, UNIT PRICE:                      YEAR 1: \$3,046.31 (INCLUDES CREDIT APPLIED)                      YEAR 2: \$13,390.00                      YEAR 3: \$13,792.00                      YEAR 4: \$14,207.00                      YEAR 5: \$14,633.00</p> <p>1.12) ONE (1) YEAR P/N WB-WP-5, COLLAB ENTERPRISE IM, ENTERPRISE INSTANT MESSAGING/WIMBA PRONTO UNIT PRICE:                      YEAR 1: \$26,000.00                      YEAR 2: \$26,780.00</p>				<i>VENDOR</i>	

CONTINUED

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
 THE TERMS AND CONDITIONS PRINTED ON BACK.  
 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

*Gilbert M. Rivera*  
 TOTAL  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 8 of 9

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BLACKBOARD INC  
 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

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Destination Freight Included		Net 30			
F.O.B. POINT		PAYMENT TERMS			
ITEM	COMMODITY DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED
	YEAR 3: \$27,583.00 YEAR 4: \$28,410.00 YEAR 5: \$29,262.00  SUBTOTAL ITEMS 1.10 - 1.12 (COLLABORATE): YEAR 1: \$29,046.31 YEAR 2: \$89,977.00 YEAR 3: \$92,676.00 YEAR 4: \$95,457.00 YEAR 5: \$98,320.00  ITEMS 1.10 - 1.12 INCLUDE TRAINER CERTIFICATION & CUSTOMIZED IMPLEMENTATION SUPPORT SERVICES TO BE DETERMINED IN YEAR 1 AT NO ADDITIONAL COSTS DURING TERM FROM 12/30/2012 - 12/29/2013, AND				
					VENDOR
					CONTINUED

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
 THE TERMS AND CONDITIONS PRINTED ON BACK.  
 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

TOTAL  
*Sgt. L. Rivera*  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

Central New Mexico Community College  
 Purchasing Department  
 525 Buena Vista SE  
 Albuquerque, NM 87106



## PURCHASE ORDER # BO305981

DATE OF P.O. 12/13/12

Page 9 19

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 650 MASSACHUSETTS AVE NW  
 6TH FLOOR  
 WASHINGTON DC 20001-3796

ATTN: MR. BEN SCHWARZ

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Destination Freight Included F.O.B. POINT		Net 30 PAYMENT TERMS	QUANTITY	U/M	UNIT PRICE	EXTENDED
ITEM	COMMODITY DESCRIPTION					
	THESE ITEMS ALSO INCLUDE A PRORATED CREDIT IN THE AMOUNT OF \$58,310.19 THAT HAS BEEN APPLIED AGAINST PO ITEMS 1.10 AND 1.11 YEAR 1 PRICES FOR UNUSED PORTION OF SERVICES ON PREVIOUS CONTRACT FROM 12/30/2012 THROUGH 9/23/2013.  PLEASE INDICATE THIS BLANKET/PURCHASE ORDER NUMBER ON INVOICE(S).					

SELLER HEREBY AGREES TO AND SHALL BE BOUND BY  
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 STATE OF NEW MEXICO TAX EXEMPTION NUMBER  
 01-714409-004

**TOTAL** 439,693.39  
  
 GILBERT M. RIVERA  
 (505)224-4546 (505)224-4548 (Fax)

**VENDOR**

# **CENTRAL NEW MEXICO COMMUNITY COLLEGE**

## **GENERAL TERMS AND CONDITIONS**

**1. Inspection and Audit.** a. CNM may inspect, at any reasonable time, any part of Seller's plant or place of business which is related to performance of this Purchase Order. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Final inspection of product and services will be made at the destination. Any testing or inspection procedures required by the specification are in addition to CNM's rights under this paragraph.

b. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. Contractor shall maintain detailed records of all materials or supplies delivered to CNM under this Purchase Order, including serial numbers and other appropriate identifiers. These records shall be subject to internal and external audit. CNM shall have the right to audit billings both before and after payment. Payment under the resultant Agreement shall not preclude CNM from recovering excessive, erroneous or illegal payments previously made to the Contractor.

**2. Warranties.** Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express and implied, are incorporated herein.

**3. Acceptance and Rejection.** If prior to final acceptance, any materials, supplies or service are found to be defective or not as specified, or, if CNM is entitled to revoke acceptance of them, CNM may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price at CNM's option. Seller shall reimburse CNM for all incidental and consequential costs related to unaccepted materials, supplies or service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive CNM's right to claim damages for breach.

**4. Assignment.** This order is assignable by CNM. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of CNM.

**5. Changes.** CNM may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of CNM. Any claim of Seller for an adjustment under this paragraph must be made in writing within thirty (30) days from the date of receipt of Seller of notification of such change, unless CNM waives this condition. Nothing in this paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.

**6. Termination and Delays.** CNM, by written notice stating the extent and effective date may terminate this order for convenience in whole or in part, at any time. CNM shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount to be approved by CNM, and not otherwise recoverable from other sources by Seller, with respect to the undelivered or unaccepted portion of this order. Provided, however, compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Seller's actual cost and may not include anticipated profits.

CNM may terminate this order by written notice in whole or in part for Seller's default if Seller refuses or fails to comply with the provision of this order, or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, CNM may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by CNM, including incidental and consequential damages.

If, after notice of termination, CNM determines Seller was not in default, or if Seller's default is due to failure of CNM, termination shall be deemed for the convenience of CNM.

The rights and remedies of CNM provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

As used in this paragraph, the word "Seller" includes Seller and its subsuppliers at any tier.

**7. Affirmative Action.** Seller shall not discriminate with regard to hiring, termination or other incidents of employment on the basis of race, sex, national origin, religion, age or handicap. Seller agrees to: a) adhere to the principles set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for handicapped persons, minority group persons and women; b) take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; c) communicate this policy in both English and Spanish to all persons concerned within the company, with outside recruiting services and the minority community at large; d) provide CNM on request a breakdown of labor force by ethnic group, sex, and job category; and e) discuss with CNM its policies and practices relating to its affirmative action program.

**8. Indemnification and Insurance.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of CNM. In any event, CNM's liability shall be subject to the limitations of the New Mexico Tort Claims Act. Seller shall indemnify and hold harmless CNM, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys fees, in connection with or resulting from such suit or action.

Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order.

**9. Patent and Copyright Indemnity.** Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use, or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold CNM harmless from any cost, expense, damage, or loss resulting therefrom.

**10. Discounts.** Any discount time will not begin until the materials, supplies, or services have been received and accepted and correct invoice received by CNM's Purchasing Department. In the event testing is required, the discount time shall begin upon the completion of the tests.

**11. Penalties.** The Procurement Code, Section 13-1-28 et seq., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**12. Title and Delivery.** Title to the materials and supplies passed hereunder shall pass to CNM at the F.O.B. point specified subject to the right of CNM to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval from CNM's Purchasing Department. Time is of the essence and the order is subject to termination for failure to deliver on time.

**13. Payment Charges.** Late payment charges shall be paid in the amount and under the conditions stated in Section 13-1-158, NMSA 1978.

**14. Other Applicable Laws.** Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

**15. OSHA Regulations.** The contractor shall abide by Federal Occupational Safety and Health Administration (OSHA) regulations and the State of New Mexico Environmental Improvement Board occupational health and safety regulations that apply to the work performed under this invitation. **ALL PRODUCTS CONTAINING HAZARDOUS SUBSTANCES MUST BE PROPERLY LABELED AND ACCOMPANIED BY MATERIAL SAFETY DATA SHEETS.** The contractor shall defend, indemnify and hold CNM free and harmless against any and all claims, loss, liability and expense resulting from any alleged violations of said regulations including but not limited to fines, penalties, judgments, court costs and attorney fees.

**16. Debarment/Suspension.** In performing the services and/or furnishing the goods specified within this purchase order, the vendor/contractor certifies that it is not suspended, debarred or declared ineligible from entering into contracts with the Executive Branch of the Federal Government, any State agency or local public body; nor is it in receipt of a notice of proposed debarment or suspension from the Executive Branch of the federal Government, any State agency or local public body.

**17. Applicable Law.** Each party acknowledges that the New Mexico Procurement Code, NMSA 1978 13-1-28 through -199, as amended, applies to every CNM purchase or contract agreement of tangible personal property, services and construction, including participation made pursuant to this purchase order. Further, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents and that the liability of CNM shall be subject in all cases to the immunities and limitation of the New Mexico Tort Claims Act, NMSA 1978 41-4-1 through -2 7, as amended.

## **SECTION 2**

### **GOVERNMENT SUBCONTRACT PROVISIONS**

If this order is subcontract under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this order. In the event of any conflict between the terms and condition of Section 2 and any other provisions of this order the terms and conditions of Section 2 shall prevail. The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated herein by reference. For purposes of this Purchase Order, in the following clauses, the term "contract" shall mean "this order", the term "contractor" shall mean "Seller" and the term "Government" and "Contracting Officer" shall mean "Albuquerque CNM" and the "Director of Purchasing," respectively.

