

Purchase Order		Marshall University Purchasing and Materials Management One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304) 696 - 2822			Purchase Order # MU10 - MNHOST									
TO: BLACKBOARD INC 650 MASSACHUSETTS AVENUE NW 6TH FLOOR WASHINGTON DC 20001-3796		Vendor Code: 	Ship to: 			THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN								
						WVFIMS Account #: VARIOUS								
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #								
06/30/09	2010	SS				MU10 - MNHOST								
<u>AGREEMENT</u>														
<p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Blackboard, Inc.</u></p> <p>for <u>Managed Hosting and related services</u> <u>per vendor 2009 document #90748 (27 pages)</u></p> <hr/> <p>Services shall begin <u>July 1, 2009</u> and extend through <u>June 30, 2012</u>. All in accordance with the agreement attached hereto and made a part hereof.</p> <p>Schedule of payment \$ <u>*As listed</u> per <u>agreement</u>.</p> <table> <tbody> <tr> <td>Fee</td> <td>\$ <u>*</u></td> </tr> <tr> <td>Travel Expense</td> <td>\$ <u>*</u></td> </tr> <tr> <td>Other Expense</td> <td>\$ <u>*</u></td> </tr> <tr> <td>Total \$</td> <td>\$ <u>OPEN END</u></td> </tr> </tbody> </table> <p>Approved As To Form this <u>N/A</u> day of <u> </u>, 20<u> </u>. Attorney General By: <u>N/A</u> Asst. Attorney General</p> <p>THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>							Fee	\$ <u>*</u>	Travel Expense	\$ <u>*</u>	Other Expense	\$ <u>*</u>	Total \$	\$ <u>OPEN END</u>
Fee	\$ <u>*</u>													
Travel Expense	\$ <u>*</u>													
Other Expense	\$ <u>*</u>													
Total \$	\$ <u>OPEN END</u>													
Line No.	Fund	Org.	Account	Encumber Amount	Total:	OPEN END								
1.	VARIOUS	VARIOUS	VARIOUS	OPEN END										
2.														
3.														
4.				OPEN END										
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4300						<i>Dennis Reardon 6-30-09</i> Authorized Signature Date								



Blackboard

BLACKBOARD LICENSE AND SERVICES AGREEMENT
COVER PAGE

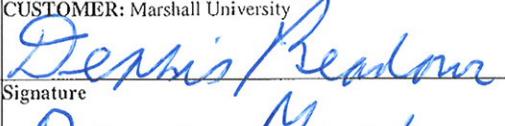
The attached documents describe the relationship between Blackboard and the Customer identified below. The documents attached to this cover page will consist of the one (1) or more schedules describing and setting forth detail about that relationship, depending upon the particular software and/or services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

This License and Services Agreement includes this cover page, the attached pricing summary, and all Schedules that are attached to the Blackboard Master Terms. For purposes of clarification, the Parties agree and acknowledge that the Master Terms provided herein are specifically included for the procurement of the product and/or services indicated in the attached Pricing Summary. This Agreement, including the Master Terms, will become effective when the attached Schedules are executed by authorized representatives of both Parties.

CUSTOMER INFORMATION:

Name/Company:	Marshall University	Principal Contact Person:	Taylor,Allen
Fax:		Phone:	304/696-6195
Address:	400 Hal Greer Blvd. Huntington, WV 25755-2020 USA		
Billing Contact:	Taylor,Allen	Title:	
Address:	One John Marshall Drive Huntington, WV 25755-2020 USA		
Phone:	304/696-6195	Email Address:	allen.taylor@marshall.edu
Fax:			

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

BLACKBOARD	CUSTOMER: Marshall University
	 Dennis Meadows
Signature	Signature
TESS FRAZIER- VICE PRESIDENT	
Print Name and Title	Print Name and Title
Date:	Date:
6/30/09	6/30/09

Effective July 1, 2009

Marshall University Pricing Summary

Product Description	Product ID	Qty.	Units	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3
Blackboard Content System License	AS-CS-HENA01	1	YR	\$0	\$0	\$0
HST SETUP LS NA	AS-SETASPLS-NA	1	EA	\$20000		
HST SVC LS HENA < 8K	AS-ASPLS-HENA06	1	YR	\$54800	\$54800	\$60280
HST SVC CO-PROD - R9	AS-ASPCOPRO	1	YR	\$29000	\$29000	\$29000
Price Reduction				<\$29000>	<\$29000>	<\$29000>
HST SETUP CS NA	AS-SETASPCS-NA	1	EA	\$15000		
Price Reduction				<\$15000>		
HST SVC CS HENA	AS-ASPCS-HENA	1	YR	\$23500	\$23500	\$25850
HST SETUP STAGING	AS-SETASPSTG	1	EA	\$5000		
Price Reduction				<\$5000>		
HST SVC STAGING	AS-ASPSTG	1	YR	\$32700	\$32700	\$35970
HST SETUP TEST	AS-SETASPTEST	1	EA	\$1000		
Price Reduction				<\$1000>		
HST SVC TEST	AS-ASPTEST	1	YR	\$13000	\$13000	\$14300
HST SETUP SSL	AS-SETASPSSL	1	EA	\$0		
HST SVC SSL	AS-ASPSSL	1	YR	\$500	\$500	\$500
Price Reduction				<\$500>	<\$500>	<\$500>
COMPLEX HOSTING MGR 10 HRS/WK	AS-ASPCHM025	1	YR	\$67000	\$67000	\$73700
HST ADD STOR ITB	AS-ASPADST-09	1	YR	\$39000	\$39000	\$42900
HST ADD SVC UNIT HENA	AS-ASPADSU-HENA	1	YR	\$39100	\$39100	\$43010
COURSE DELIVERY ADMINISTRATION	AS-EDULSADMIN	1	EA	\$5700		
COURSE DELIVERY TO ACAD COLLAB	AS-EDUCSCMTYWRK	1	EA	\$12000		
IMPLEMENTATION PLANNING	AS-IMPPLAN	1	EA	\$31730		
Total				\$338,530	\$269,100	\$296,010

Designated Server Site (Physical Location of the Software): Hosted by Blackboard	Database Version:	Operating System:	Hardware Model:
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Customers FTE/User Band: 8,000-15,000



Blackboard

BLACKBOARD MASTER TERMS

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

AGREEMENT

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

1. SCOPE OF AGREEMENT.

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

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

2. DEFINITIONS

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

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

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

2.4 Confidential Information" means any non-public information disclosed by either Party to the other, 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 "Designated Server Site" means the physical location where the Software will be installed, either a location operated by Customer, or hosted by Blackboard.

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

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

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

2.11 "Master Terms" means these Blackboard Master Terms.

2.12 "Party" means either Blackboard or Customer.

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

2.15 "Software" means the object code version of the Blackboard Learn™, Blackboard, Transact™ or Blackboard Connect™ software as described on the applicable Software Schedule(s).

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

3. APPLICATION OF SCHEDULES.

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

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

4. CONFIDENTIALITY

4.1 Nondisclosure and Nonuse. Subject to the West Virginia Freedom of Information Act, 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. Subject to the West Virginia Freedom of Information Act, 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. Subject to the West Virginia Freedom of Information Act, 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.

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, 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 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 manufactured by Blackboard (including, without limitation, any software produced by Customer for use with the Software) to the extent such claim is directed against such combination; (iii) the Customer Content, or the use of the Customer Content; or (iv) any modifications or customization of the Software or Equipment by any person other than Blackboard (any of the foregoing, separately and collectively, "Customer Matters").

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

written notice of any Blackboard Claim and (ii) to provide such assistance as Customer may reasonably request, at Customer's expense, in order to settle or defend any such Blackboard Claim.

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

9. MISCELLANEOUS MATTERS

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

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

9.3 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of West Virginia without reference to its conflicts of law provisions. 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. Neither Party shall be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, except with the written consent of the other Party; provided, however, that either Party may assign this Agreement without the consent of the other Party to any entity that is the successor corporation in any merger or consolidation of either Party, or any entity that purchases a majority of the voting securities of either Party, or all or substantially all of the assets of either Party, or of a specific division or group of such Party. This Agreement shall insure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

9.6 Remedies. The Parties agree that any breach of this Agreement would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this

Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 5, 7 and 8. If any legal action is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

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

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

9.9 U.S. Government Users. The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 2001 All rights not specifically granted in this Agreement are reserved by Blackboard.

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

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

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

9.12 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 CONTENT SYSTEM™
SOFTWARE SCHEDULE

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

1. ADDITIONAL DEFINITIONS

- 1.1 **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 Upgrades, designated by AP#, and/or later incorporated into 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). Customer's Authorized Users will not exceed Customer's FTE listed in 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 in the Pricing Summary. Unless otherwise indicated in the Pricing Summary, the Designated Server Site shall be the physical location at the primary address of Customer.
- 1.5 **Pricing Summary** means the pricing attributable to the software and services provided pursuant to this Schedule as set forth on the cover page to the Agreement.
- 1.6 **Software** means, for purposes of this Schedule only, the Blackboard Content System 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 Building Blocks®* 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 (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 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. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Customer shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software to the extent permitted by the Software's standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the license granted in Section 2.1; or (vi) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Customer add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Customer shall not use the Software in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Customer of such obligation. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard's prior written consent; provided, however, that Customer

.may provide access to *Blackboard Building Blocks*® partners that are subject to a valid Blackboard developer's license agreement for the limited purpose of installing, maintaining, and supporting their respective *Blackboard Building Blocks*® applications. Customer shall ensure that its use of the Software complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Customer warrants that its Authorized End Users will comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section 2.2. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Under no circumstances shall Customer permit any third party to host the Software.

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

2.4 Interoperability. To the extent permitted by the specifications, 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 Third Party Software. Pursuant to its agreements with these third parties, Blackboard hereby grants to Customer a non-exclusive, non-transferable license or sublicense, as applicable, to load and/or operate and use the Third Party Software solely in connection with the Software and 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. 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 Blackboard's then-current pricing.

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

3. DELIVERY

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, Blackboard will make available a copy of the Software for downloading from the Internet by Customer for purposes of installation by Customer, and delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available for download. Customer acknowledges that the download site will be made available to Customer for a period not longer than thirty (30) days from the date of such notice, and Customer will have no right to download the Software after this thirty (30)-day period.

4. FEES

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

5. TERM

This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the "Schedule Effective Date"); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue in effect for three (3) years (the "Initial Term"). Thereafter, the Schedule may renew upon written mutual agreement of the Parties for successive one (1)-year periods (each, a "Renewal Term"). 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 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

VOID IF EXECUTED AFTER JUNE 30, 2009
Marshall University

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 Customer Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/supportsvccguide.pdf>.

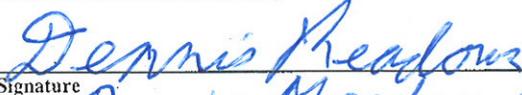
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof.

BLACKBOARD

Signature 

TESS FRAZIER-VICE PRESIDENT
Print Name and Title
Date: 6/30/09

CUSTOMER: Marshall University

Signature 

Dennis Meadows
Print Name and Title
Date: 6/30/09

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

1. ADDITIONAL DEFINITIONS

- 1.1 **"Active User Capacity"** means the number of Authorized End Users, at any particular time, permitted to be registered to access one (1) or more educational courses provided through the Hosted Software. As of the Schedule Effective Date (as defined below), the initial Active User Capacity will be equal to the number indicated in the table above.
- 1.2 **"Managed Hosting Services"** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated in the table above.
- 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 \$800 per ticket created for data archiving and cleanup related tasks. If Customer requires Blackboard to batch archive data on to a hard-

drive and ship to Customer, Blackboard will charge \$200 for the cost of each of 200 GB hard-drive required. The hard-drive can be shipped back to Managed Hosting at the time of next task for reuse.

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

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

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

2.9 IP Addresses. Any IP addresses assigned or allocated to Customer by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable and Customer shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Customer to the Blackboard allocated addresses must be agreed to by the Parties. Customer understands that the IP Services provided under this Agreement (including Internet use) may require registrations and related administrative 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 2.6. Customer shall refrain from, and shall ensure that Authorized End Users refrain from, using the Managed Hosting Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Managed Hosting Services or the resources available through the Managed Hosting Services. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Customer warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

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

4. FEES

4.1 In consideration for provision of the Managed Hosting Services, Customer shall pay to Blackboard all fees specified in the Pricing Summary or otherwise required in this Schedule (for additional services, additional bandwidth, or additional users), which fees shall be non-cancelable and non-refundable. The fees are payable in five installments (each an "Installment"), the first of which shall be due and payable upon the execution of this Schedule. The remaining Installments shall be due and payable on the anniversary of the Schedule Effective Date respectively. 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.

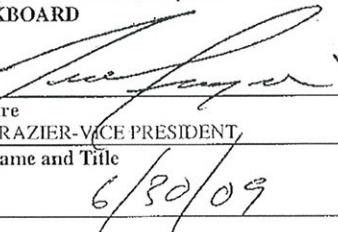
4.3 With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance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

5. TERM

This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of three (3) years (the "Initial Term"), unless earlier terminated or otherwise specified in Exhibit A. Thereafter, the Managed Hosting Schedule will renew automatically upon the conclusion of each twelve month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), at Blackboard's then current pricing for Customer's then current usage level, unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Renewal Term or then-current Renewal Term, as applicable. Upon termination of this Managed Hosting Schedule, all licenses granted under this Managed Hosting Schedule shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Hosted Software under this Managed Hosting Schedule; (ii) pay to Blackboard all amounts due and payable under this Managed Hosting Schedule; and (iii) return all Documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

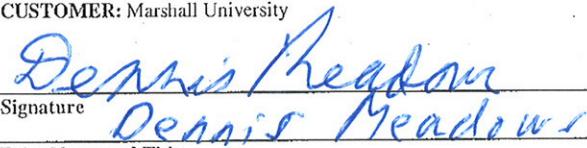
IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof.

BLACKBOARD



Signature
TESS FRAZIER-VICE PRESIDENT
Print Name and Title
Date: 6/30/09

CUSTOMER: Marshall University



Signature
Dennis Meadows
Print Name and Title
Date: 6/30/09

EXHIBIT A
MANAGED HOSTING SPECIFICATIONS

Blackboard Content System™:

- Customer must have Blackboard Learning System hosted with Blackboard as Hosted Software by Managed Hosting Services in order to host the Content System.
- 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 Users^x and 20 GB of storage and 512 kbps 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

^xA user is defined as any account in the database regardless of enrollments

Blackboard Learning System™ - Vista Enterprise License

- 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 Users^x and 200 GB of storage and 512 kbps 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 Users^x (higher ed)/5,000 additional Users (k-12), additional 512 kbps bandwidth and 100 GB additional storage are separately charged.

+ Blackboard VISTA Co-Production:

- Set Up Fee (if any) for each solution includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Term for Co-production environment is three (3) years. Thereafter, environment shall be terminated unless extended by mutual agreement of both parties.
- Active Users, storage and bandwidth specifications are included in the totals provided above.
- Additional storage and bandwidth for each solution are separately charged

+ Blackboard Non-Production Test Environment:

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

+ Blackboard Staging Environment:

- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
- Initial Term Fee includes 20 GB of storage and 512 kbps of bandwidth measured using the 95th percentile calculation (as defined above) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- The Staging Environment 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. Up to 500GB of storage can be used for a period of up to six (6) months of the year. This cloned data will not be backed up/.
- The Staging Environment is designed for 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.
- The Staging Environment, when sold with the Platinum Package, is only available during major upgrade periods.