The following provisions of the Federal Acquisition Regulations (FAR) apply regardless of the amount of this order:

* Anti-kickback Procedures:	52.203-7
Buy American Act and Balance of Payments Program	52.225-7001
* Contract Work Hours and Safety Standards Act-Overtime Comp.	52.222-4
* Equal Employment Opportunity	52.222-26
Integrity of Unit Prices	52.215-26(a)(b)
Notice to the Government of Labor Disputes	52.222-1
Preference for U.S. Flag Air Carriers (For internal air travel)	52.247-63
Restriction on Subcontract Sales to the Government	52.203-6
Service Contract Act of 1965 (Reserved)	52.222-41
* Termination for Convenience of Government (Education and other Nonprofit Institutions)	52.249-5(a)(f)

CNM reserves all administrative, contractual, and legal remedies against Seller in case of any breaches of the contract.

\* On contracts funded by federal grants, only the Special Terms and Conditions clauses identified by the asterisk (\*) are incorporated into this contract.



**Blackboard**

**Central New Mexico Community College Pricing Summary**

Product Description	Product ID	Qty	Units	Year 1 [12/30/12 – 12/29/13]	Year 2 [12/30/13 – 12/29/14]	Year 3 [12/30/14 – 12/29/15]	Year 4 [12/30/15 – 12/29/16]	Year 5 [12/30/16 – 12/29/17]
COURSE DELIV HENA 15-25K	AS-LS-HENA05	1	YR	\$ 75,200	\$ 77,456.00	\$ 79,779.68	\$ 82,173.07	\$ 84,638.26
CMTY ENGAGE HENA 15-25K	AS-CM-HENA05	1	YR	\$ 66,700	\$ 35,967.60	\$ 37,046.63	\$ 38,158.03	\$ 39,302.77
PRICE REDUCTION				<\$ 31,780>	-	-	-	-
CONTENT MGMT HENA 15-25K	AS-CS-HENA05	1	YR	\$ 84,000	\$ 44,557.80	\$ 45,894.53	\$ 47,271.37	\$ 48,689.51
PRICE REDUCTION				<\$ 40,740>	-	-	-	-
HST SETUP CONTENT MGMT NA	AS-SETAPCS-NA	1	EA	\$ 10,000	-	-	-	-
PRICE REDUCTION				<\$ 4,000>	-	-	-	-
HOSTING CONTENT MGMT HENA	AS-ASPCS-HENA	1	YR	\$ 28,800	17,798.40	18,332.35	18,882.32	19,448.79
PRICE REDUCTION				<\$ 11,520>	-	-	-	-
HOSTING PLATINUM PKG NA	AS-ASPLP-NA	1	YR	\$ 193,770	199,583.10	205,570.59	211,737.71	218,089.84
CMTY/CONTENT STANDARD	AS-CCSTANDARD	1	EA	\$ 40,000	-	-	-	-
CMTY ENGAGE TEST	AS-CMFRETEST	1	Year	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
CONTENT MGMT TEST	AS-CSFRETEST	1	Year	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>TOTALS:</b>				<b>\$ 410,430.00</b>	<b>\$ 375,362.90</b>	<b>\$ 386,623.79</b>	<b>\$ 398,222.50</b>	<b>\$ 410,169.18</b>

**Academic Suite-Site; Schedule of Fees Table**

Designated Server Site (Physical Location of the Software):	Database Version:	Operating System:	Hardware Model:
<b>Hosted by Blackboard</b>			
Customers FTE/User Band: 15,000 – 25,000			

CGN

**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 Central New Mexico Community College ("Customer") and is an addendum to the Blackboard License And Services Agreement between Blackboard and Customer, including the Master Terms dated August 15, 2007, 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:

**1. 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 AP#, 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 e-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.

**2. 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-sublicensable 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*<sup>®</sup> 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*<sup>®</sup> 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<sup>TM</sup> 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 Blackboards 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 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
- (e) Any information relevant and deemed necessary by Blackboard for the license of the Software.

*(G)*  
**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.

*(TP)*  
**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 on a twelve (12) month basis contingent upon fiscal funding specified in the Pricing Summary or otherwise required in this Schedule, which fees shall be non-cancelable and non-refundable for the current twelve (12) months of service. 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 when such termination is made at the convenience of Customer. Penalty fees shall not apply due to non-appropriation of funding. Customer further agrees to reimburse Blackboard for: (i) travel and living expenses per Customers Travel Policy incurred by Blackboard's employees and subcontractors for services rendered at Customer's facilities that have been pre-approved by Customer prior to service being rendered 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. *(CJ GR TF)*

**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 five (5) years (the "Initial Term"). Thereafter, the Schedule may renew upon the conclusion of each twelve (12) month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), contingent upon a revision to the existing Purchase Order or issuance of a new Purchase Order, 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. The maximum term including all renewals shall not exceed eight (8) years per New Mexico Statutes Annotated 13-1-150. 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/supportvcguide.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.

BLACKBOARD

CENTRAL NEW MEXICO COMMUNITY COLLEGE

*Tess Frazier*  
Signature  
TESS FRAZIER-VICE PRESIDENT  
Print Name and Title  
Date: 12/13/12

*Gilbert M. Rivera*  
Signature  
GILBERT M. RIVERA, SR. BUYER  
Print Name and Title  
Date: 13 Dec 2012

## 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 Central New Mexico 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 dated August 15, 2007 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 \$500 for the cost of each of 320 GB hard-drive and shipping required. Customer may ship the hard drive back to Blackboard for reuse in the next such task, in which case Customer shall not be charged an additional fee.

**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.

### 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 for Customer's convenience 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. Penalty fees shall not apply due to non-appropriation of funding. 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

VOID IF EXECUTED AFTER DECEMBER 28, 2012  
CENTRAL NEW MEXICO COMMUNITY COLLEGE

This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of five (5) years (the "Initial Term") or otherwise specified in Exhibit A. Thereafter, the Managed Hosting Schedule may renew upon the conclusion of each twelve month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), contingent upon a revision to the existing Purchase Order or issuance of a new Purchase order,, 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. The maximum term including all renewals shall not exceed eight (8) years per New Mexico Statutes Annotated 13-1-150. 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

CENTRAL NEW MEXICO COMMUNITY COLLEGE

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

01/13/12

Signature  
GILBERT M. RIVERA, SR. BUYER  
Print Name and Title  
Date:

13 Dec 2012

(gr)

**EXHIBIT A  
MANAGED HOSTING SPECIFICATIONS**

**+ Blackboard Platinum Package**

- Includes hosting for Blackboard Learn™ Software
- Includes Non-Production Test Environment, described below.
- During major upgrade periods, this also includes Non-Production Staging Environment and a Platinum Project Manager, each described below.
- Set-up Fee 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 includes service for up to 8,000 Active Users\* and 300 GB of storage and 21 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 are separately charged
- Additional Service units for 7,500 additional Active Users\*, additional 1Mbps bandwidth and 100 GB additional storage
- Non-Production Test Environment
  - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
  - Includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Customer full root access to servers.
  - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure
  - By its nature DOES NOT meet the Service Level specifications under Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.
- Staging Environment, available during major upgrade periods only
  - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
  - Includes 100 GB of storage
  - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
  - Per Customer request, Managed Hosting will provide up to four (4) clones of the Customer production data per year. This cloned data will not be backed up.
  - Is designed for Customer to test and approve new update/upgrade software and changes in software configuration before implementing such software in a production environment. It may not be used for production purposes.
  - 99.7% Availability guarantee as described in Service Level specifications in Exhibit B applies for all Staging Environments.
- The Platinum Project Manager is a proactive relationship manager whose primary goal is to manage the Customer's upgrade period(s) from the Managed Hosting side. He/ she will work as a single point-of-contact for all major upgrades.

Business Objectives of the Platinum PM (PPM):

1. Management
  - a. Central Point of Contact and Escalation: The PPM will be the central point-of-contact within Blackboard Managed Hosting Services during the upgrade period, lasting no longer than three months per upgrade with no more than two major upgrades during a year term.
  - b. Internal Blackboard Delivery Coordination: Coordinate with Blackboard Global Services Project Management, Developers, Customer's Technical Support Manager in Managed Hosting, Managed Hosting Operations, Engineering, and other elements of Blackboard to deliver and manage Customer's requirements during the upgrade periods.
  - c. Infrastructure and Software Upgrade Management: Design and implement Managed Hosting testing and/or staging in coordination with Customer as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another, upgrading application servers).
2. Communication
  - a. Contact: Be dedicated to Customer's Systems Administrators and Operations staff through a dedicated phone number/ email/ Instant Messenger (or other contact method) for day-to-day Managed Hosting upgrade project status reporting.
  - b. Project Communication: Build pro-active, two-way communication processes in coordination with Customer for upgrade project management, support issue escalation, and other communication procedures as necessary.
  - c. Regular Reporting: Coordinate and facilitate regularly scheduled (weekly or bi-weekly) and ad-hoc project and status update meetings surrounding the upgrade project.
3. Documentation
  - a. Upgrade Project Planning and Regular Status Reporting: Document upgrade project plans with milestones, timelines, and resource requirements. Provide weekly updates to Customer on status of the project plan until the upgrade has completed successfully with the Customer's approval for project closure.

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

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

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

**\* Active User defined in section 1.1**

*GW*

**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 initially accessible by Customer from the hosting site within ten (10) business days after execution of the applicable Order Form, provided that Customer has provided to Blackboard a URL and any other information required by Blackboard to perform its obligations under this Managed Hosting Schedule. 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.

**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:

<u>Time of Latency (per calendar month)</u>	<u>Service Credit</u>
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 for Host Latency, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit, which is the end of each calendar month. 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.

**Availability/Service Credit:**

**Standard Service Levels:**

Blackboard shall use commercially reasonable efforts to ensure the Managed Hosting Services are Available twenty-four (24) hours a day, seven (7) days a week with targeted uptime of 99.7% per calendar month. The Managed Hosting Services shall be considered "Available" except to the extent that an Authorized End User cannot access the Hosted Software due to hardware failure or sustained latency within the Blackboard hosting facilities. Notwithstanding the foregoing, the Availability of the Managed Hosting Services shall be determined without regard to any (i) packet loss, latency or network unavailability due to scheduled maintenance, (ii) the inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the control of Blackboard, or (iii) Force Majeure. For purposes of this section, "Force Majeure" means causes beyond Blackboard's 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.

If the Managed Hosting Services are Available less than 99.7% per calendar month, Customer will be eligible to receive service credits as outlined below. Such service credits shall be Customer's sole remedy for failure to meet the applicable targeted uptime. 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, which is the end of each calendar month. 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 the fees for one month of service.



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

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

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

Enhanced Service Levels (99.9%):

If Customer meets the following requirements, Customer shall automatically be entitled to 99.9% enhanced service levels. This means that the Availability of the Managed Hosting Services shall be calculated against a 99.9% targeted uptime rather than a 99.7% targeted uptime. All other provisions of the Standard Service Levels shall continue to apply.

- 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; and
- e. Customer is currently subscribed to Integration and Customization Maintenance (ICM) Service from Blackboard Consulting for supporting any SIS integration between the Hosted Software and Customer's student information system ("SIS") that was completed by Blackboard Consulting.

The enhanced service levels described herein apply only to production environments and do not apply to Staging Environments.

Enhanced Service Levels (99.8%):

If Customer meets the following requirements, Customer shall automatically be entitled to 99.8% enhanced service levels. This means that the Availability of the Managed Hosting Services shall be calculated against a 99.8% targeted uptime rather than a 99.7% targeted uptime. All other provisions of the Standard Service Levels shall continue to apply.

- a. Customer has Gold Level Service (subscription to Production Environment hosting other than Basic licenses, Foundations program, K12 LAC Bundle 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; and
- c. Customer's usage is within contracted levels for Active User Capacity and storage.

The enhanced service levels described herein apply only to production environments and do not apply to Staging Environments.

If Customer does not have 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), the Availability/Service Credit does not apply to the 7 calendar day period following the 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.

**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 may in Blackboard's sole discretion, put Blackboard, its employees or its agents at risk for injury.

**Outages**

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. For purposes of this subsection, a "System Outage" means the Managed Hosting Services are not Available. If the problem is due to a System Outage, 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, to the extent known by Blackboard at the time of such notice. Blackboard will promptly commence remedial activities and use commercially reasonable efforts to resolve the System Outage within the time estimate provided to Customer.

Following recovery from any System Outage, Blackboard will provide Customer with a post-incident summary that includes:

- 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).

**MONITORING AND PERFORMANCE**

Blackboard will make network performance reports available to Customer via [www.behind.blackboard.com](http://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. In addition, 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.

Customer acknowledges and agrees that any reports provided by Blackboard to Customer pursuant to this Schedule 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 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 deploys infrastructure in a facility that offers environment control, security, and backup power, as more specifically described below:

***Environment:***

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

***Environment Setup:***

Production environments are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and 99.7% uptime (except to the extent Customer is eligible for enhanced service levels as set forth above).

**CUSTOMER RESPONSIBILITIES**

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

- Creating/removing users including Students, Teachers, System Administrators, etc.
- Modifying all Authorized End 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 Customer and not Blackboard. For example, if the Customer chooses the URL <http://institutionname.org>, Customer is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record. Any IP addresses allocated by Blackboard to Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

**BUILDING BLOCKS POLICY**

If Customer has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to implement a Building Block, Blackboard recommends that Customer take 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, contact 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, the Blackboard Managed Hosting Service support team will work with Customer to troubleshoot the problem. If the Blackboard Managed Hosting Service support team isolates the problem as related to one or several Building Blocks, the Blackboard Managed Hosting Service support team may need to disable the Building Block to further troubleshoot the issue or to restore overall service.



**EXHIBIT TO  
BLACKBOARD PROFESSIONAL SERVICES AGREEMENT**

**STATEMENT OF WORK**

This Work Statement is a preliminary expectation of both Blackboard and Central New Mexico Community College ("Customer" or "CNM") of the services that may need to be performed. As such it may be modified by a writing approved by the designated project managers of each Blackboard and Customer. The work described below is intended to be performed on a time and materials basis.

This Statement of Work ("SOW") is an attachment to the Professional Services Agreement ("PSA") dated December 6, 2010 between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

**Engagement Summary**

Central New Mexico Community College ("Customer") is interested in the Community and Content Standard Implementation Engagement Program for Blackboard Learn 9.1.

The Blackboard modules/components to be included in the Customer's solution include :

- Blackboard Learn for Community Engagement
- Blackboard Learn for Content Management

Customer has requested that Blackboard provide Customer with consultants (each a "Consultant") to perform certain services in connection with such project.

**Overview of Client / Technical Environment**

Customer is on Blackboard Managed Hosting.

**Scope of Services**

Based on discussions with the customer and our derived understanding, Blackboard will deliver the following Services:

**Project Management**

Project Management facilitates communication within Blackboard and with the customer related to this engagement, and coordinates Blackboard's activities for this engagement. The goal of Project Management is that project objectives and milestones are met in a timely and cost effective manner. To achieve these outcomes, Blackboard will appoint a Project Manager who will be responsible for the overall engagement delivery, documentation, status reporting, and resource management.

**Consulting Services**

**Community and Content Standard Implementation Engagement Program**

The objective of the Standard Program for the Community & Content Implementation Engagement is to assist the institution with the configuration and implementation of the Blackboard Learn™ products based upon the institution's objectives related to content management and parent/student engagement. This program will provide customers with implementation planning, configuration and build guidance, and suggested effective practices and instructions for Blackboard Learn Community Engagement and Content Management Modules.

More specifically, through a series of workshops, this program will include:

- An onsite workshop to develop a mutual understanding of:
  - The implementation initiative and its alignment with the academic and business goals of the customer organization
  - Identification of opportunities for e-Learning process improvements
  - A definition of the project workstreams, success criteria and measures
- Development of detailed Project Plan
- Development of Content repository plan; Designed to meet the various needs of individual user roles
- Identification of individual access rights for the different areas of Content Engagement
- Defining of a Blackboard Learn Community & Content pilot, designed to help customers address immediate needs as well as long term objectives measured by specific success criteria
- Two separate two-hour sessions to define and identify:
  - Baseline configuration of the Community and Content Modules for an initial implementation
  - Recommendations for tab vs. modules format and layout, custom solutions, and development of organizations to meet customer needs
  - Initial tools/portals/organizations to deploy on the Blackboard Learn platform
- Development of an initial Community Engagement prototype, including environments developed for a subset of the planned roles
- Two follow-up two-hour sessions for configuration review of the development of tabs, modules, and organizations to meet customer needs and configuration of the Community & Content solution
- Two separate two-hour remote sessions for general questions and answers
- Two seats in each of the online training courses for administrators:
  - Administration of Blackboard Community Engagement
  - Administration of Blackboard Content Management
- Two days onsite Content Management Essentials Training. This session will serve to introduce instructors, course designers, and support personnel to the capabilities of Blackboard Learn which enable effective content storage, management, collaboration, and presentation.
- The session enables participants to review document management and collaboration (uploading, tracking, permissions, versioning, passes, and searches), link to content from courses, explore e-Portfolios, and deploy workflow activities
- Training is limited up to 15 participants per session
- Includes 24 hours of overall project management

**Artifacts:**

- Implementation Timeline with detailed Project Plan
- Community Configuration Guide
- Documented procedures and tools that simplify ongoing administration of the Community Engagement Module
- Content Management Configuration Guide

- Pre-questionnaire for onsite training
- Onsite agenda for Content Management Essentials session

**Customer Responsibilities Include:**

- Pre-installation of production and test Blackboard Learn for Community Engagement and Content Management environments
- Access to Blackboard System Administrator during onsite service to resolve issues, if they arise
- Creation of users and courses as requested by trainer prior to onsite training
- Services to be delivered over 16 week window

**Resource Requirements**

In order to complete this project, Blackboard proposes the following projected staffing model.

Role	Activities and Responsibilities
Project Manager	Responsible for management of project tasks, schedule, and resources
Functional Consultant	Facilitating and gathering business rules to aid in system configuration
Functional Consultant	Responsible for the facilitation of onsite and online courses

**Customer Responsibilities**

Blackboard's Consulting 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.

**Professional Fees, Expenses and Terms**

**Consulting Services Billed on a Time and Materials Basis**

Please reference the Service Pricing section for Consulting Services fees information. Blackboard Consulting rates reflect the role and requisite experience level of the assigned individuals.

Normal consulting hours are from 9 am to 5 pm local time Monday through Friday excluding Blackboard Holidays. Blackboard Consulting may charge 125% of the standard rates below for evening and weekend service delivery.