+ Complex Hosting Technical Manager

- Initial term annual fee includes service of 25% CHM
- A Complex Hosting Manager is a Project Manager and Technical Specialist whose resources can be purchased such that the time a CHM dedicates to a Customer is in line with the individual needs of that Customer. For example, a Customer who purchases a 25% CHM will receive ten hours a week -- or 25% of a standard forty hour work-week -- dedicated to them. That CHM can have up to four Customers total. A 50% CHM can have up to two Customers total and will dedicate twenty (20) hours a week to one and twenty (20) hours a week to the other, and so forth.
- Roles and responsibilities of the Blackboard Complex Hosting Manager ("CHM") will primarily fall under the following three objectives: management, communication and documentation.
- The Platinum Project Manager -- formerly called the CHM for Platinum Package Customers -- is only available during major upgrade periods, as necessary

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

- **Central Point of Contact and Escalation:** The CHM will be the central point-of-contact within Blackboard Managed Hosting CHM Services and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Customer's hosted environment
- **Infrastructure Management:** Plan and manage projects involving Customer's infrastructure for scalability, optimal performance, and growth in coordination with Customer and all elements within Blackboard

- Internal Blackboard Delivery Coordination: Coordinate with Blackboard Global Services Project Management, Developers, and Customer's Technical Support Manager in Managed Hosting CHM Services, and Managed Hosting Operations and Engineering and other elements of Blackboard to deliver and manage Customer's requirements
 - Managed Hosting Support Activities: Support directly the hosted Blackboard application and infrastructure through:
 - Direct Managed Hosting ticket escalation management and documentation
 - Development support activities focused on impact analysis and evaluation based on updates and upgrades
 - Infrastructure Expansion: Modify and order hardware when necessary in coordination with Customer
 - 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)
 - Auditing: Regularly conduct systems audit and analysis on Customer's Managed Hosting environment's performance and utilization for proactive monitoring, infrastructure management, forecasting and reporting purposes
 - Customer Business Planning Integration: Keep master schedule of Customer's academic activities and key events/milestones. Communicate to entire Blackboard Team on critical events on the calendar.
- B. Communication - Build and execute business processes for communication and Customer support (with a special focus on providing transparency and visibility into the purchased Managed Hosting services and change management). To meet this objective, the CHM's tasks may include, but not be limited to, the following:
- Contact: Be fully dedicated to Customer's Systems Administrators and Operations staff through a dedicated phone number for day-to-day Managed Hosting support requests and status reporting
 - Project Communication: Build two-way communication processes in coordination with Customer for project management, support issue escalation, and other communication procedures as necessary
 - Regular Reporting: Coordinate and facilitate regularly scheduled (weekly or monthly or quarterly) and ad-hoc project and status update meetings
 - Channel Management: Modify and update communication processes and channels as deemed necessary
 - On-site Support: CHM will make two on-site visits within the one year contract period.

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

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

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

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

Additional Storage and Bandwidth Annual Fees are separately charged

^aUser is defined as a person enrolled in one or more active courses, or part of one or more organization.

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

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

SERVICE LEVEL

Security:

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

Power:

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

Network:

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

Startup:

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

Initial Access Date:

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

Availability/Service Credit:

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

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

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

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

Backup and Disaster Recovery:

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

Outages

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

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

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

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

MONITORING AND PERFORMANCE

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

Specific System Outage Details:

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

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

Ongoing:

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

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

DATA CENTER SPECIFICATIONS

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

Environment:

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

Server Setup:

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

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

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

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

BLACKBOARD TRAINING SERVICES™ SCHEDULE

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

SCHEDULE OF TRAINING SERVICES

Blackboard Training Services
COURSE DELIVERY ADMINISTRATION
COURSE DELIVERY TO ACADEMIC COLLABORATION

1. BLACKBOARD ONSITE TRAINING SERVICES

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

1.2 Hands-on class size is restricted to a maximum of 15 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.

1.3 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.

1.4 All Blackboard Training onsite workshops purchased pursuant to this Schedule must be used within one (1) year of the Effective Date.

2. CANCELLATION. In the event that Customer cancels a scheduled onsite training workshop, Customer shall be billed for cancellation fees as follows:

Prior to 21 days before the scheduled event: \$200

15-21 days before the scheduled event: \$600

8-14 days before the scheduled event: \$1000

1-7 days before the scheduled event: the then current fee per workshop

3. FEES FOR BLACKBOARD TRAINING SERVICES STAFF.

Upon execution of this Schedule, Customer shall pay to Blackboard all fees specified in the Pricing Summary or otherwise required in this Schedule. Customer will reimburse Blackboard for: (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of Onsite Training Services, and (ii) international telephone charges. Blackboard does not maintain or provide original receipts for any expense line items under \$500. Expense items greater than \$900 must be pre-approved by Customer and supported by reasonable documentation indicating that Blackboard incurred such expenses. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Schedule including the cost of facilities, work space, computers and computer time, personnel, supplies and the like, except that Customer shall be responsible for supplying facilities for the training services if Blackboard conducts training services at a site other than Blackboard's facilities.

4. SECURITY.

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

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

BLACKBOARD

CUSTOMER: Marshall University

Signature
TESS FRAZIER- VICE PRESIDENT

Print Name and Title

Date:

6/30/09

Signature
Dennis Meadows

Print Name and Title

Date:

6/30/09



Blackboard

BLACKBOARD PROFESSIONAL SERVICES AGREEMENT

This Blackboard Professional Services Agreement ("PSA") by and between Blackboard Inc. ("Blackboard") and Marshall University ("Customer") is effective as of July 1, 2009 ("PSA Effective Date"). For purposes of clarification, the Parties agree and acknowledge that this Professional Services Agreement is specifically included for the procurement of the product and/or services indicated in the attached Pricing Summary.

TERMS AND CONDITIONS

1. PROFESSIONAL SERVICES.

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

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

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

2. PERSONNEL.

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

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

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

3. FEES AND PAYMENT.

3.1 Payment. Unless otherwise stated in a Statement of Work, Blackboard will bill clients monthly for Professional Services, as delivered. Unless otherwise stated in a SOW, payment for performance of Professional Services is due when and as performance is rendered. Customer will promptly pay Blackboard upon receipt of the applicable invoice. Invoices not paid within thirty (30) days of the date of issue will accrue interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or the maximum rate permitted by applicable law, if less. Customer will reimburse Blackboard for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Customer.

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

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

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

4. PROPRIETARY RIGHTS.

4.1 Ownership of Customer Property. As between Customer and Blackboard, Customer Property, together with all Derivative Works therefrom, are and shall, subject to the provisions of Section 4.5 below, remain the sole and exclusive property of Customer, including, without

limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein.

4.2 Ownership of Blackboard Property and Software. As between Customer and Blackboard, Blackboard Property and Software, and all other content not deemed to be Customer Property, together with any and all Derivative Works therefrom, are and shall remain the sole and exclusive property of Blackboard or its licensors or suppliers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto. Nothing in this PSA shall be construed to grant Customer any ownership right in Blackboard Software, Blackboard Property or any other software owned or licensed by Blackboard.

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

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

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

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

5. CONFIDENTIALITY.

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

5.2 Notice. The receiving Party will promptly notify the disclosing Party in the event the receiving Party learns of any unauthorized

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

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

5.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 5 will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary (a) to comply with the order of a court or competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a Party's rights under this Agreement.

6. TERM; TERMINATION.

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

6.2 Termination.

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

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

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

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

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

PROFESSIONAL SERVICES PROVIDED PURSUANT TO THIS PSA.

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

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

8. MISCELLANEOUS MATTERS

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

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

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

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

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

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

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

administrative receiver or administrator or equivalent officer or make a winding up order in relation to such party.

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

7. LIMITED WARRANTY; LIMITATION OF LIABILITY.

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

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

7.3 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7.1, ALL THE FOLLOWING PARAGRAPHS OF THIS SECTION 7 ARE IMPORTANT LEGAL LANGUAGE. PLEASE READ THESE PARAGRAPHS CAREFULLY AS THEY LIMIT BLACKBOARD'S LIABILITY TO CUSTOMER.

7.4 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS PSA (INCLUDING THE SOW(S)):

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

7.5 Limitations of Liability. CUSTOMER'S SOLE REMEDY FOR ANY DELAY OR DEFICIENCY IN PERFORMANCE OF ANY PROFESSIONAL SERVICES SHALL BE TERMINATION OF THE APPLICABLE SOW. BLACKBOARD SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS PSA OR ANY SOW OR OTHERWISE, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), AND ANY LIABILITY UNDER THIS ARTICLE, SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO BLACKBOARD UNDER THIS PSA. NEITHER BLACKBOARD NOR ITS SUBCONTRACTORS SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST DATA) ARISING OUT OF THE PROFESSIONAL SERVICES, EVEN IF BLACKBOARD OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING STATES THE ENTIRE LIABILITY OF BLACKBOARD WITH REGARD TO THIS PSA AND THE

shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

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

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

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

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

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

9. DEFINITIONS.

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

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

9.3 "Blackboard Property" means all materials, including, but not limited to any computer software (in object code and source code form, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML script, design elements, formulas, documentation, templates, formatting, CGIs, Java scripts, PL/SQL coding, other applications, content, software or other technology made, conceived, developed or provided by Blackboard or its suppliers under this PSA and any trade secrets, know-how, methodologies and processes related to Blackboard's products or services, all of which shall remain the sole and exclusive property of Blackboard or its suppliers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto.

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

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

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

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

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

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

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

CUSTOMER: Marshall University

Dennis Meadows

Signature *Dennis Meadows*

Print Name and Title

Date: *6/30/09*

Signature *Tess Frazier*

TESS FRAZIER-VICE PRESIDENT

Print Name and Title

Date:

6/30/09

**EXHIBIT TO
BLACKBOARD PROFESSIONAL SERVICES AGREEMENT**

STATEMENT OF WORK

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

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

Engagement Summary

Marshall University ("Marshall" or "customer") self-hosts a large deployment of the Blackboard Learning System – Vista License in support of online teaching and learning activities. Marshall and Blackboard have been discussing a variety of institutional initiatives, the expanded capabilities of the Blackboard Learn platform and how Blackboard can help Marshall achieve both short and long term objectives. To help Marshall define, organize, and prioritize implementation objectives and activities, Blackboard will provide consultants to perform certain implementation planning services.

Scope of Consulting Services

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

Implementation Planning

The objective of the Implementation Planning service is to develop a plan that positions the customer to implement the desired e-Learning environment and ultimately achieve the long term strategic goals of the organization. Specific objectives may include, but are not limited to, the following:

- Developing a mutual understanding of the initiative and its alignment to the customer's academic and business goals
- Establishing and prioritizing deployment objectives for the Blackboard system
- Defining and outlining project work streams and identifying required resources
- Defining project success criteria and measures
- Identifying institutional constraints, project risks and mitigating factors
- Developing an initial project plan and implementation timeline

For Marshall, Blackboard anticipates topics for discussion will include, but may not be limited to:

- Systems deployment
 - Blackboard Managed Hosting
 - Co-production options
 - Systems integration
- Outcomes Assessment and Community Engagement initiatives
- Transition to and deployment of courses on the Blackboard NG platform
- Positioning and strategic use of portal and content management capabilities

The scope and estimate are based on the assumption that the majority of the project activities will take place at Marshall University over a period of approximately one week. Additional planning and follow-up activities will be conducted remotely.

The expected outcome of the service is an Implementation Plan – an organized, prioritized and scheduled list of activities and assignments focused on achieving desired objectives within defined time periods.

Project Management

Project Management delivers the communication and coordination activities for both customer and Blackboard. The goal of Project Management is that all project objectives and milestones are met in a timely and cost effective manner. To achieve these outcomes, Blackboard will appoint a Project Manager who will be responsible for the overall engagement delivery, documentation, status reporting, and resource management.

Project Resource Requirements

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

Role		Activities and Responsibilities
Director		Executive oversight and quality assurance
Project Manager		Management of project tasks, schedule, resources, documentation and status reporting
Implementation Strategist		Direction and execution of implementation planning activities and related documentation.
Technical Consultant(s)		Execution of technical activities and documentation

Customer Responsibilities

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

Professional Fees, Expenses and Terms

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

Blackboard Consulting will invoice the customer for the actual travel related costs incurred as part of this engagement. Blackboard Consulting will make every reasonable effort to minimize travel costs to the customer while still meeting project objectives.

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

Blackboard Consulting will work with the Customer's Project Manager to confirm the appropriate scheduling. Blackboard Consulting requires a minimum of a four (4) week cancellation notice for projects once confirmed. Customers will be charged a \$4,000.00 administrative fee for late cancellations. It should be noted that 50% of the administrative fee may be reapplied to the project upon rescheduling.

Services Pricing

Consulting Service Estimates

Below is an estimate of activities by service, by role:

Consulting Services Team	Estimated Number of Hours	Estimated Rate per Hour	Estimated Total Cost
Implementation Planning (AS-IMPPLAN)	134		\$31,730.00
Director	2	\$310	\$ 620.00
Project Manager	54	\$280	\$15,120.00
Implementation Specialist (Sr. Consultant)	62	\$205	\$12,710.00
Technical Consultant	16	\$205	\$3,280.00
			\$31,730.00

Travel Expenses

Blackboard Consulting will work with Marshall to determine the appropriate level of onsite support needed. At a minimum, consultants are expected to be on site once. An additional onsite visit may be scheduled for final review and discussion. Blackboard Global Services will work with the campus to minimize travel expenses and will support these activities remotely when feasible.

Each visit is outlined below:

Trip 1 – Primary Project Activities

- Project Manager & Implementation Specialist
- 2 people, 1 week @ \$1,750 each

Trip 2 – Review and Discussion

- Project Manager & Implementation Specialist
- 2 people, 2 days @ \$1,400 each

Blackboard estimates this expense to be roughly \$6,300. Accounting for unforeseen increases in travel expenses, travel associated with this engagement will not exceed \$7,000. If it is anticipated that actual travel expenses may exceed \$7,000, prior Customer approval will be required to proceed with travel plans/expenses.

Project Timeline

The 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.

Assumptions

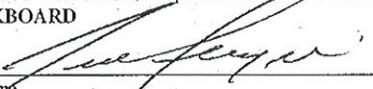
Our approach, timeline, team structure, and professional fees are based on the below assumptions. Variance from these assumptions will be managed through the Change Control Process and may affect the actual schedule and cost of the project.

- All pricing and discounts are valid for 90 days from the executed Statement of Work date for work not initiated;
- This agreement covers only the activities as described;
- Customer will provide Blackboard with access to the appropriate physical and technical environments to successfully complete the effort outlined in this document;
- Customer will complete a review of all submitted draft working products, or set of working products, in five business days unless otherwise agreed to in writing;
- The Customer shall assign a representative to be the primary point of contact for the Blackboard Project Manager. This representative shall have full authority to make all decisions regarding project scope, overall timeline, and related projects costs, as well as ensuring the necessary customer project personnel, resources, etc. are available to successful complete the project(s);
- Quality involvement and working products from the Customer are critical to the project's success. To that end, the Customer's representative shall be responsible for coordinating all meetings that involve Customer and third-party contractor staff members, working products, and information requests in a timely fashion;
- Working Products are artifacts, used by Blackboard, that demonstrate progress toward a deliverable; however, they are not themselves deliverables;
- All Consulting Services related to this Project, as outlined in this document, shall be performed on a time and materials basis,

- Services are estimated and billed based upon an eight (8) hour workday per Consultant, forty (40) hour work week per Consultant. The applicable billing rate for the Consultants shall be at the rates set forth in the table above;
- All reasonable travel, meals and lodging expenses shall be billable at cost and all such expenses shall be borne solely by Customer;
- All fees and expenses shall be billed on a monthly basis and such bills shall be due and payable Net 30;
- The customer will bring current all outstanding invoices from previous agreements greater than thirty (30) days, prior to beginning work under this document;
- The estimates above were developed based on the estimated project duration. In the event the project exceeds the duration and crosses a new fiscal year, rate may be adjusted accordingly based on the effort expended in the new fiscal year;
- Except as otherwise stated in this Agreement with regard to the Consulting Services performed hereunder, Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time.

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

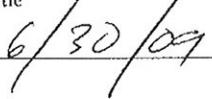
BLACKBOARD



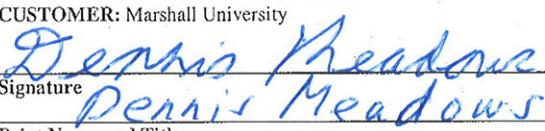
Signature
TESSERAZIER-VICE PRESIDENT

Print Name and Title

Date:


6/30/09

CUSTOMER: Marshall University



Signature
Dennis Meadows

Print Name and Title

Date:


6/30/09

MU10-MNGHOST

WV-96
Rev. 6/09

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be *due Net 30 from the date of an accurate invoice*.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - *Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.*
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. *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 OR \$2 MILLION, WHICHEVER IS GREATER.*
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY:** -Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

MARSHALL UNIVERSITY

Signed: Dennis Headoue
Title: CPO
Date: 6/30/09

Approved as to form prior to signature this 30th day of June, 2009 by Jawne Wayfield, Deputy Attorney General

BLACKBOARD

Signed: Jeffrey
Title: Vice President
Date: 6/30/09

**AMENDMENT
TO THE WVNET SOFTWARE LICENSE AGREEMENT FOR WCT VISTA AGREEMENT
DATED DECEMBER 11, 2002**

This Amendment ("Amendment") to the WVNet Software License Agreement for WCT Vista Agreement Dated December 11, 2002 ("Agreement") is made as of the last signature date indicated below.