**Training Services Billed on a Firm-Fixed Price Basis**

Please reference the Service Pricing section for Training Services fees information. All Training Services purchased pursuant to this Agreement must be used within one (1) year of the Effective Date.

**Engagement Programs Billed on Firm Fixed Price Basis**

Please reference the Service Pricing section for Firm-Fixed Price Services fees information.

All components of the Community and Content Standard Implementation program purchased pursuant to this Agreement must be used within sixteen (16) weeks of the Effective Date.

**Travel Expenses related to Consulting and Training Services**

Blackboard Consulting will invoice the customer for the actual travel related costs as incurred as part of this engagement. Travel costs are not included in the Service Pricing Section. Blackboard Consulting will make reasonable efforts to manage travel costs without compromising project objectives.

1. Customer agrees to meals at \$45/day when consultant is traveling to perform work at CNM facilities.
2. Customer agrees to mileage at \$0.55/mile; however, all rental cars shall be rented with unlimited miles (i.e., mileage is not applicable to rental cars, nor is it applicable from Consultant's home to office/airport).
3. Customer agrees that Car rental applies when consultant is traveling to CNM's facilities to perform contracted services.

**Cancellation of On-site Training Workshops or On-Site Consulting Visits**

In the event the Customer chooses to cancel a scheduled on-site training workshop or consulting visit within two (2) weeks of the scheduled event, Blackboard Consulting may invoice the Customer for the following:

1. For on-site training workshops, the full price of the workshop plus any incurred travel change fees
2. For on-site consulting visits, the cost of all consultant hours scheduled for the site visit plus incurred travel change fees.

**Services Pricing**

**Firm-Fixed Price Services**

The costs for additional services to be provided on a Firm-Fixed Price basis are detailed below:

Community and Content Standard Implementation Engagement Program	AS-CCSTANDARD	16 Weeks	\$40,000.00

**Firm-Fixed Price Milestone/Invoicing Schedule**

Community and Content Standard Implementation Engagement Program	Contract Signature	\$40,000.00
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**Project Timeline**

The actual project schedule will be finalized with the Customer's project lead upon project initiation.

**Change Control**

Changes to scope, resources, staffing, or timeline may impact this estimate. In the event a change occurs, the Blackboard Consulting Project Manager will capture and assess the impact and relevant implications through the project Change Control Process. This process will yield a Project Change Request (PCR) document for the customer's review and consideration. The PCR requires customer and Blackboard approval to be valid and actionable, if applicable.

**General Engagement Assumptions**

Our approach, timeline, team structure, and professional fees are based on the below assumptions. Variance from these assumptions will be managed through the Change Control Process and may affect the actual schedule and cost of the project.

- Pricing estimates outlined herein expire 30 days from prepared date;
- All pricing and discounts are valid for 90 days from the executed Statement of Work date for work not initiated;
- This agreement covers only the activities as described;
- Staffing and scheduling for project roles/positions will begin once the Statement of Work is signed and Purchase Order is received
- Payment for any software licenses is not contingent on or related to payment or performance for professional services
- Customer will provide Blackboard with access to the appropriate physical and technical environments in the timeframes confirmed with Blackboard Project Manager to successfully complete the effort outlined in this document;
- Any scheduling estimates are based on the assumption that the customer will respond to any decision required from the Customer within 5 business days.
- Customer will complete a review of all submitted draft working products, or set of working products, in five business days unless otherwise agreed to in writing;
- The Customer shall assign a representative to be the primary point of contact for the Blackboard Project Manager. This representative shall have full authority to make all decisions regarding project scope, overall timeline, and related projects costs, as well as ensuring the necessary customer project personnel, resources, etc. are available to successfully complete the project(s);
- Quality involvement and working products from the Customer are critical to the project's success. The Customer's representative shall be responsible for coordinating all meetings that involve Customer and third-party contractor staff members, working products, and information requests within the agreed upon timeframes;
- Customer is responsible for providing subject matter experts to assist in identifying business rules, resolving process discrepancies and answering ad hoc questions. The subject matter expert will be made available as needed during the course of the engagement and will be responsible for soliciting input from additional Customer personnel as needed.
- Hardware and software configuration and environment(s), either managed or self-hosted, can support the functional/technical services included in this SOW
- All interfacing systems in the environment(s) designated for functional testing will be available.
- Third-party products and services, except as expressly noted above, Customer will separately procure and provide all third-party products and services in a timely manner to support the Services as defined in this Statement of Work. Blackboard is not responsible for making changes to the configuration or data contained or used in third-party systems, including but not limited to the Customer's SIS.
- Working Products are artifacts, used by Blackboard, that demonstrate progress toward a deliverable; however, they are not themselves deliverables;
- Services are estimated and billed based upon a maximum eight (8) hour workday per Consultant and a maximum forty (40) hour work week per Consultant. The applicable billing rate for the Consultants shall be at the rates set forth in the table above;
- The customer shall pay all outstanding invoices from any previous Blackboard agreements greater than thirty (30) days, prior to beginning work under this document;
- The estimates above were developed based on the estimated project duration. In the event the project exceeds the duration and crosses a new fiscal year, rate may be adjusted accordingly based on the effort expended in the new fiscal year;
- Except as otherwise stated in this Agreement with regard to the Consulting Services performed hereunder, Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time.
- For Time and Materials Consulting Services related to this project, as outlined in the document, all fees and expenses shall be billed on a monthly basis and such bills shall be due and payable Net 30
- All Firm-Fixed Price Consulting Services related to this Project, as outlined in this document, shall be billed according to the Milestone/Invoicing Schedule as outlined in this document section Services Pricing
- All reasonable travel, meals and lodging expenses shall be billable at cost and all such expenses shall be borne solely by Customer.

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

**BLACKBOARD**

**CENTRAL NEW MEXICO COMMUNITY COLLEGE**

Signature  
Tess Frazier  
TESS FRAZIER-VICE PRESIDENT  
Print Name and Title  
12/13/12  
Date:

Signature  
Gilbert M. Rivera  
GILBERT M. RIVERA, SR. BUYER  
Print Name and Title  
13 Dec 2012  
Date:

APPENDIX

TRAINING SERVICES

The following assumptions / requirements apply to Training Services to be provided by Blackboard Consulting.

- Blackboard, upon request of Customer, shall provide Onsite Training Services to Customer. Upon acceptance of this Agreement, Blackboard will designate a Project Manager/Coordinator to schedule training event. Events are typically scheduled 3 to 6 weeks in advance.
- Hands-on class size is restricted to a maximum of 15 Authorized End Users (as defined in Customer's Software Schedule) to maintain an effective instructor-student ratio.
  - Extra students may require an additional materials, instructor fee, or additional days.
  - Large groups may request presentation learning instead of the hands-on classroom format.
- Training events are only for Customer's on-campus, internal use. Training events may not be video recorded.
- Each class is structured as a hands-on/active training seminar held in a computer classroom unless otherwise agreed. To insure the best learning experience, Customers must provide:
  - A computer lab containing one computer for each student. Each computer must have at least 800 MHz processors and 256 MB or RAM and monitors capable of at least 1024x768 resolution.
  - A high bandwidth Internet connection from each computer
  - Microsoft Internet Explorer 6.0 or later installed on each computer
  - Microsoft 2000 or later installed on each computer
  - Recommended: Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime and/or RealPlayer.
  - A video projection device capable of 1024x768 resolution attached to a "lead" computer.
  - Access to the locally installed version of Blackboard software or a Blackboard Managed Hosting installation.
- Each participant must possess basic Web navigation and file management skills, internet access, and an email address.
- Blackboard, upon request of Customer, shall provide Online Training Services to Customer. Upon acceptance of this agreement, Blackboard will designate a Project Manager/Coordinator to gather necessary enrollment information. The exact schedules for online training courses/workshops are published to the Blackboard Inc. website.
- Online training course/workshop class sizes are restricted to a maximum of 20 Authorized End Users (as defined in Customer's Software Schedule) to maintain an effective instructor-student ratio.
- Each participant must possess basic Web navigation and file management skills, internet access, and an email address.
- Students in online training courses should expect to spend eight to fifteen hours per week reading assignments, completing exercises, and participating in Discussion Board forums. The Customer must provide the name(s) and email address(es) of each participant in advance of the course start date.





Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Central New Mexico Community College ("Customer") details the terms of Customer's use of the products and services set forth in the product and pricing summary exhibit attached hereto and incorporated by reference ("Product and Pricing Exhibit"). This Order Form shall become effective on the later of: (i) the last signature date indicated below; or (ii) the date specified in the Product and Pricing Exhibit ("Effective Date").

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

Invoicing	Blackboard
<p><b>Customer:</b> Central New Mexico Community College <b>Address:</b> 901 Buena Vista SE Albuquerque, NM 87106 USA <b>Invoicing Contact:</b> Accounts Payable, Attn: Jessica Spence Email: CNM_Invoices@cnm.edu Phone: 505-224-4446 Fax: (505) 224-4440</p>	<p><b>Billing Contact Information:</b> 650 Massachusetts Ave., NW, 6th Floor Washington, DC 20001-3796 Phone: 1.800.424.9299</p>

Customer's Purchase Order, the Purchase Order terms and conditions and this Order Form, together with the terms of service ("TOS") attached as Exhibit A and incorporated herein by reference, form the entire agreement between the parties ("Agreement") in respect of the products and services set forth in the Product and Pricing Exhibit. An approved and funded purchase order shall be required for Blackboard to invoice the Customer for amounts due under this Agreement. Notwithstanding anything to the contrary in any purchase order or other document provided by the Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Agreement is conditioned upon Customer's acceptance of this Agreement. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute this Agreement on behalf of Customer or Blackboard, as applicable.

Customer: Central New Mexico Community College	<i>G</i>
Signature	
Name (printed)	GILBERT M. RIVERA
Title (printed)	SR. BUYER
Date	14 Dec 2012

Blackboard Collaborate Inc	
Signature	
Name (printed)	Tess Frazier
Title (printed)	Vice President
Date	12/14/12

**Product and Pricing Exhibit**

**A. Product and Pricing Summary**

**Software, ASP Services & Professional Services:** The Customer hereby subscribes to the following Blackboard Collaborate Software, ASP Services and/or Professional Services:

Qty	Product Code	Product Name	Product or Service Description	Initial Term Period 1 Fee 12/30/12 – 12/29/13	Initial Term Period 2 Fee 12/30/13 – 12/29/14	Initial Term Period 3 Fee 12/30/14 – 12/29/15	Initial Term Period 4 Fee 12/30/15 – 12/29/16	Initial Term Period 5 Fee 12/30/16 – 12/29/17
1	WB-WC-5-SAAS	WIMBA CLASSROOM	Bb Collaborate/Wimba Classroom Enterprise Open Access	\$48,356.50	\$49,807	\$51,301	\$52,840	\$54,425
1	WB-WV-5-SAAS	COLLAB VOICE AUTH	Bb Collaborate Voice Authoring/Wimba Voice Tools	\$13,000.00	\$13,390	\$13,792	\$14,207	\$14,633
1	WB-WP-5	COLLAB ENTERPRISE IM	Bb Collaborate Enterprise Instant Messaging/Wimba Pronto	\$26,000.00	\$26,780	\$27,583	\$28,410	\$29,262
1			Trainer Certification and Customized Implementation Support Services TBD in Year 1 (No additional costs, part of license fees in Year 1 Term; 12/30/12 – 12/29/13; also see Year 3 of signed contract on 9/22/10)	\$0.00				
1			(Credit for unused portion of signed contract on 9/22/10; Credit for term dates 12/30/12 – 9/23/13)	(\$58,310.19)				

Sales Order Total Fee (Initial Term):	USD \$29,046.31	USD \$89,977	USD \$92,676	USD \$95,457	USD \$98,320
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Customer understands and agrees that this Order Form limits the use of the Software, ASP Services and/or Professional Services by the Customer to the delineated description and quantity specified above. Additional access to or usage of the software or services is subject to additional purchase.

PO Required for Invoicing YES  NO

**B. Term**

1. **Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be five (5) years following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form may renew for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, contingent upon fiscal funding and a revision to the Purchase Order or submission of a new Purchase Order, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable. The maximum term including all renewals shall not exceed eight (8) years per New Mexico Statutes Annotated 13-1-150.
3. **Effective Date:** 12/30/12 – 12/29/17

**C. Payment Terms**

1. Initial and subsequent payments are due when invoiced yearly on a Net-30 basis upon approved invoice. All amounts due are in United States dollars (\$) unless otherwise expressly indicated. Customer may terminate service without penalty at any time during the Initial Term in cases of non-appropriation of funding.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form. Fees for subsequent Renewal Terms, if any, shall be invoiced annually upon the anniversary of the Effective Date.
3. **Sales Tax:** If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this

**Order Form.**

**D. Special Provisions**

**Enterprise Licensed User Group (applicable only to enterprise banded products):**

For the purposes of this Collaborate Agreement, Customer's FTE shall be 15,000 – 25,000

This executed contract (CL-0076264) upgrades the current contract (signed and dated 9/22/10) to a 5 year contract with a 3% increase each year. Invoice annually as follows:

Year 1: \$29,046.31

Year 2: \$29,977

Year 3: \$30,676

Year 4: \$31,457

Year 5: \$32,320



**EXHIBIT A:**

**BLACKBOARD COLLABORATE™  
TERMS OF SERVICE**

**IMPORTANT, READ CAREFULLY: YOUR USE OF THE BLACKBOARD WEBSITES AND THE BLACKBOARD COLLABORATE™ SERVICES AND ASSOCIATED SOFTWARE IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS OF SERVICE.**

BY SIGNING THE BLACKBOARD COLLABORATE SALES ORDER FORM AND/OR BY ACCESSING, BROWSING, AND USING THE SERVICES, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS OF SERVICE ("TOS"). IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF SERVICE, DO NOT SIGN THE BLACKBOARD COLLABORATE SALES ORDER FORM AND DO NOT ACCESS/USE THE SOFTWARE OR SERVICES.

Blackboard Inc., and/or one of its affiliates or subsidiaries (the "Company" or "we") provides the *Blackboard Collaborate™* services and software to "you" (namely, the Customer listed on the signed Blackboard Collaborate Sales Order Form), subject to the following Terms of Service ("TOS"), which the Company reserves the right to modify, from time to time, effective five (5) days after such modified document mutually agreed between the Parties.

These TOS, together with the Blackboard Collaborate Sales Order Form (the "Order Form") you signed, Customer's Purchase Order, and the Purchase Order Terms and Conditions constitute a legal agreement (the "Agreement") between you and the Company for your use of the specific services and/or software set forth on the Order Form. These supplemental terms and conditions are hereby incorporated into these TOS. You represent and warrant that you have all necessary right, power and authority to enter into this Agreement and to perform and otherwise discharge all of your obligations hereunder.

**1. GRANT OF RIGHTS**

- 1.1 The Company hereby grants, and you hereby accept, subject to the terms and conditions of the Agreement:
  - (i) where ASP Services are specified in the Order Form, a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the ASP Services, Software, and Documentation to facilitate the conduct of your classes, training sessions, seminars and other meetings;
  - (ii) where a perpetual server license is specified in the Order Form, a perpetual, limited, personal, non-exclusive, non-transferable, non-sublicensable, single-server license to use the Software and Documentation on a single server to facilitate the conduct of your classes, training sessions, seminars and other meetings; or
  - (iii) where a term license is specified in the Order Form, a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the Software and Documentation for the term specified in the Order Form to facilitate the conduct of your classes, training sessions, seminars and other meetings.
- 1.2 As part of the set-up and initialization of the Software, the Company will set-up the virtual classrooms, administrative privileges and class schedules in the manner agreed to with you and specified in the Order Form. You shall pay the appropriate fees as per the purchase order prior to such set-up and initialization pursuant to Section 8 below.
- 1.3 So long as you are in compliance with the terms of this Agreement, including payment terms, the Company will make available to you for the Software (i) free of charge, as they become available, all Upgrades and (ii) for the fee to be determined by the Company upon issue, any New Versions of the Software. Nothing in this Agreement will obligate the Company to maintain the Software in the version covered by this Agreement indefinitely.

**2. CUSTOMER RIGHTS, RESTRICTIONS AND OBLIGATIONS**

- 2.1 **Back-up/Archival Copy.** You shall be entitled to make one copy of the Software (where Software is provided to you) and/or Documentation for backup or archival purposes only. You shall reproduce with such copy any trade-mark, copyright and other notices, or any other indicia of ownership contained in or associated with the Software and/or Documentation on such copy. You may not use any backup or archival copy of the Software or Documentation for any purpose other than to replace an original copy if it is destroyed or becomes defective.
- 2.2 **No Rights to Other Software/Services.** You acknowledge and agree that you are only being granted a license to use the ASP Services, Software and Documentation specified in the Order Form for the period specified therein and that, for greater certainty, such license shall not be construed as to grant to you the right to use any other software, services or documentation of the Company or its suppliers, or to use or exploit the Software, ASP Services and Documentation in any manner other than as expressly permitted by the Agreement.

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**2.3 Use by Authorized Users.** You may (subject to, and only to the extent of, the license rights granted to you in Section 2.1 above) permit your Authorized Users to use the Software, ASP Services and/or Documentation for such purpose. You may provide access to, or copies of, the Documentation to your Authorized Users as necessary for, and in conjunction with, your authorized use of the Software and/or ASP Services, and may abridge or condense the Documentation in connection therewith, provided that the copyright to any derivative work shall belong to the Company and you shall reproduce with such copy or work any trade-mark, copyright and other notices, or any other indicia of ownership contained in, or associated with, the Documentation. You acknowledge and agree that you shall be responsible and liable for all uses made by you or your Authorized Users of the Software, ASP Services or Documentation.

**2.4 Compliance with Laws.** You shall comply with all applicable laws (including, but not limited to export/import laws and laws relating to privacy, obscenity, copyright, trademark, confidential information, trade secret, libel, slander or defamation), as well as all policies and practices of your affiliated school or organization. You shall not, directly or indirectly, send, submit, post, receive or otherwise facilitate, or in any way use, or permit to be used, the Software, ASP Services or Documentation, to send, submit, post, receive or otherwise facilitate the transmission of any materials that are abusive, obscene, profane, sexually explicit, threatening, or materials containing blatant expressions of bigotry, racism or hate, or which violate or infringe any third-party right.