The purpose of this Amendment is to modify the existing Agreement to provide Marshall University ("Customer") a Co-Production copy of the Blackboard Software as indicated below.

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

The parties hereby agree to the following terms and conditions:

1. Section 1.1.1, entitled Co-Production License is hereby added:

1.1.1 Co-Production License. From the date of this Amendment until up to three (3) year after the release of version 9.2 (or version 10, if there is no version 9.2) of the Software, Customer may operate one production copy of the Software (version 9.x) concurrently with one production copy of the Software (version 8.x or earlier) for no additional charge subject to the terms of the Agreement. After such time period, if Customer wishes to continue to operate the Software with both concurrent copies in production, the then-current pricing for an annual co-production license shall apply. The annual fee shall renew each year unless Customer has notified Blackboard in writing prior to the end of the then current term that it has ceased using the co-production license.

Product Description	Quantity	Units	Total Price
Co-production license fee	3	YR	Initial fee waived

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT

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

WebCT Inc

Signature
TESS FRAZIER – VICE PRESIDENT

Print Name and Title

Date:

6/30/09

Customer: Marshall University

Signature
Dennis Meadows

Print Name and Title

Date:

6/30/09

Purchase Change Request				Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100	Order # 0300845	
FY 2010	Buyer SS	Date 07/13/09	Account P9930	P.O. Date 10/09/02	Contract 0300845	
Document <input type="checkbox"/> Requisition (Cancellation only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase <input checked="" type="checkbox"/> Agreement			Document Action <input type="checkbox"/> Cancellation <input checked="" type="checkbox"/> Increase/Decrease <input type="checkbox"/> Unused Balance <input type="checkbox"/> Freight <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Extension Error			
Vendor Name, Address, Phone #, etc.			Vendor Code	BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100		
Ph# 800-424-9299 Fax			FEIN# 52-2081178			
Item#	Quantity	Description of Change			Unit Price	Extended Price
		Change Order # <u>9</u> X25453 To renew the contract agreement according to all terms, conditions, prices and specifications contained in the original contract including all authorized change orders. Effective Period July 1, 2009 to June 30, 2010 Basic & Gold Transaction System Additional Maintenance and Support ICD/DCI			Current	New 2010
					\$62,268	\$66,010
					\$ 6,227	\$ 6,601
					<u>\$ 3,252</u>	<u>\$ 3,450</u>
		Total			\$71,747	\$76,061
Reason for Change: To renew the contract for the 2010 fiscal year at the new rates. Banner Information: ORG. 5480 FUND 119001 (P030845F)					Previous Total	\$ 440,289.00
					Increase	\$ 76,061.00
					Decrease	\$
					New Total	\$ 516,350.00

Approved:



Authorized Signature

7.14.09

Date

N/A

Attorney General if required

Date



Blackboard

**ADDENDUM
TO BLACKBOARD MASTER TERMS EFFECTIVE JULY 1, 2002
WITH MARSHALL UNIVERSITY**

This Addendum #5 to the Blackboard Master Agreement dated July 1, 2002, ("Agreement") between Blackboard Inc. and Marshall University is made as of the last signature date below.

The purpose of this Addendum is to renew the Blackboard Software Schedule, B-1 and Maintenance and Support Schedule C-1, for an additional twelve (12) month term.

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

- A. Pursuant to the "Term" section of the Software Schedule B-1, Blackboard Transaction System Software License, dated July 1, 2002, Customer and Blackboard wishes to renew the Software Schedule for an additional term. The Software Schedule states the Schedule may renew for successive one (1) year terms (each, a "Renewal Term"). The parties agree that the Renewal Term beginning July 1, 2009, shall be valid for a period of twelve (12) months, ending June 30, 2010. In accordance with the Agreement and this Amendment, Customer shall remit in full a purchase order and/or the License Fee no later than thirty (30) days after receipt of an invoice from Blackboard.

SCHEDULE OF LICENSE FEES

Software	Level of Support	Renewal Terms (USD)
Blackboard Transaction System- - VTLS LIB System - FDI - Uni-Print System - Facility Door Access License - TS Unix 8k- 14,999	Basic and Gold – included in renewal term.	\$3450 \$3450 \$7700 \$51410
Additional Maintenance and Support for Current Term		\$6601
ICD/DCI		\$3450
Total Fees Due:		\$76,061

- B. Pursuant to the "Term" section of the Maintenance and Support Schedule C-1, dated July 1, 2002, Customer and Blackboard wishes to renew the Maintenance and Support Schedule for an additional term. The Maintenance and Support Schedule states the Schedule may renew for successive one (1) year terms (each, a "Renewal Term"). The parties agree that the Renewal Term beginning July 1, 2009, shall be valid for a period of twelve (12) months, ending June 30, 2010.

- C. All other terms and conditions remain unchanged and in full force and effect.

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

BLACKBOARD


 Signature
 Tess Frazier, Vice President
 Print Name and Title
 Date: 6/22/09

MARSHALL UNIVERSITY


 Signature
 Dennis Meadow
 Print Name and Title
 Date: 7.16.09

(P030845F) 0300845
#9

VOID IF EXECUTED AFTER: JUNE 30, 2009
Customer: Marshall University



Blackboard

**ADDENDUM
TO BLACKBOARD MASTER TERMS EFFECTIVE JULY 1, 2002
WITH MARSHALL UNIVERSITY**

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Additional Maintenance and Support for Current Term		\$6601
ICD/DCI		\$3450
Total Fees Due:		\$76,061

- B. Pursuant to the "Term" section of the Maintenance and Support Schedule C-1, dated July 1, 2002, Customer and Blackboard wishes to renew the Maintenance and Support Schedule for an additional term. The Maintenance and Support Schedule states the Schedule may renew for successive one (1) year terms (each, a "Renewal Term"). The parties agree that the Renewal Term beginning July 1, 2009, shall be valid for a period of twelve (12) months, ending June 30, 2010.

- C. All other terms and conditions remain unchanged and in full force and effect.

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

BLACKBOARD

Signature

Tess Frazier, Vice President

Print Name and Title

Date:

6/22/09

MARSHALL UNIVERSITY

Signature

Dennis Meadow

Print Name and Title

Date:

7.14.09

0300845 40#9

RFQ No. P030845F

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY: The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: Blackboard Inc.

Authorized Signature: Trevor J. Foy Date: 6/10/09

WV-96
Rev. 6/09

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. DISPUTES - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
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12. ASSIGNMENT - *Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.*
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16. RENEWAL - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
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21. AMENDMENTS - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

MARSHALL UNIVERSITY

Signed: Dennis Headard
 Title: CPO
 Date: 6/30/09

BLACKBOARD

Signed: Jay Taylor
 Title: Vice President
 Date: 6/30/09

Approved as to form prior to signature this 30th day of June, 2009 by George Wayfield, Deputy Attorney General

**Office of Purchasing**

102 Old Main
One John Marshall Drive
Huntington, WV 25755-4100

Number:

PURCHASE ORDER**P030845F**

Please show this number on all packages and documents related to this order

Voice: (304) 696-3157 Fax: (304) 696-3333

Date: 07/13/2009

522081178
Vendor: Blackboard Inc
1899 L St NW 5th fl
Washington DC 20036

Ship To: Marshall University Rec Dept
201 21st Street
Huntington WV 25703

Requisition #:

Invoice to: Accounts Payable, Marshall University
One John Marshall Drive, Huntington, WV 25755-4300
Voice 304-696-2220 Fax: 304-696-3289

Address all other correspondence to the Purchasing Department.
TAX EXEMPTION #: 55-6000789

PLEASE ACKNOWLEDGE RECEIPT OF THIS ORDER AND GIVE DEFINITE DELIVERY DATE

Item	Item Description	Units	Unit Price	Extended Price
1	P9930 2010 Blackboard Transaction System Software +Gold Approved for purchase on Agreement# 0300845 Reference PA300845 before 7/1/05 Reference PB300845 before 7/1/06 Reference PC300845 before 7/1/07 Reference PD300845 before 7/1/08 Reference P030845E before 7/1/09	1.00 YR	76,061.00	76,061.00

FOB: TERMS: DISCOUNT: \$0.00

PURCHASING AGENT: Stephanie Smith (304) 696-2822 ADDL CHARGES: \$0.00

AUTHORIZED SIGNATURE: *Dennis Phedor 7.27.09* TOTAL TAXES: \$0.00

Attorney General's Signature (if required): TOTAL: \$76,061.00

Account #: Item Amount
1-119001-5480-71710-1034 \$76,061.00Mark For:
Robert Dorado/MSC BW9/ext. 4624

PURCHASING COPY



Office of Purchasing
102 Old Main
One John Marshall Drive
Huntington, WV 25755-4100

Number:

PURCHASE ORDER

P030845F

Please show this number on all packages and documents related to this order

Voice: (304) 696-3157 Fax: (304) 696-3333

Date: 07/13/2009

522081178
Vendor: Blackboard Inc
1899 L St NW 5th fl
Washington DC 20036

Ship To: Marshall University Rec Dept
201 21st Street
Huntington WV 25703

Requisition #:

Invoice to: Accounts Payable, Marshall University
One John Marshall Drive, Huntington, WV 25755-4300
Voice 304-696-2220 Fax: 304-696-3289

Address all other correspondence to the Purchasing Department.
TAX EXEMPTION #: 55-6000789

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Item	Item Description	Units	Unit Price	Extended Price
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FOB:	TERMS:	DISCOUNT: \$0.00
PURCHASING AGENT:	Stephanie Smith (304) 696-2822	ADDL CHARGES: \$0.00
AUTHORIZED SIGNATURE:	<i>Dennis Bealow</i> 7.23.09	TOTAL TAXES: \$0.00
Attorney General's Signature (if required):		TOTAL: \$76,061.00

		Mark For: Robert Dorado/MSC BW9/ext. 4624
	VENDOR COPY	

Purchase Order		Marshall University Purchasing and Materials Management One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304)			Purchase Order # P1000765	
TO: Blackboard Inc 650 Massachusetts Avenue NW 6th Floor Washington DC 20001-3796		Vendor Code: 411666	Ship to: N/A	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN		
			Bldg: Room#:	WVFIMS Account #: P20278		
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
10/08/09	10	VT			N30	
<u>AGREEMENT</u>						
<p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Blackboard Inc</u></p> <p>for <u>Blackboard MobileEdu Suite and related services per vendor's 2009 document #95733 (5 pages) Reference MU10-MNGHOST for</u> Blackboard Master Terms dated July 1, 2009.</p> <p>Services shall begin <u>October 16, 2009</u> and extend through <u>October 15, 2012</u>.</p> <p>All in accordance with the agreement attached hereto and made a part hereof.</p> <p>Schedule of payment \$ <u>20,800</u> per <u>FY10 10-16-09/10-15-10; \$21,840 FY11 10-16-10/10-15-11; \$22,932 FY12 10-16-11/10-15/12</u> Fee \$ <u>65,572.00</u> Travel Expense \$ _____ Other Expense \$ _____ Total \$ \$ <u>65,572.00</u></p> <p>Approved As To Form this <u>N/A</u> day of <u>20</u>. Attorney General By: <u>N/A</u> Asst. Attorney General</p> <p style="text-align: center;">THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>						
Line No.	Fund	Org.	Account	Encumber Amount	FY10 FY11 FY12	Total: \$65,572.00
1.	119003	2061	71710	\$20,800		
2.	119003	2061	71710	\$21,840		
3.	119003	2061	71710	\$22,932		
4.						
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4300					 10/14/09 Charles H. Racer Authorized Signature Date	

BOG 35

Scanned 11-9-09

REPORT ID: WVFA70U8
PAGE . 1

STATE OF WEST VIRGINIA
FINANCIAL INFORMATION MANAGEMENT SYSTEM
OFFICE OF THE STATE AUDITOR

10/14/09

15:12:39

PURCHASE ORDER COVER SHEET

AUDITOR ENTRY ID: P 0 20278

DOCUMENT ID: P 20278

STATE ORGANIZATION: 0471
STATE ORGANIZATION NAME: MARSHALL UNIVERSITY
ORGANIZATION CONTACT: SELAH WILSON
ORGANIZATION ADDRESS: 400 HAL GREER BLVD

HUNTINGTON WV 25755-0001

ORGANIZATION: 0471
ORGANIZATION NAME: MARSHALL UNIVERSITY

DATE PREPARED: 10/14/09

PO AMOUNT: 65,572.00

ENCUMBRANCE AMOUNT: 20,800.00

START DATE: 10/16/09

END DATE: 10/15/12

STATE PURCHASE ORDER NUMBER: P1000765

CONTRACT NUMBER:

VENDOR NUMBER: 411666

VENDOR NAME: BLACKBOARD INC

VENDOR ADDRESS: PO BOX 200154

PITTSBURGH PA 15251-0154

CONTACT PERSON: STEPHANIE SMITH

CONTACT PHONE: 304-696-2822 EXT: 0000 RETURN TO ORG:0471

DESCRIPTION: BLACKBOARD MOBILEDU SUITE & RELATED SERVICES
FY10 20,800

APPROVED BY STATE AUDITOR:

DATE:

FUND	FY	ORG	ACT	OBJ	GRANT	AMOUNT
4890	2010	0471	099	171		20,800.00
TOTAL PURCHASE ORDER AMOUNT						20,800.00

TERMS AND CONDITIONS

Revised 3/20/96

1. ACCEPTANCE: Seller shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Seller are objected to and are hereby rejected, unless otherwise provided for in writing by the Buyer and approved by the Attorney General.
2. APPLICABLE LAW: The laws of the State of West Virginia and the Procedural Rules of the Governing Board having jurisdiction shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. ASSIGNMENT: Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Seller without the Buyer's consent.
4. BUYER: For the purposes of these Terms and Conditions, the "Buyer" means the institution purchasing goods and services for which a Purchase Order has been lawfully issued to the Seller.
5. CANCELLATION: The Buyer may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
6. COMPLIANCE: Seller shall comply with all federal, state and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the W. Va. Division of Labor, if applicable.
7. DELIVERY: For exceptions to the delivery date as specified in the Order, the Seller shall give prior notification and obtain the approval of the Buyer. Time is of the essence of this Order and it is subject to termination by the Buyer for failure to deliver on time.
8. DISPUTES: Disputes arising out of the agreement shall be submitted to the West Virginia Court of Claims.
9. HOLD HARMLESS: The Buyer will not agree to hold the Seller or any other party harmless because such agreement is not consistent with state law.
10. MODIFICATIONS: This writing is the parties final expression of intent. No modification of this Order shall be binding unless agreed to in writing by the Buyer.
11. NON-FUNDING: All services performed or goods delivered under this Purchase Order/Contract are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. ORDER NUMBERS: Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
13. PAYMENTS AND INTEREST ON LATE PAYMENTS: Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the West Virginia Code.
14. RENEWAL: The Contract may be renewed only upon mutual written agreement of the parties.
15. REJECTION: All goods or materials purchased herein are subject to approval of the Buyer. Any rejection of goods or materials resulting in nonconformity to the terms, conditions or specifications of this Order, whether held by the Buyer or returned to the Seller, will be at the Seller's risk and expense.
16. SELLER: For the purposes of these Terms and Conditions, the "Seller" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from the Buyer.
17. SHIPPING, PACKING, BILLING & PRICING: Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Buyer.
18. TAXES: The State of West Virginia (the Buyer) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. TERMINATION: In the event of a breach by the Seller of any of the provisions of this contract, the Buyer reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Seller. The Seller shall be liable for damages suffered by the Buyer resulting from the Seller's breach of contract.
20. WARRANTY: The Seller expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.