**2.5 Customer Restrictions.** You agree that, unless otherwise expressly permitted in this Agreement, you and your Authorized Users will not: (i) reproduce, republish, display, frame, download (except as expressly authorized herein), distribute, or transmit the Software and/or the ASP Service; (ii) to the extent permitted under applicable law, redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software and/or the ASP Service; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization, or use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Software and/or the ASP Service; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software, or otherwise permit the Software, ASP Services or Documentation to be subject to any timesharing, service bureau, subscription service or rental activities; (v) except to the extent expressly permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software (e.g., in an effort to develop other applications or services that provide similar or substitute or complimentary functionality to the Software or the ASP Services); (vi) create or use any software other than as authorized by the Company to access the Software or to access the Software or the ASP Services by any means other than through the interface that is provided by the Company for use in accessing the Software or ASP Services; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software or ASP Services in any way that violates this Agreement, or any other agreements to which you are a party, or any law; and/or (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the ASP Services. You may not charge any fees to any party for their use of the Software and/or ASP Services.

**2.6 Modifications to Software and ASP Services.** The Company may, at its sole discretion, and from time to time, (i) discontinue the Software or ASP Services or modify the features of the Software or ASP Services from time to time without prior notice; and (ii) make available additional features and/or functionalities to the Software or ASP Service which may, but are not required to, be added to the Software or ASP Service by you at an additional cost.

### 3. THIRD PARTY SOFTWARE; INTERNET ACCESS

**3.1 Third Party Software.** The Software and ASP Service may contain third party software and the Company reserves the right to modify the Software and ASP Service to maintain compliance with the license terms of third party software. The Company is required to, and you agree that you will also, comply with the applicable terms of any third party license of which you have been notified by the Company.

**3.2 Internet Access and Necessary Equipment.** In order to use the Software and ASP Services, you must obtain access to the World Wide Web, either directly or through devices that access web-based content, and pay any service and/or telephony fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device. You acknowledge and agree that such equipment and system requirements, which may change from time to time, are your responsibility. Where ASP Services are specified in the Order Form, the Company shall use commercially reasonable efforts to provide you and your Authorized Users with access via the Internet to the Software for the purpose of using the Software in accordance with the terms of this Agreement and in the manner more particularly set out herein. Generally, the Company endeavors to provide such access on a 24-hour per day and 365 days per year basis. However, such access may not be available from time to time as a result of repairs, upgrades or routine maintenance. The Company will use commercially reasonable efforts to minimize the impact of such activities.

### 4. REGISTRATION; PASSWORDS AND ACCESS

(2)

**4.1 Registration.** In consideration of your use of the Software and ASP Services, you or your Authorized Users may be required to provide information in order to register for and/or use certain Software and ASP Services. You agree to (a) provide true, accurate, current and complete information about yourself and your Authorized Users as prompted by the Software's registration form, and (b) maintain and promptly update all such information to keep it true, accurate, current and complete.

**4.2 Passwords and Access.** You and your Authorized Users may receive a password and account designations upon completing the registration process. You are solely responsible for maintaining the confidentiality of these account(s) and password(s), and are fully responsible for all activities that occur under such passwords or user identifications. You shall be permitted to provide access codes and passwords to Authorized Users. You acknowledge and agree that you are solely responsible for the issuance of access codes and passwords and that the Company will only issue access codes or passwords to Authorized Users on your instruction and as your agent. You acknowledge and agree that you shall be responsible for each and every access, use or employment of the ASP Services or Software that occurs by your Authorized Users and/or in conjunction with such passwords and user identifications, and that the Company is authorized to accept the user identifications and passwords as conclusive evidence that you, or your Authorized Users, as the case may be, have accessed, utilized, or otherwise employed the ASP Services and/or the Software. You agree to (a) notify the Company of any unauthorized use of such password or user identifications and any other breach of security, and (b) ensure that you and your Authorized Users exit from your account at the end of each session using the logout button. You and your Authorized Users are solely responsible for applying the appropriate level of access rights to Customer Content and to communications involving the use of the ASP Services or Software.

## 5. CONSENTS; CUSTOMER CONTENT

**5.1 Necessary Consents.** Where ASP Services are specified in the Order Form, you acknowledge and agree that the ASP Services are provided via the Internet and that you and your Authorized Users' information, including personal information, may be transferred across national borders and stored or processed in any country in the world. You are solely responsible for obtaining and maintaining any necessary consents or permissions from your Authorized Users or others whose information may be collected, recorded, processed, stored, used, disclosed, transferred, exchanged or otherwise handled as a result of, or as part of, any Customer Content or any communications involving the use of the ASP Services or Software and agree to obtain and maintain all such consents or permissions throughout the term of this Agreement. If you reside in the European Union, upon registration you will be indicating your explicit consent that the personal information you have provided may be transferred and stored in countries outside the EU, including the United States. If you fail to provide your consent, you will not be permitted to access the Services for which registration is required. Your personal information shall only be used in accordance with the Company's Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Policy.aspx>.

**5.2 Customer Content.**

(i) You are solely responsible for all Customer Content, as well as for the content of any communications by you or your Authorized Users, including any communications involving the use of the ASP Services or the Software. By uploading or otherwise making available any Customer Content, you automatically grant and/or warrant that the owner has granted the Company, the perpetual, world-wide, royalty-free, non-exclusive, sublicensable, irrevocable right and license to use, reproduce, modify, publish, distribute, perform, display, and transmit the Customer Content through the Service, including use of Customer Content, courses, designs and customizations. You also permit any other user with access to your instance of the Service, subject to your restrictions, to access, view, store, and reproduce the Customer Content to the same extent permitted herein.

(ii) You are solely responsible for making and keeping back-up copies of Customer Content. The Company shall not be responsible or liable for the deletion or accuracy of Customer Content, the failure to store, transmit, encrypt (or otherwise secure) or receive Customer Content, or the storage, transmission, encryption (or other security) or receipt of any other communication involving the use of the ASP services or Software.

(iii) You acknowledge and agree that most information shared or communicated between you, your Authorized Users and the Company, the ASP Services or the Software occurs in an unsecured environment, is not treated as confidential, and may be intercepted and read by others.

(iv) You acknowledge that the Company does not pre-screen Customer Content, but that the Company shall have the right (but not the obligation) in its sole discretion to refuse or move any Customer Content that is available through the Software and/or ASP Services. Without limiting the foregoing, the Company has the right to remove any Customer Content or your access to the Software and/or ASP Services that violates these TOS or is otherwise objectionable. You agree and acknowledge that the Company may preserve Customer Content and may disclose Customer Content if required to do so by law or in the good faith belief that any such preservation or disclosure is reasonably necessary to comply with legal process, enforce the TOS, and/or respond to claims that any Customer Content violates the rights of third parties or protect the rights, property or personal safety of the Company, its users and the public.

## 6. PROPRIETARY RIGHTS AND COPYRIGHT

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You acknowledge and agree that the Software and ASP Service and any necessary software used in connection therewith contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You agree that title to and ownership of the Software (including all source code), ASP Services and Documentation and any modifications made thereto and all intellectual property rights therein shall at all times remain with the Company and/or its suppliers. You shall not have any right, title or ownership interest in the Software, ASP Services or Documentation except the limited right to use the Software, ASP Services and Documentation as explicitly provided in the Agreement.

## 7. SUPPORT

**7.1 Support Services.** For the term identified in the Order Form, and thereafter as long as you continue to obtain support services from the Company pursuant to a then-current support services agreement, the Company shall provide, to such degree as the Company makes such services generally available, support services on an annual basis with respect to the Software and/or ASP Services. Support services currently include delivery of bug fixes and workarounds, and support via telephone (up to a maximum of 250 calls per year, after which the charges set out in the Order Form will apply). Where telephone support is provided, only those individuals who are responsible for providing support to your Authorized Users shall be entitled to make use of same.

**7.2 Onsite Support.** If, for whatever reason, support is required to be delivered by the Company from anywhere other than the offices of the Company, and you approve the delivery of that support, you shall pay the then-current applicable onsite support fees (including travel time). All travel requires Customer prior approval and must adhere to Customer's travel policy. Customer agrees to meals at \$45/day when consultant is traveling to perform work at CNM facilities and mileage at \$0.55/mile; however, all rental cars shall be rented with unlimited miles (i.e., mileage is not applicable to rental cars, nor is it applicable from Consultant's home to office/airport). Customer agrees that Car rental applies when consultant is traveling to CNM's facilities to perform contracted services.

**7.3 Company Responsibility.** In providing support services the Company shall only be required to use reasonable commercial efforts to correct documented errors in the ASP Services and/or Software identified by you, which can be repeated by the Company (with your assistance if the Company so requests such assistance). Notwithstanding the forgoing, under no circumstances does the Company warrant or represent that all errors can or will be corrected.

## 8. FEES; EXPENSES

**8.1 Fees; Payments.** In consideration for the Company's performance under this Agreement, you agree to pay the Company all fees required by the Order Form, which fees will be due in accordance with the provisions of the Order From, but in no event later than thirty (30) days after the date of an approved invoice from the Company. The Company expressly reserves the right to change the fees payable under any Order Form with respect to any renewal of such Order Form upon expiration of its then-current term. Any renewal fees of the Service shall be at the Company's then-current rates. You will pay all fees in U.S. dollars, unless otherwise noted on the Order Form. Payments shall be sent to the address indicated on the invoice.