BLACKBOARD MOBILEDU SCHEDULE

This Blackboard MobilEdu Schedule ("Schedule") is made as of the last date indicated below, by and between Blackboard and Marshall University ("Customer") and is an addendum to the Blackboard License And Services Agreement between Blackboard and Customer, dated July 1, 2009, which includes, without limitation, the Master Terms and other Schedules incorporated therein including any Order Forms which may be jointly executed by the parties from time to time. 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 agree as follows:

1. BLACKBOARD MOBILEDU SERVICE

1.1 **Service.** In consideration for the applicable fees, Blackboard shall provide the Customer with the use of the MobilEdu Service for Customer's institution. In the initial implementation of the MobilEdu Service, Blackboard will provide Customer with a build of the User Software for which Customer may select any or all of the Licensed Modules for inclusion in the User Software and at Customer's option, may include Customer's branding.

1.2 **Distribution of User Software.** Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a limited, non-exclusive, non-transferable, right to distribute the User Software during the Term to be used in conjunction with the Central Service for non-commercial use. Promotion and distribution of the User Software is the responsibility of Customer. Distribution of the User Software by Customer to its end users shall be pursuant to a license agreement which is reasonably satisfactory to Blackboard; provided, however, that the standard distribution terms utilized by Apple Inc. to distribute applications through its Apple App Store shall be deemed satisfactory unless Blackboard otherwise notifies Customer in writing.

1.3 **Customers Obligations.** Customer is responsible for promptly providing and maintaining Customer Data feeds to the Central Service for each of the Licensed Modules which Customer has selected for the User Software in formats which are compatible with the Central Service. Customer is responsible for maintaining Customer Applications, Customer Systems and Customer Data and promoting and distributing Customer Applications, User Software, Updates and Upgrades to End Users via Customer's distribution channels such as Customer's Apple App Store page. Customer will designate a qualified individual to serve as Customer's support contact with Blackboard for maintenance and support issues, requests and inquiries ("Site Administrator"). Customer may change its Site Administrator at any time by providing written notice to Blackboard. Customer and its End Users will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the MobilEdu Service, including, without limitation, any and all costs, fees, expenses and taxes of any kind related to the foregoing. Blackboard will not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

1.4 **Term.** This Schedule shall become effective when executed by authorized representatives of both Parties (the "Schedule Effective Date"); and shall continue in effect for the initial term stated in the applicable Order Form (the "Initial Term"), unless earlier terminated in accordance with the termination provisions of the Agreement. Thereafter, the applicable Order Form will renew automatically 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 use of the MobilEdu Service; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) delete any copies of the User Software from its server or other locations such as the Customer's Apple App Store page, and provide to Blackboard proof of the destruction of the original copy and any other copies of the User Software; and (iv) return all documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

1.5 **Fees.** In consideration for the services provided and license(s) granted in this Schedule with respect to the Initial Term, Customer shall pay to Blackboard all fees specified in each applicable Order Form, which fees shall be non-cancelable and non-refundable. With respect to each Renewal Term, 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.

1.6 **Expansion of Licensed Use.** The MobilEdu Service is priced annually based upon Customer's FTE. Customer represents and warrants that the FTE provided to Blackboard and set forth on any Order Form 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 fees for increases in Customer's FTE beyond the subscribed level.

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.

1.7 **Additional Services.** In the event that Customer desires additional products or services relating to the MobilEdu Service not on the initial Order Form, such additional products and services may be added via an Order Form executed by both parties stipulating as to the additional products and services ordered and the applicable fees. This Schedule shall apply to any such additional Order Forms.

2. GENERAL TERMS

2.1 **General Usage Terms.** Customer agrees not to use the User Software or Central Service for any purposes beyond the scope of the license granted in this Schedule. Without limiting the foregoing, Customer shall not: (i) use the User Software or Central Service to provide commercial services; (ii) develop, utilize or distribute any software application that accesses the Central Service, or allow any third party software application to access the Central Service other than with Blackboard's prior approval; (iii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source

code from which the User Software or Central Service 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; (iv) modify the User Software or Central Service or create any derivative product of the User Software or Central Service, except with the prior written consent of Blackboard; (v) obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the User Software; or (vi) Customer shall not use or distribute the User Software in violation of any obligations relating to any Third Party Software, provided that Blackboard has notified Customer of such obligation. Customer shall be responsible for ensuring that the use of the User Software is in compliance with all applicable laws, statutes, regulations or rules. Customer acknowledges that the Licensed Modules may operate differently on different Licensed Platforms and on different mobile devices within the same Licensed Platforms, and certain Licensed Modules may not be offered on all Licensed Platforms.

2.2 Third Party Software/Content. The MobilEdu Service may contain Third Party Software and Blackboard reserves the right to modify the MobilEdu Service to maintain compliance with the license terms of Third Party Software. Customer acknowledges that in the case of distribution of User Software for certain third party platforms, such as the Apple iPhone platform, Customer's distribution of User Software will be subject to such third party's program terms and conditions and may require such third party's approval. In the event that Customer opts to enroll in any Third Party Programs, Customer shall be responsible for compliance with the terms and conditions of such Third Party Programs. In order to distribute any User Software for the iPhone platform, Customer is required to enroll in the Apple Developer Program or any successor program; such program enrollment is between Customer and Apple directly.

2.3 Certain Rights. Customer shall be deemed to own and hold all right, title and interest to the Customer Data and Customer's logos. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the MobilEdu Service, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the MobilEdu Service 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 any component of the MobilEdu Service for any purpose in Blackboard's sole discretion. Blackboard shall have a royalty-free, worldwide, perpetual license to use or incorporate into Blackboard's products or services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or Customer's users. The User Software will marked "Powered by Blackboard" or similar designation and Customer shall maintain such designation on Customer's webpage that promotes the Service to Customer's users.

2.4 Limited Software Warranty. Blackboard warrants, solely for the benefit of Customer, that any MobilEdu Service licensed under this Schedule which is manufactured by Blackboard will substantially conform to the designated technical documentation for a period of ninety (90) days after the Effective 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 provided all required Customer Data feeds and made the system configurations required to interface with the MobilEdu Service; and (iv) Customer has notified Blackboard in writing of any failure of the MobilEdu Service to conform to the foregoing warranty within the warranty period. The foregoing shall not apply to any portion of the MobilEdu Service offered as a beta version, which shall be deemed to be available on an as-is basis, without warranty of any kind including all implied warranties including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law. 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.

2.5 Product Support. Customer is eligible to receive Product Support from Blackboard as described from time to time in the Blackboard Customer Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website.

2.6 Application Development Kit. Customer may at its option utilize the MobilEdu Application Development Kit under the terms located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website.

3. ADDITIONAL DEFINITIONS

3.1 "Central Service" means software and systems provided by Blackboard which facilitate the exchange of Customer Data between User Software and Customer Systems and any associated administrative tools or systems provided by Blackboard to Customer.

3.2 "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 or Upgrade.

3.3 "Customer Data" means data, information and any other content supplied by Customer through Customer Systems.

3.4 "Customer Systems" means Customer's business applications, databases and other information technology systems that will interface with the Central Service.

3.5 "Licensed Modules" means each of the software modules licensed by Customer pursuant to an Order Form and any Upgrades, Updates or Corrections provided thereto.

3.6 "Licensed Platforms" means each of the software platforms for mobile devices licensed by Customer pursuant to an Order Form.

3.7 "MobilEdu Service" means the service provided by Blackboard consisting of User Software which operates in conjunction with the Central Service.

3.8 "Order Form" means an order form executed by Customer and Blackboard relating to MobilEdu products or services.

3.9 "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, 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, (vi) 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.

3.10 "Third Party Software" means the software or content manufactured, distributed or created by third parties that has been incorporated by Blackboard into the MobilEdu Service.

3.11 "Third Party Programs" means the programs or agreements offered by third parties, such as Apple Inc.'s iPhone Developer Program, relating to mobile devices on which the User Software is intended to operate.

3.12 "Updates" means the object code versions of the Licensed Modules or other 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.

3.13 "Upgrades" means the object code versions of the Licensed Modules or other 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.

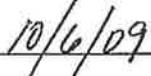
3.14 "User Software" means the software containing Licensed Modules, including Updates, Upgrades, and Corrections, provided by Blackboard to Customer for distribution.

BLACKBOARD



Signature
TESS FRAZIER- VICE PRESIDENT
Print Name and Title

Date:



CUSTOMER: Marshall University



Signature Charles H. Racer
Assistant Director of Purchasing
Print Name and Title

Date: October 14, 2009

**Blackboard MobilEdu
Order form**

<input checked="" type="checkbox"/>	New order
<input type="checkbox"/>	Additional order

Customer:	Marshall University
FTE band:	<FTE or User band>
Initial Term:	3 years
Effective Date:	The last of the dates indicated in the signatures below

Payment schedule for Initial Term:	Initial Term Year 1	Initial Term Year 2	Initial Term Year 3
	\$32,000	\$32,000	\$32,000
	<\$11,200>	<\$10,160>	<\$9,068>
	\$20,800	\$21,840	\$22,932
One-time setup fee:		\$7,500	
		<-\$7,500>	
		\$0	
Licensed Modules:	The Blackboard MobilEdu suite, including Upgrades, Updates or Corrections, if any, later released during Customer's subscription. The Blackboard MobilEdu suite currently consists of Maps, Directory, Courses, Athletics, News, Events, Images and Videos.		
Licensed Platforms:	iPhone mobile web browser		

Notes:

1. The terms of the Blackboard MobilEdu Schedule are incorporated by reference and accompany this Order Form. Capitalized terms used in this Order Form are defined in the Blackboard MobilEdu Schedule or corresponding Blackboard License and Services Agreement.
2. Above pricing is based on Customer's concurrent licensing of the Community Engagement module of Blackboard Learn for the duration of the term.

BLACKBOARD

Signature



TESS FRAZIER- VICE PRESIDENT

Print Name and Title

Date:

10/14/09

CUSTOMER: Marshall University



Signature

Charles H. Racer

Assistant Director of Purchasing

Print Name and Title

Date: October 14, 2009

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals; nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be *due Net 30 from the date of an accurate invoice*.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - *Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.*
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. *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 OR \$2 MILLION, WHICHEVER IS GREATER.*
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

MARSHALL UNIVERSITY

Signed: Charles H. Racer

Title: Assistant Director of Purchasing

Date: October 14, 2009

Approved as to form prior to signature this 30th day of June, 2009 by Wayne Wayfield, Deputy Attorney General

BLACKBOARD

Signed: Jason Fagin

Title: Vice President

Date: 10/6/09

**Purchase
Change Request**



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Order #

P1000765

FY 11	Buyer VT	Date 02/09/2011	Account P20278	P.O. Date 10/08/2009	Contract
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Document	Document Action	
<input type="checkbox"/> Requisition (Cancellation only)	<input type="checkbox"/> Cancellation	<input type="checkbox"/> Error in Total Amount
<input type="checkbox"/> Regular Purchase Order	<input type="checkbox"/> Increase/Decrease	<input type="checkbox"/> Change of Account
<input type="checkbox"/> Contract Purchase Order	<input type="checkbox"/> Unused Balance	<input type="checkbox"/> Change of Vendor Name/Address
<input type="checkbox"/> Open End Contract Purchase	<input type="checkbox"/> Freight	<input checked="" type="checkbox"/> Other
<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Renewal	
	<input type="checkbox"/> Extension Error	

Vendor Name, Address, Phone #, etc. 522081178 Blackboard Inc 650 Massachusetts Avenue NW 6th Floor Washington DC 20001-3796	Vendor Code 411666	BOT/BOD Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100
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Item#	Quantity	Description of Change	Unit Price	Extended Price
		<p>Change Order # 1 X 28045</p> <p>To correct coverage period for the Blackboard MobileEdu Suite and related services due to application not being implemented until February 3, 2010.</p> <p>Effective date now reads October 16, 2009 to October 15, 2012</p> <p>Change to read:</p> <p>February 3, 2010 to February 2, 2013</p> <p>Payment term:</p> <p>FY11 \$20,800.00 (02-03-2010 / 02-02-2011) FY12 \$21,840.00 (02-03-2011 / 02-02-2012) FY13 \$22,932.00 (02-03-2012 / 02-02-2013)</p>		

Reason for Change: To correct payment term.	Previous Total \$ 65,572.00
	Increase \$
	Decrease \$
	New Total \$ 65,572.00

Approved:

Authorized Signature

3-14-11

Date

N/A

Attorney General if required

Date

BOG 79

Scan 2-16-11-SF

REPORT ID: WVFA70UC
PAGE 1

STATE OF WEST VIRGINIA
FINANCIAL INFORMATION MANAGEMENT SYSTEM
OFFICE OF THE STATE AUDITOR

02/09/11
14:42:18

PURCHASE ORDER ADJUSTMENT COVER SHEET
CONTRACT CHANGE ORDER

PURCHASE ORDER: P 20278

AUDITOR ENTRY ID: X 7 28045
DOCUMENT ID: X 28045

STATE ORGANIZATION: 0471
STATE ORGANIZATION NAME: MARSHALL UNIVERSITY
ORGANIZATION CONTACT: SELAH WILSON
ORGANIZATION ADDRESS: 400 HAL GREER BLVD

HUNTINGTON

WV 25755-0001

ORGANIZATION: 0471
ORGANIZATION NAME: MARSHALL UNIVERSITY

DATE PREPARED: 02/09/11

ADJUSTED ENC AMOUNT: 42,640.00

ENC AMOUNT: 42,640.00

REVISED PO AMOUNT: 65,572.00

PO AMOUNT: 65,572.00

START DATE: 10/16/09 END DATE: 10/15/12

REVISED START DATE: 02/03/10 REVISED END DATE: 02/03/13

STATE CHANGE ORDER NUMBER: 1

FIMS PO IDENTIFIER: P000020278

STATE PURCHASE ORDER NUMBER: P1000765

CURRENT VENDOR NUMBER: 411666

CURRENT VENDOR NAME: BLACKBOARD INC

CURRENT VENDOR ADDRESS: PO BOX 200154

PITTSBURGH

PA 15251-0154

CONTACT PERSON: VIRGINIA CAMPBELL-TURNER

CONTACT PHONE: 304-696-2820 EXT: 2820 RETURN TO ORG: 0471

DESCRIPTION: TO CHANGE PAYMENT TERM; IMPLEMENTATION OF APPLICATION STARTED ON 2/3/2010

APPROVED BY STATE AUDITOR:

DATE:

FUND	FY	ORG	ACT	OBJ	GRANT	AMOUNT
4890	2011	0471	099	171		0.00
TOTAL PURCHASE ORDER ADJUSTMENT AMOUNT						0.00

**Purchase
Change Request**



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Order #

P1000765

FY 11	Buyer VT	Date 02/28/2011	Account P20278	P.O. Date 10/08/2009	Contract
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Document	Document Action	
<input type="checkbox"/> Requisition (Cancellation only)	<input type="checkbox"/> Cancellation	<input type="checkbox"/> Error in Total Amount
<input type="checkbox"/> Regular Purchase Order	<input type="checkbox"/> Increase/Decrease	<input type="checkbox"/> Change of Account
<input type="checkbox"/> Contract Purchase Order	<input type="checkbox"/> Unused Balance	<input type="checkbox"/> Change of Vendor Name/Address
<input type="checkbox"/> Open End Contract Purchase	<input type="checkbox"/> Freight	<input checked="" type="checkbox"/> Other
<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Renewal	
	<input type="checkbox"/> Extension Error	

Vendor Name, Address, Phone #, etc. 522081178 Blackboard Inc 650 Massachusetts Avenue NW 6th Floor Washington DC 20001-3796	Vendor Code 411666	BOT/BOD Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100
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Item#	Quantity	Description of Change	Unit Price	Extended Price
2.	1 ea	<p style="text-align: center;">Change Order # 2 X 28114</p> <p>To add Mobile Bundle Hena 8-15K Includes: Mobile Central Hena FTE 8-15K Mobile Learn Hena 8 - 15K</p> <p>Effective date: February 11, 2011 thru February 10, 2014</p> <p>Payment term: FY11 \$24,999.00 (02-11-2011 / 02-10-2012) FY12 \$26,749.00 (02-11-2012 / 02-10-2013) FY13 \$28,621.00 (02-11-2013 / 02-10-2014)</p>		\$80,369.00

Reason for Change:	Previous Total \$ 65,572.00
To add Mobile Bundle to include Mobile Central and Mobile Learn Hena 8 - 15K.	Increase \$ 80,369.00
	Decrease \$
	New Total \$ 145,941.00

Approved:

Authorized Signature

3-1-11

Date

N/A

Attorney General if required

Date

REPORT ID: WVFA70UC
PAGE 1

STATE OF WEST VIRGINIA
FINANCIAL INFORMATION MANAGEMENT SYSTEM
OFFICE OF THE STATE AUDITOR

02/28/11
16:05:03

PURCHASE ORDER ADJUSTMENT COVER SHEET
CONTRACT CHANGE ORDER

PURCHASE ORDER: P 20278

AUDITOR ENTRY ID: X 5 28116
DOCUMENT ID: X 28116

STATE ORGANIZATION: 0471
STATE ORGANIZATION NAME: MARSHALL UNIVERSITY
ORGANIZATION CONTACT: SELAH WILSON
ORGANIZATION ADDRESS: 400 HAL GREER BLVD

HUNTINGTON

WV 25755-0001

ORGANIZATION: 0471
ORGANIZATION NAME: MARSHALL UNIVERSITY

DATE PREPARED: 02/28/11

ADJUSTED ENC AMOUNT: 67,639.00
ENC AMOUNT: 42,640.00
REVISED PO AMOUNT: 145,941.00
PO AMOUNT: 65,572.00

START DATE: 02/03/10 END DATE: 02/03/13
REVISED START DATE: 02/03/10 REVISED END DATE: 02/10/14

STATE CHANGE ORDER NUMBER: 2

FIMS PO IDENTIFIER: P000020278

STATE PURCHASE ORDER NUMBER: P1000765

CURRENT VENDOR NUMBER: 411666
CURRENT VENDOR NAME: BLACKBOARD INC

CURRENT VENDOR ADDRESS: PO BOX 200154

PITTSBURGH PA 15251-0154

CONTACT PERSON: VIRGINIA CAMPBELL-TURNER
CONTACT PHONE: 304-696-2820 EXT: 2820 RETURN TO ORG: 0471

DESCRIPTION: TO ADD MOBILE BUNDLE HENA, 3-YR CONTRACT EFFECTIVE
FEB. 11, 2011 THRUOUGH FEB. 10, 2014

APPROVED BY STATE AUDITOR:

DATE:

FUND	FY	ORG	ACT	OBJ	GRANT	AMOUNT
4890	2011	0471	099	171		24,999.00
TOTAL PURCHASE ORDER ADJUSTMENT AMOUNT						24,999.00



**Blackboard Mobile
Order Form**

<input checked="" type="checkbox"/>	New order
<input type="checkbox"/>	Additional/revised order

Customer:	Marshall University
FTE band:	8-15K
Initial Term:	3 years
Effective Date:	The last of the dates indicated in the signatures below

Payment schedule for Initial Term:	Product Description	Product ID	Qty	Units	Year 1 Initial Term Fee	Year 2 Initial Term Fee	Year 2 Initial Term Fee
	MOBILE BUNDLE HENA 8-15K Includes: * MOBILE CENTRAL HENA FTE 8-15K * MOBILE LEARN HENA 8-15K	MOB-BND-HENA04	1	EA	\$ 53620	\$ 26,749	\$28,621
					<i>Price Reduction:</i> (\$ 28621)	---	---
					TOTALS:	\$ 24,999	\$ 26,749
							\$28,621
Licensed Modules:	Blackboard Mobile Central suite/ Blackboard Mobile Learn						
Licensed Platforms:	iPhone BlackBerry Android iPad HP webOS						

Notes:

1. The terms of the Blackboard Mobile Schedule are incorporated by reference and accompany this Order Form. Capitalized terms used in this Order Form are defined in the Blackboard Mobile Schedule or corresponding Blackboard License and Services Agreement.
2. This order form shall supersede and replace the original Blackboard Mobileedu Order Form dated October 14, 2009 effective the last signature date below.

BLACKBOARD

 Signature _____
 TESS FRAZIER- VICE PRESIDENT
 Print Name and Title _____
 Date: 2/11/11

CUSTOMER: Marshall University

 Signature _____
 Stephanie Smith
 Print Name and Title _____
 Date: 3-1-11

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be *due Net 30 from the date of an accurate invoice*.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - *Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.*
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. ***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 OR \$2 MILLION, WHICHEVER IS GREATER.***
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

WEST VIRGINIA NETWORK - Marshall University

Signed: Stephanie P.D.

Title: Director, Office of Purchasing

Date: 3-1-11

BLACKBOARD

Signed: Jean Luey

Title: Vice President

Date: 2/11/11

Approved as to form prior to signature this 30th day of June, 2009 by Dawn E. Wayfield, Deputy Attorney General

**Purchase
Change Request**



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Order #

P1000765

FY 2013	Buyer VT	Date 04/12/2013	Account P20278	P.O. Date October 08, 2009	Contract
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Document	Document Action	
<input type="checkbox"/> Requisition (Cancellation only)	<input type="checkbox"/> Cancellation	<input type="checkbox"/> Error in Total Amount
<input type="checkbox"/> Regular Purchase Order	<input checked="" type="checkbox"/> Increase/Decrease	<input type="checkbox"/> Change of Account
<input type="checkbox"/> Contract Purchase Order	<input type="checkbox"/> Unused Balance	<input type="checkbox"/> Change of Vendor Name/Address
<input type="checkbox"/> Open End Contract Purchase	<input type="checkbox"/> Freight	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Renewal	
	<input type="checkbox"/> Extension Error	

Vendor Name, Address, Phone #, etc.	Vendor Code	BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100
Blackboard Inc 650 Massachusetts Avenue NW 6 th FL Washington DC 20001-3796	PH# FAX# FEIN: 52-2081178	

Item#	Quantity	Description of Change	Unit Price	Extended Price
		<p>Change Order # <u>3</u></p> <p>To change final payment term on CO#2 for Mobile Bundle to include Mobile Learn:</p> <p>Now reads: FY13 \$28,621.00 (02-11-2013 / 02-10-2014)</p> <p>Change to read: FY13 \$52,700.00 (02-11-2013 / 02-10-2014)</p> <p>Mobile Bundle \$28,621.00 Mobil Learn \$24,029.00</p>		

Reason for Change: To change final payment term per attached amendment.	Previous Total \$ 145,941.00
	Increase \$ 24,029.00
	Decrease \$
	New Total \$ 169,970.00

Approved:

Stephane Ell 4/15/13

Date

N/A
Attorney General if required

Date



Blackboard

**AMENDMENT
TO THE BLACKBOARD MOBILE ORDER FORM EFFECTIVELY DATED MARCH 1, 2011
BETWEEN BLACKBOARD INC. AND MARSHALL UNIVERSITY**

This Amendment to the Blackboard Mobile Order Form effectively dated March 1, 2011 ("Agreement") between Blackboard Inc. ("Blackboard") and Marshall University ("Customer") is made as of the last signature date below ("Addendum").

The purpose of this Amendment is to supersede and replace the existing Year 3 Initial Term Fee.

The following sections of the Order Form are modified as follows:

Payment schedule for Initial Term:	Product Description	Product ID	Qty	Units	Year 3 Initial Term Fee (2/11/13-2/10/14)
	MOBILE BUNDLE HENA04 8-15K Includes: * MOBILE CENTRAL HENA FTE 8-15K * MOBILE LEARN HENA 8-15K	MOB-BND-HENA04	1	EA	*\$52,700
	<i>Price Reduction:</i>				
	TOTALS:				
Licensed Modules:	Blackboard Mobile Central suite/ Blackboard Mobile Learn				
Licensed Platforms:	iPhone BlackBerry Android iPad HP webOS				

*Mobile Bundle price includes \$28,621 from Mobile Learn and \$24,029 from Mobile Central.

1. The terms of the Blackboard Mobile Schedule dated October 14, 2009 are incorporated by reference and accompany this Order Form. Capitalized terms used in this Order Form are defined in the Blackboard Mobile Schedule or corresponding Blackboard License and Services Agreement.

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

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

BLACKBOARD

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

Signature

Tess Frazier, Vice President

Print Name and Title

Date: 2/20/13

CUSTOMER: MARSHALL UNIVERSITY

A handwritten signature in blue ink, appearing to read "Stephanie Gell".

Signature

A handwritten signature in blue ink, appearing to read "Stephanie Smith".

Print Name and Title

Date: 4-15-13

**Purchase
Change Request**



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Order #

P1000765

FY 2014	Buyer VT	Date 02/04/2014	Account P20278	P.O. Date October 08, 2009	Contract
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Document	Document Action	
<input type="checkbox"/> Requisition (Cancellation only)	<input type="checkbox"/> Cancellation	<input type="checkbox"/> Error in Total Amount
<input type="checkbox"/> Regular Purchase Order	<input type="checkbox"/> Increase/Decrease	<input type="checkbox"/> Change of Account
<input type="checkbox"/> Contract Purchase Order	<input type="checkbox"/> Unused Balance	<input type="checkbox"/> Change of Vendor Name/Address
<input type="checkbox"/> Open End Contract Purchase	<input type="checkbox"/> Freight	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Renewal	
	<input type="checkbox"/> Extension Error	

Vendor Name, Address, Phone #, etc. Vendor Code

Blackboard Inc.
650 Massachusetts Avenue NW 6th FL
Washington DC 20001-3796

PH# 202/463-4860 x2721 FAX# FEIN: 52-2081178

BOG Unit Name & Address

Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Item#	Quantity	Description of Change	Unit Price	Extended Price
		Change Order # <u>4</u> X 33790 To renew and increase the original contract according to all terms, conditions, and specifications contained in the original contract and all authorized change orders. The contract is increased as defined in the attached documentation. For Mobile Bundle Hena04 8-15K Includes: 1. 1 yr. • Mobile Central Hena FTE 8-15K 2. 1 yr. • Mobile Learn Hena 8-15K Coverage period: February 11, 2014 – February 20, 2015		

Reason for Change: Contract renewal requested.

Previous Total	\$ 169,970.00
Increase	\$ 55,862.00
Decrease	\$
New Total	\$ 225,832.00

Approved:

Stephanie Bell
Authorized Signature

2/13/14

Date

N/A
Attorney General if required

Date

Renewal Notice

THIS IS NOT AN INVOICE, DO NOT PAY



Blackboard Inc.
650 Massachusetts Ave., NW
6th Floor
Washington DC 20001
USA

Phone: (202) 463-4860 X2721
Fax : (202) 318-2619
Federal ID # 52-2081178

Send Purchase Order to

Blackboard Finance Operations
650 Massachusetts Avenue NW, 6th Floor
Washington, DC 20001 USA
Fax: (202) 318-2619
FinanceOps@blackboard.com

Unless otherwise notified, invoice will be sent to the address below.

Client Contact Information

Marshall University
One John Marshall Drive
Huntington WV 25755
USA

Client ID: 200124

Renewal Notice Date: January 21, 2014

The renewal pricing listed below is based on your contract with Blackboard and is provided to facilitate generation of purchase orders for your upcoming renewal item. The amounts listed below **do not** include applicable taxes, which will be assessed and included at the time of invoice.

Renewal ID: Bb-042400

<u>Qty</u>	<u>Product Name</u>	<u>Product Description</u>	<u>Start Date</u>	<u>End Date</u>	<u>Price (USD)</u>
1	MOBILE CENTRAL	Blackboard Mobile Central	02/11/2014	02/10/2015	21,000.75
1	MOBILE LEARN	Blackboard Mobile Learn	02/11/2014	02/10/2015	34,861.25
<u>Renewal Amount (USD)</u>					55,862.00

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

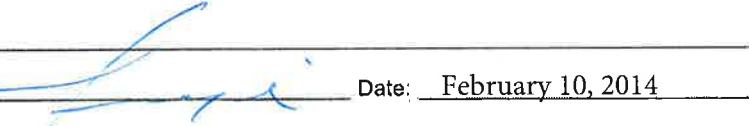
"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Blackboard, Inc. 

Authorized Signature: J. F. T. Thompson Date: February 10, 2014

State of District of Columbia

County of Ward 9, to-wit:

Taken, subscribed, and sworn to before me this 10th day of February, 20 14.

My Commission expires October 31, 2015.

AFFIX SEAL HERE

NOTARY PUBLIC



Purchasing Affidavit (Revised 07/01/2012)

2014 FEB 12 AM 10:55
RECEIVED
HARVARD UNIVERSITY
OFFICE OF PURCHASING

**Purchase
Change Request**



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington, WV 25755-4100

Order #

P1000765

FY 2015	Buyer VT	Date 01/09/2015	wvOasis No. P000020278	P.O. Date October 08, 2009	Contract
Document		Document Action			
<input type="checkbox"/> Requisition (Cancellation only)		<input type="checkbox"/> Cancellation		<input type="checkbox"/> Error in Total Amount	
<input type="checkbox"/> Regular Purchase Order		<input type="checkbox"/> Increase/Decrease		<input type="checkbox"/> Change of Account	
<input type="checkbox"/> Contract Purchase Order		<input type="checkbox"/> Unused Balance		<input type="checkbox"/> Change of Vendor Name/Address	
<input type="checkbox"/> Open End Contract Purchase		<input type="checkbox"/> Freight		<input type="checkbox"/> Other	
<input checked="" type="checkbox"/> Agreement		<input checked="" type="checkbox"/> Renewal			
		<input type="checkbox"/> Extension Error			

Vendor Name, Address, Phone #, etc.	Vendor Code	BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100
Blackboard Inc. 650 Massachusetts Avenue NW 6 th FL Washington DC 20001-3796	PH# 202/463-4860 x2721 FAX# FEIN: 52-2081178	Formerly FIMS P-doc No. P20278

Item#	Quantity	Description of Change	Unit Price	Extended Price
1.	1 yr.	Change Order # <u>5</u> To renew and increase the original contract according to all terms, conditions, and specifications contained in the original contract and all authorized change orders. The contract is increased as defined in the attached documentation. For Mobile Bundle Hena 8-15K Includes: • Mobile Central Hena FTE 8-15K • Mobile Learn Hena 8-15K Coverage period: February 11, 2015 – February 10, 2016	\$22,050.79 \$36,604.31	\$22,050.79 \$36,604.31

Reason for Change: Contract renewal requested. Formerly FIMS No. P20278.	Previous Total \$ 225,832.00
	Increase \$ 58,655.10
	Decrease \$
	New Total \$ 284,487.10

Approved:

Authorized Signature

1-9-15

Date

N/A

Attorney General if required

Date

Renewal Notice

THIS IS NOT AN INVOICE, DO NOT PAY



Blackboard

Blackboard Inc.
650 Massachusetts Ave., NW
6th Floor
Washington DC 20001
USA

Phone: (202) 463-4860 X2721
Fax : (202) 318-2619
Federal ID # 52-2081178

Send Purchase Order to

Blackboard Finance Operations
650 Massachusetts Avenue NW, 6th Floor
Washington, DC 20001 USA
Fax: (202) 318-2619
FinanceOps@blackboard.com

Unless otherwise notified, invoice will be sent to the address below.

Client Contact Information

Marshall University
One John Marshall Drive
Huntington WV 25755
USA

Client ID: 200124

Renewal Notice Date: December 03, 2014

The renewal pricing listed below is based on your contract with Blackboard and is provided to facilitate generation of purchase orders for your upcoming renewal Item. The amounts listed below do not include applicable taxes, which will be assessed and included at the time of invoice.

Renewal ID: Bb-072441

<u>Qty</u>	<u>Product Name</u>	<u>Product Description</u>	<u>Start Date</u>	<u>End Date</u>	<u>Price (USD)</u>
1	MOBILE CENTRAL	Blackboard Mobile Central	02/11/2015	02/10/2016	22,050.79
1	MOBILE LEARN	Blackboard Mobile Learn	02/11/2015	02/10/2016	36,604.31

Renewal Amount (USD) ————— 58,655.10

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Blackboard Inc.

Authorized Signature: Jes Tigin Date: 1-16-15

State of DISTRICT OF COLUMBIA

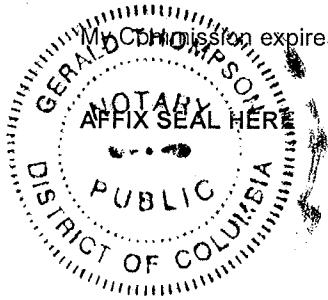
County of Arlington, to-wit:

Taken, subscribed, and sworn to before me this 6th day of January, 2015.

My Commission expires October 31, 2015.

NOTARY PUBLIC

[Signature]
Purchasing Affidavit (Revised 07/01/2012)



UC Defaulted Accounts Search Results

Sorry, no records matching your criteria were found.

FEIN: 522081178

Business name: BLACKBOARD INC

Doing business

as/Trading as:

Please use your browsers back button to try again.