**8.2 Late Fees.** The Company may charge interest on any overdue amounts at the lower of: (i) the highest permissible rate allowed by law, 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.

**8.3 Audit.** For the sole purpose of ensuring compliance with this Agreement, the Company shall have the right, at its expense, to audit your use of the Software during your normal business hours upon not less than seven (7) days' advance notice. Any such audit shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, the Company 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 the Company unless the audit reveals that you have underpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case you shall, in addition, reimburse to the Company the reasonable costs of conducting the audit.

**8.4 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 delivery of any Software or the performance of the ASP Services by the Company to you. You will be responsible for payment of such applicable sales, use, excise, import or export, value-added or similar tax or interest at point of sale. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If you are required to deduct or withhold, you will promptly notify the Company of the requirement, pay the required amount to the relevant governmental authority, provide the Company with an official receipt or certified copy or other documentation acceptable to the Company evidencing payment, and pay to the Company, in addition to the payment to which the Company is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by the Company equals the full amount the Company would have received had no such deduction or withholding been required. If you are exempt from any such taxes or fees, then such taxes or fees shall not be charged to you upon the Company's receipt of a copy of your tax exemption certificate or number.



**8.5 Expenses.** Except as provided in these TOS or the Order Form, 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 the Company 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 you by the Company, Company shall pay external or internal legal costs incurred to respond to the request.

## 9. TERM; TERMINATION

**9.1 Term.** The initial term ("Initial Term") of this Agreement shall be as specified in the Order Form. Where the Initial Term of this Agreement is not perpetual, unless otherwise specified in the Order Form, the term of the Agreement may be renewed contingent upon fiscal funding, revision of the Purchase Order, or issuance of a new Purchase Order for successive periods of one (1) year each (a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless you provide the Company, or the Company provides you, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or any subsequent Renewal Term. The maximum term including all renewals shall not exceed eight (8) years per New Mexico Statutes Annotated 13-1-150. Each Renewal Term shall incorporate and be governed by the Company's then-current pricing.

**9.2 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 Order Form (if more than one Order Form is in effect) 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 11 or the license usage restrictions in the Order Form. Notwithstanding any other provision in this Agreement, the Company may terminate this Agreement, or any portion of the licenses granted herein, immediately, without notice, if it is determined that you or your Authorized Users have failed to comply with any applicable laws.

**9.3 Termination for Insolvency.** Without prejudice to any other available remedies, either party may terminate the 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.

**9.4 Effect of Termination.** Upon termination of this Agreement, all licenses granted and products or services provided under this Agreement shall immediately cease. Upon termination, you will immediately discontinue all use of materials licensed under this Agreement, and will pay to the Company all amounts due and payable hereunder for the current years' service. Customer shall not be liable to pay future fees in cases of non-appropriation of funding for the Services. 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 Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.

**9.5 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 6, 8, 9.4, 9.5, 10-15 of these TOS shall survive the termination of this Agreement for any reason.

## 10. PRIVACY POLICY

Because like you, we are Internet users concerned about privacy, we also are concerned about your right to privacy while accessing our websites and using the Software and ASP Services. As such, your use of the ASP Services and Software is subject to our Privacy Policy. Please take the opportunity to review our Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Policy.aspx> which is incorporated herein by reference.

## 11. CONFIDENTIALITY

**11.1 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

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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.

**11.2 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.

**11.3 Terms of Agreement.** Except as otherwise provided by law, parties shall make reasonable efforts not to 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 11 to keep such terms confidential.

**11.4 Exceptions to Confidential Treatment.** Notwithstanding the foregoing, the preceding provisions of this Section 11 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. *Further, if the Company is required by applicable law, legal process or government action to produce information, files, documents or personnel as witnesses with respect to these TOS or the Services provided to you by the Company, you shall reimburse the Company for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless the Company is a party to the proceeding or the subject of the investigation.*

**11.5 Contact Information.** You hereby authorize the Company 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 the Company relating to Company-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 you have purchased through the Company for the purpose of providing those products and services or support or maintenance for the products and services. You acknowledge that you have the right to provide such consent, and the Company acknowledges that it will not use or distribute the contact information except as explicitly set forth above.

**11.6 Other Rights.** You hereby grant to the Company the limited right to use your name, logo and/or other marks for the sole purpose of listing you as a user of the applicable Software or ASP Services in the Company's promotional materials. Company shall request approval from Customer prior to each use of Customer's logo by contacting Ms. Miranda Evjen at [mevjen@cnm.edu](mailto:mevjen@cnm.edu) or Ms. Alexis Kerschner Tappen at [akerschner@cnm.edu](mailto:akerschner@cnm.edu). The Company agrees to discontinue such use within fourteen (14) days of your written request.

## 12. DISCLAIMER OF WARRANTY

THE FOLLOWING PARAGRAPHS OF THIS SECTION 12 ARE IMPORTANT LEGAL LANGUAGE. PLEASE READ THESE PARAGRAPHS CAREFULLY, AS THEY LIMIT THE COMPANY'S LIABILITY TO YOU.

**12.1 Disclaimer of Warranty.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED ORDER FORM(S): (A) THE SOFTWARE AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY 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 THE COMPANY NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR

INFORMATION CONTAINED IN THE SOFTWARE OR ASP SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE OR ASP SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE OR ASP SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE OR ASP SERVICES IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) THE COMPANY AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE OR ASP SERVICES. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE ASP SERVICES AND/OR THE SOFTWARE ARE NOT DESIGNED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS (INCLUDING, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION/COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, SURGICAL OR MEDICAL FACILITIES, LIFE SUPPORT OR WEAPONS SYSTEMS) AND THAT THE COMPANY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR CONDITION OF FITNESS FOR SUCH PURPOSES.

**12.2 Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY OR ITS LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AUTHORIZED USERS FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR ASP SERVICES, WHETHER OR NOT THE COMPANY 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 THE COMPANY'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 YOU UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, AND/OR ASP 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. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES THE COMPANY'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

**12.3 Liability Not Excluded.** Nothing in this Section 12 excludes or limits the liability of the Company to you for death or personal injury caused by the negligence of the Company or any other liability which cannot be excluded by law.

**12.4 Essential Basis.** The parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 12 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.

### **13. INFRINGEMENT**

**13.1 Company Infringement Obligations.** If any third party brings a claim against you alleging that the use of the Software or ASP Services 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 you must promptly notify the Company in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that you have promptly fulfilled all of the foregoing obligations and are not in material breach of the Agreement, the Company shall at its own expense and option: (i) indemnify, defend, and settle such claim, (ii) procure you the right to use the Software or ASP Services, (iii) modify or replace the Software or ASP Services to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event that the Company exercises option (i) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that the Company will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

**13.2 Exceptions.** The Company shall have no liability to you under Section 13.1 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 ASP Services in a manner other than as specified by the Company, or your breach of these TOS; (ii) any combination of the Software or ASP Services with other products, equipment, devices, software, systems or data not manufactured by the Company (including, without limitation, any software produced by you 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 ASP Services by any person other than the Company (any of the foregoing, separately and collectively, "Customer Matters").

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**13.3 Customer Infringement Obligations.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of Central New Mexico Community College shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

**13.4 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 13 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.

#### **14. DEFINITIONS**

The following terms shall have the following meanings when used in the Agreement:

“**ASP Services**” shall mean those services, as may be amended from time to time, provided by the Company in respect of the hosting of, and access via the Internet to, the Software for the purpose of permitting you and your Authorized Users to use the Software in the manner as more particularly set out herein (for greater certainty, ASP Services are optional and are only provided when indicated on the Order Form).

“**Authorized Users**” means those individuals who are authorized by you to use the ASP Services, Software or Documentation, from time to time, in the manner as more particularly set out herein.

“**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. “Confidential Information” shall also include information about the Software, ASP Services or Documentation.

“**Customer Content**” shall mean all items supplied by you or your Authorized Users for inclusion in, use in association with, or uploading to the ASP Services or the Software, including all program, data, or other software files, regardless of format, documents, text, pictures, photographs, graphics, video, animation, and sound recordings.

“**Documentation**” shall mean, with respect to any particular Software and ASP Services, any applicable standard end user specifications and/or operating instructions provided by the Company for such Software and ASP Services, which may be amended from time to time. Documentation does not include any sales or marketing materials.

“**Effective Date**” shall mean the date on which you indicated your acceptance of this Agreement by executing and returning the Order Form to the Company.

“**Software**” shall mean the computer programs specified in the Order Form and all related files and Documentation, or any portion thereof, as may be amended from time to time and provided or made available by the Company to you or your Authorized Users under the terms of this Agreement.

“**Upgrades**” means linear improvements in functionality, amendments, enhancements, or changes (but not New Versions) of the Software or the Documentation issued by the Company and made available to you during the Term.

“**New Version**” means any release, option or future product of the Software that the Company licenses separately.

#### **15. GENERAL PROVISIONS**

**15.1 Order of Precedence.** In the event a conflict arises between Customer’s Purchase Order, the Purchase Order terms and conditions, these TOS and the provisions of any Order Form, these Customer’s Purchase Order and PO terms and conditions will govern unless the relevant Order Form 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.

**15.2 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

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provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

**15.3      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 15.3 will be construed to limit either party's rights under Sections 9 and 15.7.