<u>WorkforceWV</u>	<u>Unemployment Compensation</u>	<u>Offices of the Insurance Commissioner</u>
------------------------------------	--	--

Purchase Order		Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquires regarding this order to: (304) 696-2820			Purchase Order # P1401278													
TO: 134007629 Blackboard Collaborate Inc. 650 Massachusetts Ave., 6th Floor Washington, DC 20001		Vendor Code: 	Ship to: n/a	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN														
			Bldg: Room#:	WVFIMS Account #: Essential Service														
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #												
7/1/2014	2015	VT																
<u>AGREEMENT</u>																		
<p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Blackboard Collaborate Inc.</u></p> <hr/> <p>for <u>a 3-yr Agreement for Blackboard Collaborate software</u> <u>and/or services. Ref. MU10-MNGHOST for Blackboard</u> <u>Master Agreement dated June 30, 2009.</u></p> <hr/> <p>Services shall begin <u>July 1, 2014</u> and extend through <u>June 30, 2017</u></p> <p>All in accordance with the agreement attached hereto and made a part hereof.</p> <p>Schedule of payment \$ _____ per <u>Agreement</u>.</p> <table> <tr> <td>Fee</td> <td>\$</td> <td>442,575.18</td> </tr> <tr> <td>Travel Expense</td> <td>\$</td> <td></td> </tr> <tr> <td>Other Expense</td> <td>\$</td> <td></td> </tr> <tr> <td>Total \$</td> <td>\$</td> <td>442,575.18</td> </tr> </table> <p>Approved as to form this <u>N/A</u> day of _____, 2014 Patrick Morrisey, Attorney General</p> <p>By _____ Dan Greear, Chief Counsel</p> <p style="text-align: center;">THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>							Fee	\$	442,575.18	Travel Expense	\$		Other Expense	\$		Total \$	\$	442,575.18
Fee	\$	442,575.18																
Travel Expense	\$																	
Other Expense	\$																	
Total \$	\$	442,575.18																
Line No.	Fund	Org.	Account	Encumber Amount	07/01/14 - 6/30/15 07/01/15 - 6/30/16 07/01/16 - 6/30/17	Total: \$442,575.18												
1.				\$145,047.70														
2.				\$147,508.65														
3.				\$150,018.83														
4.																		
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500					 6/27/14 Authorized Signature Date													

**Blackboard**

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Marshall University ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement dated June 30, 2009 and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

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:

A. Product and Pricing Summary

Product ID	Product Description	Qty.	Year 1 Initial Term Fee 7/1/14-6/30/15	Year 2 Initial Term Fee 7/1/15-6/30/16	Year 3 Initial Term Fee 7/1/16-6/30/17
Bb Collaborate Materials Licensing 0	Current	1	102.00	104.04	106.12
Bb Collaborate Enterprise IM 8001-15000 (FTE)	8001-15000	1	29,775.49	30,371.00	30,978.42
Additional 250 Support Calls 250	Current	1	8,160.00	8,323.20	8,489.66
Bb Collaborate Web Conferencing	Blackboard currently offers with the sale and renewal of this product, 50 GB of storage for standard recordings and pre-load storage, 50GB of storage for MP4 recording conversion, and 10,000 annual MP4 views/downloads. 8001-15000	1	55,356.09	56,463.21	57,592.48
Bb Collaborate Voice Authoring	Bb Collaborate Voice Authoring - FTE 8001-15000	1	29,654.12	30,247.20	30,852.15
Bb Collaborate Getting Started with Web Conferencing	The training allows for a maximum of 20 participants.	2	6,000.00	6,000.00	6,000.00
Bb Collaborate Product Specialist Certification - 6 Participants	Certification for 6 additional Participant 8001-15000	2	16,000.00	16,000.00	16,000.00
TOTALS:			\$145,047.70	\$147,508.65	\$150,018.83

B. Term

- Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be three (3) years following the Effective Date.
- Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, 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.
- Effective Date:** Upon execution of this Order Form.

C. Payment Terms

- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
- Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
- 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

- The terms and conditions of the Blackboard Collaborate Terms of Service dated March 31, 2011 shall be incorporated herein.

Customer: Marshall University	
Signature	
Name (printed)	Stephanie Smith
Title (printed)	Director of Purchasing
Date	June 27, 2014

Blackboard ("Blackboard")	DocuSigned by: 1CEED8D252D6444
Signature	TESS FRAZIER
Name (printed)	VICE PRESIDENT
Title (printed)	
Date	May 19, 2014

**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 is posted at the relevant link, such posting to constitute effective notice of change. You can review the most current version of these TOS at any time through <https://secure.blackboard.com/legal/collaborate/TOS.htm>.

These TOS, together with the Blackboard Collaborate Sales Order Form (the "Order Form") you signed, 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. Further, in connection with the use of certain services and/or software, you may be required to download content, software, and/or required to agree to supplemental terms and conditions. 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 Order Form or provide the Company with a 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 (other than reasonable implementation fees), 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.

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

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 for promotional and/or marketing purposes. 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

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) and the Company's reasonable travel, subsistence and other expenses incurred in connection therewith.

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 Form, but in no event later than thirty (30) days after the date of an 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, 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, 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.

8.6 Purchase Orders. You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to the Company, you will timely issue such purchase order and inform the Company of the number and amount thereof. You agree 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 your obligations under this Agreement, including payment of amounts owed to the Company.

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 shall be renewed automatically 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. 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. 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 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, 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 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. 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").

13.3 Customer Infringement Obligations. You shall, at your own expense, indemnify and, at the Company's option, defend the Company 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 the Company 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 "Company Claim"), provided that you will not settle any Company Claim unless such settlement completely and forever releases the Company with respect thereto or unless the Company provides its prior written consent to such settlement. The Company agrees (i) to provide you with prompt written notice of any Company Claim and (ii) to provide such assistance as you may reasonably request, at your expense, in order to settle or defend any such Company Claim.

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 these TOS and the provisions of any Order Form, these TOS 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. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either party.

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 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.

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

exclusive jurisdiction of the courts in or for the District of Columbia. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

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, 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.

15.8 Notices. The Company may provide you with notices regarding changes to the TOS, by email, regular mail or postings on the Services or its webpages. 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.

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 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, order, 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 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.

AGREEMENT ADDENDUM FOR SOFTWARE
Between Blackboard and Marshall University

In the event of conflict between this Agreement Addendum and the Blackboard Order Form, the Blackboard Master Agreement dated June 30, 2009, and the Blackboard Collaborate Terms of Service dated March 31, 2011, this Agreement Addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. *Fees for software licenses, subscriptions, or maintenance are payable annually in advance.* Payment for services will be in arrears. Payment will be due Net 30 from the date of an accurate invoice.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement. Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.

13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. ***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 THREE TIMES 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.***

14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.

16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.

17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.

18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.

21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

SIGNATURES TO FOLLOW

ACCEPTED BY:

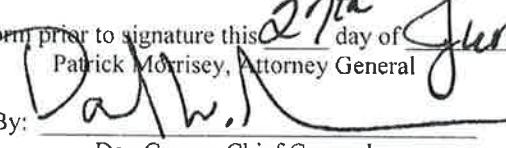
STATE OF WEST VIRGINIA

VENDOR

Spending Unit: Marshall University Company Name: _____
Signed:  Digitally signed by Tess Frazier
DN: cn=Tess.Frazier,
o=Blackboard, ou=Vice President, Contracts,
email=tess.frazier@blackboard.com, c=US
Date: 2014.06.27 13:59:52 -04'00'
Title: Director of Purchasing Title: 
Date: June 27, 2014 Date: _____

Approved as to form prior to signature this 27th day of June, 2014

Patrick Morrisey, Attorney General

By: 
Dan Greear, Chief Counsel

UC/WC Defaulted Accounts Search Results

Sorry, no records matching your criteria were found.

FEIN: 134007629
Business name: BLACKBOARD COLLABORATE
Doing business
as/Trading as:

Please use your browsers back button to try again.

WorkforceWV	Unemployment Compensation	Offices of the Insurance Commissioner
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RFQ No. P1401278

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Blackboard INC.

Authorized Signature: Jean Feuer Date: 01/10/14

State of DISTRICT OF COLUMBIA

County of D.C., to-wit:

Taken, subscribed, and sworn to before me this 10th day of JUNE, 2014.

My Commission expires OCTOBER 31, 2015.

AFFIX SEAL HERE

NOTARY PUBLIC

Gerald Thompson

Purchasing Affidavit (Revised 07/01/2012)



Purchase Order		Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304) 696-2820			Purchase Order # P1401278									
TO: 134007629 Blackboard Collaborate Inc. 650 Massachusetts Ave., 6th Floor Washington, DC 20001		Vendor Code:	Ship to: n/a	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN										
			Bldg: Room #:	WVFIMS Account #: Essential Service										
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #								
7/1/2014	2015	VT												
AGREEMENT														
<p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Blackboard Collaborate Inc.</u></p> <hr/> <p>for <u>a 3-yr Agreement for Blackboard Collaborate software</u> <u>and/or services. Ref. MU10-MNGHOST for Blackboard</u> <u>Master Agreement dated June 30, 2009.</u></p> <hr/> <p>Services shall begin <u>July 1, 2014</u> and extend through <u>June 30, 2017</u>.</p> <p>All in accordance with the agreement attached hereto and made a part hereof.</p> <p>Schedule of payment \$ _____ per <u>Agreement</u> .</p> <table> <tbody> <tr> <td>Fee</td> <td>\$ 442,575.18</td> </tr> <tr> <td>Travel Expense</td> <td>\$</td> </tr> <tr> <td>Other Expense</td> <td>\$</td> </tr> <tr> <td>Total \$</td> <td>\$ 442,575.18</td> </tr> </tbody> </table> <p>Approved as to form this <u>N/A</u> day of _____, 2014 Patrick Morrisey, Attorney General</p> <p>By _____ Dan Greear, Chief Counsel</p> <p>THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>							Fee	\$ 442,575.18	Travel Expense	\$	Other Expense	\$	Total \$	\$ 442,575.18
Fee	\$ 442,575.18													
Travel Expense	\$													
Other Expense	\$													
Total \$	\$ 442,575.18													
Line No.	Fund	Org.	Account	Encumber Amount	07/01/14 - 6/30/15 07/01/15 - 6/30/16 07/01/16 - 6/30/17	Total: \$442,575.18								
1.				\$145,047.70										
2.				\$147,508.65										
3.				\$150,018.83										
4.														
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500					 6/27/14 Authorized Signature									

**Blackboard**

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Marshall University ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement dated June 30, 2009 and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

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:

A. Product and Pricing Summary

Product ID	Product Description	Qty.	Year 1 Initial Term Fee 7/1/14-6/30/15	Year 2 Initial Term Fee 7/1/15-6/30/16	Year 3 Initial Term Fee 7/1/16-6/30/17
Bb Collaborate Materials Licensing 0	Current	1	102.00	104.04	106.12
Bb Collaborate Enterprise IM 8001-15000 (FTE)	8001-15000	1	29,775.49	30,371.00	30,978.42
Additional 250 Support Calls 250	Current	1	8,160.00	8,323.20	8,489.66
Bb Collaborate Web Conferencing	Blackboard currently offers with the sale and renewal of this product, 50 GB of storage for standard recordings and pre-load storage, 50GB of storage for MP4 recording conversion , and 10,000 annual MP4 views/downloads. 8001-15000	1	55,356.09	56,463.21	57,592.48
Bb Collaborate Voice Authoring	Bb Collaborate Voice Authoring - FTE 8001-15000	1	29,654.12	30,247.20	30,852.15
Bb Collaborate Getting Started with Web Conferencing	The training allows for a maximum of 20 participants.	2	6,000.00	6,000.00	6,000.00
Bb Collaborate Product Specialist Certification - 6 Participants	Certification for 6 additional Participant 8001-15000	2	16,000.00	16,000.00	16,000.00
TOTALS:			\$145,047.70	\$147,508.65	\$150,018.83

B. Term

- Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be three (3) years following the Effective Date.
- Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, 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.
- Effective Date:** Upon execution of this Order Form.

C. Payment Terms

- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
- Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
- 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

- The terms and conditions of the Blackboard Collaborate Terms of Service dated March 31, 2011 shall be incorporated herein.

Customer: Marshall University
Signature
Name (printed) Stephanie Smith
Title (printed) Director of Purchasing
Date June 27, 2014

Blackboard ("Blackboard")	DocuSigned by: 1CEED60252D6444
Signature TESS FRAZIER	
Name (printed) VICE PRESIDENT	
Title (printed)	
Date May 19, 2014	

**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 is posted at the relevant link, such posting to constitute effective notice of change. You can review the most current version of these TOS at any time through <https://secure.blackboard.com/legal/collaborate/TOS.htm>.

These TOS, together with the Blackboard Collaborate Sales Order Form (the "Order Form") you signed, 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. Further, in connection with the use of certain services and/or software, you may be required to download content, software, and/or required to agree to supplemental terms and conditions. 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 Order Form or provide the Company with a 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 (other than reasonable implementation fees), 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.

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

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 for promotional and/or marketing purposes. 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

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) and the Company's reasonable travel, subsistence and other expenses incurred in connection therewith.

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 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, 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, 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.

8.6 Purchase Orders. You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to the Company, you will timely issue such purchase order and inform the Company of the number and amount thereof. You agree 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 your obligations under this Agreement, including payment of amounts owed to the Company.

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 shall be renewed automatically 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. 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. 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 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, 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 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. 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").

13.3 Customer Infringement Obligations. You shall, at your own expense, indemnify and, at the Company's option, defend the Company 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 the Company 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 "Company Claim"), provided that you will not settle any Company Claim unless such settlement completely and forever releases the Company with respect thereto or unless the Company provides its prior written consent to such settlement. The Company agrees (i) to provide you with prompt written notice of any Company Claim and (ii) to provide such assistance as you may reasonably request, at your expense, in order to settle or defend any such Company Claim.

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 these TOS and the provisions of any Order Form, these TOS 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. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either party.

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 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 York without reference to its conflicts of law provisions, and each party irrevocably submits to the non-

exclusive jurisdiction of the courts in or for the District of Columbia. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

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, 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.

15.8 Notices. The Company may provide you with notices regarding changes to the TOS, by email, regular mail or postings on the Services or its webpages. 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.

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 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, order, 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 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.

AGREEMENT ADDENDUM FOR SOFTWARE
Between Blackboard and Marshall University

In the event of conflict between this Agreement Addendum and the Blackboard Order Form, the Blackboard Master Agreement dated June 30, 2009, and the Blackboard Collaborate Terms of Service dated March 31, 2011, this Agreement Addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. *Fees for software licenses, subscriptions, or maintenance are payable annually in advance.* Payment *for services* will be in arrears. Payment will be due Net 30 from the date of an accurate invoice.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement. *Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.*

13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. ***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 THREE TIMES 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.***

14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.

16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.

17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.

18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.

21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

SIGNATURES TO FOLLOW

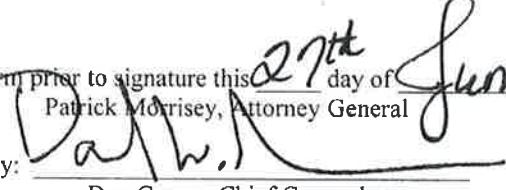
ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: Marshall University Company Name: _____
Signed:  Digitally signed by Tess Frazier
Title: Director of Purchasing Signed: _____
DN: cn=Tess.Frazier,
o=Blackboard, ou=Vice
President, Contracts,
email=tess.frazier@black
board.com, c=US
Date: 2014.06.27 13:59:52
-04'00'
Date: June 27, 2014 Date: _____

Approved as to form prior to signature this 27th day of June, 2014
Patrick Morrisey, Attorney General

By: 
Dan Greear, Chief Counsel

Purchase Order		Marshall University Purchasing and Materials Management One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304) 696-2820			Purchase Order # P1600003	
TO: 522081178 Blackboard Inc. 650 Massachusetts Ave., NW 6 th Floor Washington, DC 20001		Vendor Code:	Ship to: N/A	THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH HEREIN.		
			Bldg.: Room #:	WVFIMS Account #:		
P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
07/01/15	16	VT			N30	
<u>AGREEMENT</u>						
<p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Blackboard Inc</u></p> <p>for <u>Internet2 Net+ Program</u></p> <p><u> </u> <u> </u> <u> </u></p>						
<p>Services shall begin <u>July 1, 2015</u> and extend through <u>June 30, 2018</u>.</p> <p>All in accordance with the agreement attached hereto and made a part hereof.</p>						
<p>Schedule of payment \$ <u>See below</u> per _____.</p> <p>Fee \$ <u>1,730,835.00</u> Travel Expense \$ _____ Other Expense \$ _____ Total \$ \$ <u>1,730,835.00</u></p>						
<p>Approved As To Form this <u>N/A</u> day of _____, 20 _____. Attorney General By: <u>N/A</u> Asst. Attorney General</p>						
<p>THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>						

Line No.	Encumbrance Amount	Coverage Period
1.	\$624,540.00	July 1, 2015 – June 30, 2016
2.	\$545,313.00	July 1, 2016 – June 30, 2017
3.	\$560,982.00	July 1, 2017 – June 30, 2018
4.		

Total: \$1,730,835.00

Mail Original Invoice and 1 Copy to:
 Marshall University Accounts Payable
 One John Marshall Drive
 Huntington, WV 25755-4300


 Stephen Miller 6/29/15
 Authorized Signature Date



Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Marshall University ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement Internet2 Net+ Program Attachment A, the Blackboard Software and Services License Schedule Internet2 Net+ Program Attachment B and the Blackboard Pricing Exhibit Internet2 Net+ Program Attachment C (all attached hereto), form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

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:

A. Product and Pricing Summary

Internet2 Products and Fees:

<u>OTY</u>	<u>Product Name</u>	<u>Product or Service Description</u>	<u>Initial Term Period 1 Fees (USD)</u>	<u>Initial Term Period 2 Fees (USD)</u>	<u>Initial Term Period 3 Fees (USD)</u>
1	HOSTING ADDL STORAGE 1TB	Blackboard Managed Hosting Storage 1TB - open market	\$10,000.00	\$10,000.00	\$10,000.00
1	NA ADD 7500 USERS HST DIAM ENG	Blackboard Managed Hosting - Additional 7500 Users Diamond Engagement Plan, North America	\$13,000.00	\$13,000.00	\$13,000.00
1	INTERNET2 NET+ SOLUTION DIAM	<p>Blackboard Internet2 NET+ Solution Diamond Hosting - includes:</p> <ul style="list-style-type: none"> • Bb Analytics For Learn -Annual License • Pyramid for Bb Analytics For Learn • Academic Collaboration Getting Started • Blackboard Course Delivery • Blackboard Community Engagement • Blackboard Content Management • Blackboard Managed Hosting for Content Management • Blackboard Diamond 1 Hosting • Blackboard Managed Hosting for Outcomes • Blackboard Managed Hosting Test Environment • Blackboard Outcomes Assessment • Bb Collaborate Enterprise IM • The Blackboard Collaborate Implementation Service includes: A 2-day on-site engagement designed to align faculty use cases with a measurable action plan Engagement report containing the action plan and associated project plan Quarterly status checks to review progress tasks and performance against assigned metrics Number of Participants: 20 Max Duration: 2 days Onsite and 3 Online Status Checks * Price does not include Travel and Expenses • Bb Collaborate SAS Advanced Workshop • Bb Collaborate Technical Services SAS Essentials • Bb Collaborate Technical Services Health Check • Bb Collaborate Web Conferencing Learning Services with Lab Series • The training allows for a maximum of 15 participants. • Blackboard currently offers with the sale and renewal of this product, 50 GB of storage for standard recordings and pre-load storage, 50GB of storage for MP4 recording conversion, and 10,000 annual MP4 views/downloads. • ELS SUPPORT-FTE Virtualized inbound operational support of eLearning systems to assist with inquiries, includes: live shared support via toll-free phone calls, web tickets and chat. 	\$457,100.00	\$470,813.00	484,937.00
Internet2 Subtotal:			\$480,100.00	\$493,813.00	\$507,937.00

Analytics Products and Fees:

OTY	Product Name	Product or Service Description	Initial Term Period 1 Fees (USD)	Initial Term Period 2 Fees (USD)	Initial Term Period 3 Fees (USD)
1	ADDITIONAL IMPLEMENTATION SUPPORT	Bb Analytics Additional Implementation Support	\$46,440.00	-	-
		ANALYTICS HOSTING includes: <ul style="list-style-type: none"> • Bb Analytics Managed Hosting - 8001-15000 • Bb Analytics Managed Hosting Set-up - 8001-15000 • Bb Analytics Managed Hosting Analytics for Learn VPN - 8001-15000 • Bb Analytics Managed Hosting A4L Reporting Server Setup - 8001-15000 • Bb Analytics Managed Hosting A4L Reporting Server - 8001-15000 • Bb Analytics Managed Hosting A4L Building Block Setup - 8001-15000 			
1	ANALYTICS HOSTING		\$50,000.00	\$51,500.00	\$53,045.00
1	TRAVEL EXPENSES - FIXED FEE	TRAVEL EXPENSES - FIXED FEE	\$8,000.00	-	-
1	OUTCOMES EVID ASSESSMENT ENGAG	OUTCOMES EVID ASSESSMENT ENGAG	\$40,000.00	-	-
Analytics Subtotal			\$144,440.00	\$51,500.00	\$53,045.00
TOTAL:			\$624,540.00	\$545,313.00	\$560,982.00

Customer's Users: 30,504

Customer's total Storage: 3.5 TB Storage

Customer's total Bandwidth: 27 MBPS Bandwidth

B. Term

1. **Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be three (3) years following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, 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.
3. **Effective Date:** Upon execution of this Order Form.

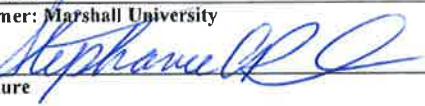
C. Payment Terms

1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form. However, solely for the Analytics support (Bb Analytics Additional Implementation Support) and the Outcomes engagement (OUTCOMES EVID ASSESSMENT ENGAG) listed above, with respect to Period 1 of the Initial Term fees, Blackboard agrees to invoice Customer four (4) times starting upon execution and each invoice following 6 weeks apart, in the following amounts: a) the first, second and third invoice shall each be in the amount of \$20,000.00 and b) the fourth invoice shall be \$26,440.00.
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

1. The terms and conditions of the attached Blackboard Master Agreement Internet 2 Net + Program (Attachment 1) are incorporated herein.
2. The terms and conditions of the attached BLACKBOARD SOFTWARE LICENSE AND SERVICES SCHEDULE INTERNET 2 NET+ PROGRAM (Attachment 2) are incorporated herein.
3. The terms and conditions of the attached BLACKBOARD PRICING EXHIBIT INTERNET 2 NET+ PROGRAM (Attachment 3) are incorporated herein.
4. The terms and conditions of the attached EXHIBIT TO BLACKBOARD ORDER FORM STATEMENT OF WORK (Attachment 4) are incorporated herein.
5. The terms and conditions of the attached EXHIBIT TO BLACKBOARD ORDER FORM STATEMENT OF WORK (Attachment 5) are incorporated herein.
6. The terms and conditions of the attached EXHIBIT TO BLACKBOARD ORDER FORM STATEMENT OF WORK (Attachment 6) are incorporated herein.

Customer: Marshall University



Stephanie Smith

Name (printed)

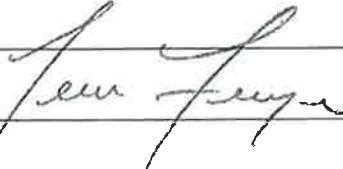
Director of Purchasing 

Title (printed)

4/29/15

Date

Blackboard ("Blackboard")



Signature

TESS FRAZIER

Name (printed)

VICE PRESIDENT

Title (printed)

Date 6/23/2015

AGREEMENT ADDENDUM
Between Marshall University and BlackBoard

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears. Payment will be due Net 30 from the date of an accurate invoice.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement. Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. ***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 THREE TIMES 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.

14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

MARSHALL UNIVERSITY

Spending Unit:

Signed:

Title: Director of Purchasing

Date:

6/29/15

VENDOR

Company Name:

Blackboard Inc.

Signed:

Title:

VPT Contracts

Date:

6/26/2015

Approved as to form prior to signature this 26th day of June, 2015

Patrick Morrisey, Attorney General

By:

J. Robert Leslie

James R. Leslie, Senior Deputy Attorney General

ATTACHMENT I
BLACKBOARD MASTER AGREEMENT
INTERNET2 NET+ PROGRAM

1. SCOPE OF AGREEMENT.

1.1 **Order Forms.** This Blackboard master agreement ("Master Agreement") between Customer and Blackboard describes the general terms by which Customer may license or purchase, as applicable, an Offering (as defined below) from Blackboard. This Master Agreement, together with the Order Form(s) and Schedule(s) referencing it, form the entire agreement between the Parties in respect of the specified Offering. Customer acknowledges that it only has right to use and/or receive the Offerings to the extent provided pursuant to one or more applicable Order Forms. For purposes of clarity, the University Corporation for Advanced Internet Development d/b/a Internet2 ("Internet2") is not a party to this Master Agreement, is not providing any of the Services hereunder, and is not a Contractor (as defined in Section 10.12 below) of Blackboard in connection herewith, and Blackboard is not a Contractor of Internet2 in connection herewith.

1.2 **Order of Precedence.** In the event a conflict arises between any provisions of this Master Agreement and any provisions of any Order Form, Schedule, exhibit or other document referenced in the Master Agreement or Order Form, the applicable provisions of this Master Agreement will govern unless the relevant Order Form, Schedule, exhibit or other document expressly identifies the applicable provisions of this Master Agreement that are to be superseded by the applicable conflicting provisions of the relevant Order Form, Schedule, exhibit or other document. 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.

2. DEFINITIONS.

2.1 **Agreement** means, collectively, this Master Agreement, the Order Form(s), Schedule(s) and other exhibits to such Order Form(s) or Schedule(s), as may be amended by the Parties from time to time.

2.2 **Authorized End User** means an individual authorized by the Customer to use or otherwise access an Offering from time to time in the manner set forth in this Agreement.

2.3 **Available Date** means, with respect to any particular Offering, the date upon which the Offering is made available to Customer pursuant to the terms of the relevant Order Form, regardless of whether Customer utilizes the Offering.

2.4 **Blackboard** means Blackboard Inc.

2.5 **Blackboard Property** means all materials, including, but not limited to any computer software (in object code, source code form or as a hosted solution, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML script, design elements, formulas, documentation, templates, formatting, CGIs, Javascripts, PL/SQL coding, other applications, content, software or other technology made, conceived, developed or provided by Blackboard or its suppliers and any trade secrets, know-how, methodologies and processes related to Blackboard's products or services, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein and any Derivative Works thereof. For the avoidance of doubt, Customer Applications are not considered Blackboard Property.

2.6 **Confidential Information** means any non-public information disclosed by either Party to the other 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, operations, vendors or customers. Blackboard's Confidential Information will be deemed to include all Blackboard Property; Customer's Confidential Information will be deemed to include all Customer Property.

2.7 **Customer** means the customer identified on the relevant Order Form.

2.8 **Customer Content** means any data, information, graphics, media or other files or other content provided by Customer or any Authorized End User through use of an Offering.

2.9 **Customer Property** means all graphic user interface, text, images, music, designs, products, computer programs, drawings, content, end user information, documentation, notes, development aids, technical documentation, information and other materials provided by Customer to Blackboard for use in connection with the Offering, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein. Customer Property includes all Customer Content. Customer Property includes any third party software or content provided by, or made available at the request of, Customer for use in connection with any Offering.

2.10 **Derivative Works** shall mean a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which the preexisting work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work". The term Derivative Works shall not include and Blackboard shall not obtain any rights with respect to (i) any Confidential Information of the Customer or any Customer-developed content or other Customer materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof or (ii) with respect to any applications that connect to the Services via publicly-available interfaces and protocols for the purpose of Customer's development of solutions and applications that can operate with the Services on an automated or scripted basis (such applications, "**Customer Applications**").

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

2.12 **Effective Date** means the effective date set forth in the relevant Order Form.

2.13 **Equipment** means any hardware and/or firmware provided by Blackboard to Customer.

2.14 **Offering(s)** means Software, Services, Professional Services and/or Equipment, as applicable.

2.15 **Order Form** a document executed by both parties which lists items to be purchased and/or licensed by Customer as well as other information related to such items, each of which is incorporated into this Agreement.

2.16 **Party** means either Blackboard or Customer.

2.17 **Professional Services** means any professional services provided by Blackboard to Customer.

2.18 **SaaS Service** means software provided by Blackboard as a Blackboard-hosted solution.

2.19 **Service(s)** means any service(s) provided by Blackboard to Customer, including, without limitation, any SaaS Service.

2.20 **Software** means solely the object code version of software provided by Blackboard to Customer.

2.21 **Test Copy** means a copy of the Software which may be used only for purposes of testing the Software in Customer's environment, and not for production purposes.

2.22 **User Data** includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security Number, and student or personnel identification number; personally identifiable information contained in student education records as that term is defined under FERPA; IP address; driver's license number; other state- or federal-identification numbers such as passport, visa or state identity card numbers; account number or credit or debit card number, or an account number or credit card number in combination with any required security code, access code or password that would permit access to an individual's financial account; and such other data and information as may be specified by Applicable Law as "personal data" or the equivalent thereof, and all binary text, sound, image, video or other files that are uploaded to, processed by, stored by and/or created by (a) Customer for an Authorized End User through the use of any Offering, and/or (b) an Authorized End User through the use of any Offering.

3. PROPRIETARY RIGHTS AND PROTECTIONS

3.1 Ownership of Customer Property. As between Customer and Blackboard, Customer Property is and shall remain the sole and exclusive property of Customer.

3.2 Ownership of Blackboard Property. As between Customer and Blackboard, Blackboard Property is and shall remain the sole and exclusive property of Blackboard or its licensors or suppliers.

3.3 Vesting of Rights. To the extent, if any, that ownership of any of the Blackboard Property does not reside or automatically vest in Blackboard, Customer hereby transfers and assigns to Blackboard all rights, title interest and goodwill which Customer may have in and to Blackboard Property. Without prejudice to the generality of the foregoing, in the event that ownership of any Blackboard Property vests in Customer for any reason, Customer agrees to execute all such instruments and do all such things, at Blackboard's cost and expense, as Blackboard may require of it to transfer or assign such ownership to Blackboard.

3.4 Non-exclusivity. Customer acknowledges that it has no rights of exclusivity as to any of the Offerings to be provided by Blackboard, and that Blackboard shall have the right to provide to third parties with software, services and equipment which are the same or similar to those provided to Customer, and to use or otherwise exploit any Blackboard Property in providing such services.

3.5 Blackboard Use of Customer Property. During the term of this Agreement, Customer grants to Blackboard, solely to perform its obligations hereunder, a non-exclusive, royalty-free license (a) to modify, arrange, combine, copy, store, transmit, distribute, and otherwise use the Customer Property and each element thereof generally and in combination with other elements of the Customer Property and the Blackboard Property, and (b) to make archive or backup copies and other copies of the Customer Property.

3.6 License and General Usage Restrictions.

a. Subject to the terms and conditions of the Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicenseable right and license to (x) install and use one (1) production copy as described in the Order Form, (y) install and use one unsupported Test Copy of the Software for one installation at Customer's Designated Server Site (unless Customer purchases the Blackboard Managed Hosting Non-Production Test Environment in which case Blackboard will host the Test Copy of the Software), 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, (z) use the Services, in each case 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 Order Form) and to use the Documentation, (i) 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 (ii) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained nodes, (aa) permit and enable Authorized End Users to access and use the Services and copies of the Documentation, and (bb) create one (1) copy of the Software for archival, non-production purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software.

b. The Software and Services licensed hereunder (i) shall not cause any Customer Property to become or be considered open source code subject to disclosure, licensure or redistribution to third parties ; (ii) shall not be modified by Blackboard during the Term in a manner that materially diminishes the functionality of such Software or Services without Customer's prior consent; and (iii) shall be, or shall use commercially reasonable efforts to become, compliant with Section 508 of the Rehabilitation Act and Level AA of the W3C Web Content Accessibility Guidelines 2.0.

c. Customer shall not (i) except to the extent permitted in Section 3.6a. above, copy or duplicate any Software or Documentation; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any 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; or (iii) install or use any Software on any computer, network, system or equipment other than the Designated Server Site or as otherwise set forth in Section 3.6a. above, except with the prior written consent of Blackboard. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard's prior written consent.

d. Customer agrees not to use any Offering for purposes beyond the scope of this Agreement. Without limiting the foregoing, Customer shall not: (a) modify the Offering or create any derivative product of the Software or SaaS Service, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software or SaaS Service to the extent permitted by the solution's standard user interface or from developing Customer Applications, (b) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the Agreement other than as expressly provided for herein, or (c) use the Offering 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 or SaaS Service, nor will Customer add any other notices or markings to the Software or SaaS Service or any portion thereof except as permitted by the solution's standard user interface. Customer shall not use the Software or SaaS Service in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has provided Customer with reasonable advance written notification of such obligation.