**15.4 Governing Law.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of New Mexico without reference to its conflicts of law provisions, and each party irrevocably submits to the non-exclusive jurisdiction of the courts in Bernalillo County, New Mexico. 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.

**15.5      Modification and Waiver.** No modification, amendment, supplement, or other change to this Agreement, including, without limitation, changes to any Order Form will be effective unless set forth in writing and signed by duly authorized representatives of the Company and you. 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.

**15.6 Assignment.** None of your rights or obligations 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 the Company, and any attempt to assign, delegate or otherwise transfer any of your 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.

**15.7      Remedies.** The parties agree that any breach of this Agreement would cause irreparable injury for which no adequate remedy at law exists; therefore, the parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this Agreement, in addition to other remedies available to the parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 9, 12 and 13. If any legal action is brought to enforce any obligations hereunder, each Party shall pay its own legal fees.

**15.8 Notices.** The Company may provide you with notices regarding changes to the TOS, by email, or regular mail. Any other 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 on the Sales Order Form or to such other address as shall be given in accordance with this Section 15.8, and shall be effective upon receipt. You also understand and agree that the Software and/or ASP Services may include certain communications from the Company, including service announcements and administrative messages, and that these communications are considered part of your registration, and you will not be able to opt out of receiving them.

**15.9      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.

**15.10    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. All rights not specifically granted in this Agreement are reserved by the Company.

**15.11    Export Control.** You shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of the Company without the express, prior, written consent of the Company 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.

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**15.12 Links.** Some links on the Company websites lead to sites posted by independent site owners. Because the Company has no control over these sites, the Company is not responsible for such sites' accessibility via the Internet and does not endorse products, services, or information provided by such sites. As such, the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on you or any Authorized User or other content, goods, or services available on or through any other site. Further, the inclusion of these links does not imply that the other sites have given permission for inclusion of these links, or that there is any relationship between the Company and the linked sites. The Company is an independent operating company and reference to other companies do not imply any partnership, joint venture, or other legal connection where the Company would be responsible for the actions of their respective owners. Unless otherwise explicitly stated, all marketing or promotional materials found on the Company websites and the Service are solely directed to individuals, companies, or other entities located in the United States.

**15.13 Trademark Notice.** Blackboard, the Blackboard logo, BBWorld, Blackboard Learn, Blackboard Collaborate, Behind the Blackboard, Elluminate, Elluminate Plan!, Elluminate Live!, Elluminate Publish!, Elluminate Bridges, Elluminate vClass, Elluminate vOffice, Elluminate vRoom, Wimba, Wimba Classroom, Wimba Pronto, Wimba Voice and Wimba Create are trademarks or registered trademarks of the Company, or one of its affiliates or subsidiaries, in the United States and/or other countries. All other trademarks, service marks, trade dress, and logos used in the Company websites, and the Services are the trademarks, service marks, trade dress, and logos of their respective owners.

**15.14 Designated Agent.** The Digital Millennium Copyright Act, signed into law on October 28, 1998, amended the copyright law to provide limitations for service provider liability relating to material online. In compliance with such Act, the Company has registered a Designated Agent with the United States Copyright Office to receive notice of alleged copyright infringements contained on the Company services. All inquiries into alleged copyright infringement on the Company services should be sent to Blackboard, c/o Teresa Frazier, 650 Massachusetts Avenue, 6th Floor, Washington, D.C. 20001.

**15.15 Interstate Nature of Communications.** When you register with the Software and/or ASP Services, you acknowledge that in using the Software and/or ASP Services to send or store electronic communications (including but not limited to uploading photos and files, you will be causing communications to be sent through the Company or the Company's third party computer networks located in the United States and abroad. As a result, and also as a result of the Company's network architecture and business practices and the nature of electronic communications, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, by agreeing to this TOS, you acknowledge that use of the Software and/or the ASP Services results in interstate data transmissions.

**15.16 Relationship.** The Company and you are independent contracting parties. This Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

**15.17 Entire Agreement.** This Agreement, namely Customer's Purchase Order, the Purchase Order terms and conditions, these TOS and the Order Form(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, acknowledgment, or other communication between the parties relating to its subject matter. This means that you may not and should not rely on any sales or marketing materials provided to it by the Company. The Company's only obligations to you related to the subject matter of this Agreement are set forth in the Purchase Order and in this Agreement. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. 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 Order Form 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.

All changes to the Agreement must be made through an amendment to the Purchase Order, agreed to by both parties.

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CUSTOMER'S PURCHASE ORDER AND PURCHASE ORDER TERMS AND CONDITIONS  
by TF  
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AMENDMENT # 1  
TO THE BLACKBOARD MASTER TERMS DATED AUGUST 15, 2007 BETWEEN  
BLACKBOARD INC. AND CENTRAL NEW MEXICO COMMUNITY COLLEGE

This Amendment to the Blackboard Master Terms dated August 15, 2007 ("Master Terms") between Blackboard, Inc. ("Blackboard") and Central New Mexico Community College ("Customer") is made as of the date signed below.

The purpose of this amendment is to amend the existing Blackboard Master Terms and the parties hereby agree to the following changes which shall supersede and replace the applicable sections:

1.2 Order of Precedence. The Order of Precedence shall be Customer's Purchase Order, the Purchase Order Terms and Conditions as mutually agreed by the Parties, the Order Form(s) and this Master Services Agreement.

2.4 "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, customers, end users, end users' grades or other EDUCATIONAL information, end users' financial information, transaction data, employees, finances, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literary elements, capabilities and functionality, source code and object code, as well as research and development efforts, 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. It is understood by the Parties that all pricing, Order Forms and Agreements made between Blackboard and Customer are not considered Confidential Information.

2.5 "Customer" means Central New Mexico Community College (CNM) with its principal office and place of business at 525 Buena Vista Drive SE, Albuquerque, NM 87106.

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 law 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. It is understood that Customer is a Local Public Body within the state of New Mexico. The Parties agree Customer's Purchase Order, including all pricing, Order Forms, and this Agreement, are subject to applicable federal and State of New Mexico Open Records Laws.

4.6 Other Rights. Customer hereby grants 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. All requests by Blackboard to use Customer's name and logo shall require written approval from Customer's Marketing and Communications Office (MCO) prior to each use.

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 reimburse to Blackboard the underpaid amount(s) due.

6.6 Purchase Orders. It is understood by the Parties that Customer is a Local Public Body within the state of New Mexico, and that goods and services shall not be rendered without a valid Purchase Order in place.

8.3 Customer Infringement Obligations. CNM may not enter into contracts in which it indemnifies or saves harmless the other contracting party. Central New Mexico Community College (CNM) is a state educational institution, N.M. Const. Article XII, Section 11. As such, it is prohibited from contractually creating a general obligation against the College without submitting the question to the voters and creating a sinking fund, pursuant to Article IX, Section 8 of the New Mexico Constitution. Moreover, Article IV, Section 30 of the NM Constitution and Section 23-1-5 NMSA 1978 prohibit contracting any liability which might exceed expenditures authorized by the legislature. Indemnification and save harmless clauses create potentially unlimited contractual liabilities and are, therefore, prohibited by the above provisions. Additionally, Article IV, Section 14 of the NM Constitution prohibits the state from pledging or lending its credit, directly or indirectly. An indemnification clause could easily be construed as doing just that.

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 Mexico without reference to its conflicts of law provisions, and each Party irrevocably submits to the non-exclusive jurisdiction of the courts in

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or for the State of New Mexico. The U.N. Convention on Contracts for the International Sale of Goods 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. Changes to this Agreement may also require changes to Customer's Purchase Order. 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.

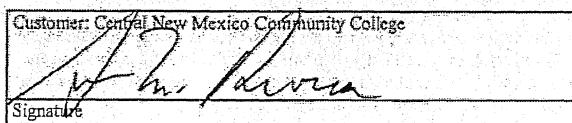
9.8 Force Majeure. Neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor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

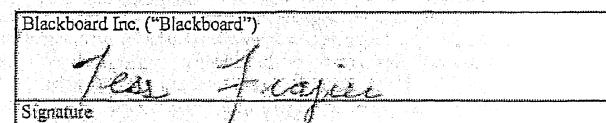
9.11 Relationship. Blackboard is an independent contractor while Customer is a Local Public Body within the state of New Mexico.. This Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

9.12 Entire Agreement. Customer's Purchase Order, the Purchase Order Terms and Conditions as mutually agreed, and this Agreement and Exhibit(s), constitutes the entire, full and complete Agreement between the Parties concerning the subject matter and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, acknowledgement, or other communication between the Parties relating to the subject matter. All changes to the Agreement may also require that a change be made through an amendment or revision to the Purchase Order and agreed by both Parties. Notwithstanding the foregoing, nothing in this Agreement shall exclude or restrict the liability of either party arising out of fraud or fraudulent representation. This Agreement, and any Schedule thereto, may be executed in counterparts, each of which together constitute one and the same instrument. Facsimile signatures will be considered original signatures.

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT

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

Customer: Central New Mexico Community College	
	
Signature	
GILBERT M. RIVERA, SR. BUYER	
Name & Title (printed)	
Date	7 July 2014

Blackboard Inc. ("Blackboard")	
	
Signature	
TESS FRAZIER, VICE PRESIDENT	
Name & Title (printed)	
Date	7 July 14