3.7 Customer Property. Except to the extent prohibited by applicable law and except to the extent such representation and warranty constitutes an unlawful waiver of sovereign immunity by Customer (if applicable), Customer represents and warrants that: (a) Customer owns or has sufficient rights in and to the Customer Property, including, without limitation, personal, educational, and financial information contained within the Customer Property, in order for Customer and its Authorized End Users to use, and permit use of, the Offering(s), and (b) to the actual or constructive knowledge of Customer based on commercially reasonable diligence, the Customer Property 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 Property may be accessed by Blackboard's support or Managed Hosting personnel outside of the country of the hosted facility, and hereby authorizes such access, which access shall, for the avoidance of doubt, be subject to the limitations set forth in Section 3.5 above. Blackboard does not operate or control the third party information, services, opinions or other content of the Internet that may be incorporated in, operated with or otherwise displayed by the Offerings. Blackboard reserves the right to remove from any Offering any Customer Property that Blackboard determines, in its reasonable discretion, may subject Blackboard to liability or may be libelous, defamatory, obscene, infringing or illegal under applicable law or contrary to the terms of this Agreement. Blackboard shall give prompt notice to Customer of any such removal. Customer agrees that it shall make no claim whatsoever against Blackboard relating to third party content of the Internet or respecting any third party information, product, service or software ordered through or provided via the Internet.

3.8 Data Protections.

a. All Blackboard facilities, technologies and software applications used to store and process User Data will employ at least commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use, including updates and upgrades to such safeguards as such represent then-current commercially reasonable practices, and with respect to (i) any User Data that is subject to protection under the Family Education Rights and Privacy Act of 1974 ("FERPA"), such safeguards shall include that Blackboard shall maintain the confidentiality of such User Data in accordance with the provisions of FERPA and (ii) any User Data deemed to be "nonpublic personal information" under the Gramm-Leach-Bliley Act, 15 U.S.C. sections 6801-6809 ("GLB") such safeguards shall meet the privacy and security standards set forth in the GLB and its implementing regulations. Blackboard agrees that it is a "School Official" (as that term is used in FERPA) with a "legitimate educational interest" in any User Data that is protected by FERPA. Blackboard agrees that prior to releasing any User Data to any subcontractor or agent, Blackboard will require such subcontractor or agent to agree that (i) it is a "School Official" with a "legitimate educational interest" in any such User Data that is protected by FERPA and (ii) it shall maintain the confidentiality of such User Data in accordance with the provisions of FERPA.

b. Blackboard has established, and will throughout the Term maintain, the data security policy and practices applicable to the Services, including encryption, access protocols, incident response and anti-virus protection, as set forth in (i) the Blackboard Information Security Policy set forth in Exhibit [] and (ii) the Cloud Security Alliance Cloud Control Matrix set forth in Exhibit [], in each case as such may be improved upon by Blackboard from time to time during the Term.

c. Within the twelve (12) month period prior to the Effective Date, an independent third-party auditor accredited to conduct Statement on Standards for Attestation Engagements ("SSAE") 16, SOC 2, Type 2 audits of third-party service organizations conducted, and annually thereafter shall conduct, a SSAE 16, SOC 2, Type 2 audit examination of the primary data centers owned or operated by Blackboard from which the Services are provided, conducted in accordance with AT section 101 of the American Institute of Certified Public Accountants ("AICPA") attestation standards, concluding that the applicable trust services would be met in all material respects for the period audited. The SSAE 16, SOC 2, Type 2 service organization control report (a "SOC 2 Report") resulting from such audit(s) are available to Customer upon written request.

d. Blackboard may transmit User Data for processing or storage outside the United States solely to jurisdictions with data privacy and security laws and regulations at least as stringent as the applicable data privacy and security laws and regulations in the United States.

e. Blackboard and its Contractors will perform background checks on their respective personnel who have potential to access User Data. Such background checks for United States domiciled personnel will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, felony and misdemeanor criminal records check of federal, state and/or local records (as applicable) for job related crimes; for non-United States domiciled personnel, comparable checks will be performed to the extent permitted by applicable law. Blackboard shall ensure that neither its nor any of its Contractor's personnel with a felony conviction or who otherwise have a negative background check as determined by Blackboard's reasonable employment policies (which must be consistent with applicable law) have access to any User Data.

f. Blackboard will not give one Authorized End User (other than an Authorized End User that is an administrator) access to another Authorized End User's account or User Data unless the Authorized End User whose account or User Data is to be accessed has given Blackboard express consent to provide such access.

4. REPRESENTATIONS.

4.1 By Blackboard. Blackboard represents and warrants that (a) Blackboard and any person executing or otherwise agreeing on Blackboard's behalf to this Agreement (including any Schedule or Order Form which may be incorporated into this Agreement from time to time) has authority to enter into this Agreement, and (b) during the Term Blackboard will comply with all applicable laws and regulations governing all matters set forth herein, including applicable laws and regulations relating to being an "Equal Opportunity Employer", the payment of any undisputed taxes due to any applicable jurisdiction, procurement (including no bid-rigging, bid rotating, bribery or attempted bribery; the Sarbanes-Oxley Act of 2002 or other state or federal securities laws).

4.2 By Customer. Customer represents and warrants that (a) Customer and any person executing or otherwise agreeing on Customer's behalf to this Agreement (including any Schedule or Order Form which may be incorporated into this Agreement from time to time) has authority to enter into this Agreement, (b) except to the extent Blackboard's failure to comply with applicable laws and regulations as set forth in Section 4.1(b) above causes Customer not to be in compliance with applicable laws and regulations, during the Term it will comply with all applicable laws and regulations governing all matters set forth herein; (c) during the Term Customer shall refrain from using any Offering in a manner that is libelous, defamatory, obscene, infringing or illegal under applicable law, or otherwise abusing the Offering or the resources available through the Offering; (d) Customer will maintain reasonable policies and procedures to protect against the sharing of access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement and (e) during the Term, to the extent that Authorized End Users exercise the rights granted to Customer under this Agreement, Customer shall maintain reasonable policies and procedures to require such Authorized End Users to comply with the obligations applicable to such exercise set forth in this Agreement.

5. TERM; TERMINATION.

5.1 Term. This Agreement shall commence as of the date of this Master Agreement and shall continue in effect until the later of: (i) the expiration of the minimum term, as specified on the relevant Order Form, or (ii) the expiration or termination of all Order Forms (the "Term"). Each Order Form, and the license(s) associated therewith, shall terminate as set forth in such Order Form.

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 Order Form 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 3.8, Section 9 or the license usage restrictions in any Order Form.

5.3 Effect of Termination. Upon termination of this Agreement, all Order Forms 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 in accordance with Section 6.1. Also, in the event of any termination prior to the end of any Order Form's term other than for reason of Blackboard's uncured breach of this Agreement, Customer shall immediately pay Blackboard all fees which are then due or would become due had no termination occurred. In addition, upon termination of this Agreement, each Party: (a) will immediately cease any use of the other Party's Confidential Information, (b) 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 offline libraries (provided, however, that the foregoing will not apply to Blackboard with respect to User Data it is to maintain and not delete until after it provides transition assistance ordered by Customer, but at a minimum no less than thirty (30) days after transition assistance has been provided); and (c) 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. Upon the termination of any Order Form, Blackboard will provide reasonable transition assistance to Customer, including data transfer, at Blackboard's then-current rates. In the event of the termination or suspension of this Agreement in connection with the bankruptcy or insolvency of Blackboard, Customer shall be deemed to have the rights granted to a licensee under Section 365(n) of the United States Bankruptcy Code.

5.4 Suspension. Blackboard shall have the right to suspend an Authorized End User's or Customer's access to the Services, in whole or in part, only: (a) if Blackboard reasonably believes that an Authorized End User's or Customer's use of the Services represents a direct or indirect threat to Blackboard's network operation or integrity or any other Blackboard customer's use of the Services; (b) if reasonably necessary to prevent unauthorized access to Customer Content; (c) if Customer is in breach of this Agreement or if any Authorized End User is in breach of the terms of service related to the Services, in each case subject to the expiration of any applicable cure period or (d) to the extent necessary to comply with applicable law or regulations. If Blackboard suspends one or more Authorized End User's or Customer's access to any Services, Blackboard will promptly notify Customer of such suspension and the reason for such suspension. Blackboard will (i) use reasonable efforts to suspend only the minimum portion of the Services necessary to address the issues giving rise to the suspension; (ii) suspend the provision of the Services to only the Authorized End Users whose actions necessitated the suspension (and not suspend the provision of the Services to an Customer as a whole or to other Authorized End Users whose actions did not necessitate the suspension) if at all practicable; and (iii) provide Customer with advance notice of any suspension and an opportunity to discuss the matter with Blackboard before such suspension occurs unless delaying the suspension may be reasonably likely to result in harm to Blackboard or any other Blackboard customer's use of the Services, or enable unauthorized access to Customer Content. In addition, Blackboard agrees that Customer shall have the right at any time(s) to suspend or terminate any of its Authorized End Users' access to the Services in accordance with such Customer's policies or practices. Notwithstanding anything to the contrary contained in this Agreement, in the event of any conflict between the terms and conditions of any current or future terms of service or terms of use for or related to any or all of the Offerings and the terms and conditions of this Agreement (exclusive of any such terms of service or terms of use) the terms and conditions of this Agreement will be deemed to control and prevail.

5.5 Survival. The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination. Without limiting the foregoing, the provisions of Sections 1, 2, 5, 6.6, 7, 8, 9 and 10 of this Master Agreement shall survive the termination of this Agreement for any reason, and the provisions of Section 3.8 shall survive to the extent Blackboard possesses User Data.

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 Order Forms, as applicable, which fees will be due in accordance with the provisions of the relevant Order Form and will be at rates consistent with the prices set forth in Exhibit [*] attached to and made a part hereof, but in no event earlier than thirty (30) days after the date of receipt of an invoice from Blackboard. All fees for the initial year of any annual term Software license or annual Services shall be due and payable upon the date of execution of the applicable Order Form and Customer's receipt of an invoice for the amount due. Customer will pay all fees in U.S. dollars unless otherwise set forth in the applicable Order Form. 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: (a) the highest permissible rate in the jurisdiction in which Customer's main campus is located, or (b) 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. Customer acknowledges that any delay in payment due may result in termination of the Blackboard license, subject to the cure periods set forth in Section 5.2 above, and/or an interruption in service at Blackboard's sole discretion.

6.3 Taxes. The fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any Software or Equipment or the performance of Services by Blackboard to Customer. Customer will be responsible for payment of such Taxes at point of sale. If Customer is exempt from any such Taxes, then such Taxes shall not be charged to Customer upon Blackboard's receipt of a copy of documentation acceptable to Blackboard that satisfies the requirements of the relevant tax authority to exempt such fees from such Tax (such as Customer's tax exemption certificate, or VAT Registration Number.) All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law, regulation, or rule then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, timely pay the required amount to the relevant tax authority, provide Blackboard with an official receipt, certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard the amount to which Blackboard is otherwise entitled under this Agreement, less the amount required to be deducted or withheld. In the event Customer is not domiciled in the United States for tax purposes, to the extent that Blackboard is unable to claim an income tax credit for the full amount deducted or withheld (the "Unrecouped Withholding"), Customer shall pay Blackboard, within sixty (60) days following receipt of an invoice from Blackboard, the Unrecouped Withholding.

6.4 Expenses. Except as provided in this Agreement, each party will be responsible for its own expenses incurred in rendering its performance or exercising its rights 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 either party is required by applicable law, legal process or government action or for an audit by the other party to produce information, files, documents or personnel as witnesses with respect to this Agreement or the products or services provided under this Agreement, the requesting party shall reimburse the requested party for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless either (i) the requested party is a party to the proceeding or the subject of the investigation or (ii) such information production is part of the scope of obligations under this Agreement.

6.5 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.

6.6 Audit Rights. Blackboard shall maintain, for a period of at least two (2) years after such books and records are created or for such longer period of time as may be required by applicable law or regulations, all books and records relating to this Agreement and Blackboard's performance of its obligations hereunder. To the extent not prohibited by applicable law or regulations, such books and records shall be made available for review and audit by Customer no more than one (1) time per year during the Term. Any such audit of Blackboard's books and records shall be conducted during Blackboard's normal business hours and at the location(s) where such books and records are normally maintained by Blackboard and after Customer provides at least thirty days' prior notice of any such audit. In the event an audit by Customer reveals an overpayment by Customer to Blackboard, within thirty (30) days following notice of such findings of the audit, Blackboard shall refund to Customer the amount of the overpayment, subject to Blackboard's right to contest the findings of the audit. Any findings or results from the audit shall be subject to the confidentiality obligations of Section 9 below.

7. WARRANTIES, LIMITATIONS OF LIABILITY AND INDEMNIFICATION.

7.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS AGREEMENT: (A) THE OFFERINGS ARE PROVIDED "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (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 OFFERINGS.

7.2 Limitations of Liability. EXCEPT FOR THE INDEMNITIES SET FORTH IN SECTION 7.4 AND SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OFFERINGS, WHETHER OR NOT SUCH PARTY 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 INABILITY TO RETRIEVE OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). EXCEPT FOR THE INDEMNITIES SET FORTH IN SECTIONS 7.4 AND 8, A BREACH OF SECTION 9 AND LIABILITY FOR TANGIBLE PROPERTY DAMAGE, PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF A PARTY, AND EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS PURSUANT TO SECTION 6.1 AND THE PRICING EXHIBIT, IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID (OR IN THE CASE OF CUSTOMER'S LIABILITY, FEES PAYABLE) BY CUSTOMER UNDER THIS AGREEMENT FOR THE AFFECTED OFFERING DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. SUBJECT TO THE FOREGOING, 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 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.

7.4. Indemnification.

a. **Indemnification by Customer.** Except to the extent prohibited by applicable law and except to the extent such indemnification constitutes an unlawful waiver of sovereign immunity by Customer (if applicable), Customer will indemnify, defend and hold harmless Blackboard, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a "**Blackboard Indemnitee**") from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Blackboard Indemnitee arising out of Customer's (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.

b. **Indemnification by Blackboard.** In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Blackboard will indemnify, defend and hold harmless Customer, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a "**Customer Indemnitee**") from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Customer Indemnitee arising out of Blackboard's (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.

c. **Inapplicability to Infringement.** For the avoidance of doubt, the indemnification obligations set forth in this Section 7.4 shall not apply to infringement, which is addressed under Section 8 hereof.

8. INFRINGEMENT.

8.1 **Blackboard Infringement Obligations.** If any third party brings a claim against any Customer Indemnitee alleging that any Offering infringes a U.S. or European patent or a copyright under applicable law of any jurisdiction in which Customer is using the applicable Offering, Customer must promptly notify Blackboard in writing and make no admission in relation to such alleged infringement. Provided that Customer has promptly fulfilled all of the foregoing obligations and is not in material breach of the Agreement, Blackboard shall at its own expense indemnify, defend and hold harmless such Customer Indemnitee, and, without limitation of the foregoing indemnity obligation, at its own expense and option (a) procure Customer the right to use the Offering, (b) modify or replace the Offering to avoid infringement; or (c) refund the applicable fee paid for the applicable Offering(s) for the current term. Blackboard 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. Without in any way limiting Blackboard's obligations set forth above in this Section 8.1, if Blackboard becomes aware that Customer's use of any Offering is, or in Blackboard's reasonable opinion is likely to become, enjoined or materially diminished as a result of a third party claim of patent or copyright infringement, Blackboard shall promptly notify Customer.

8.2 **Exceptions.** Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement to the extent based upon: (a) any use of the Offering in a manner other than as specified by Blackboard, (b) any combination of the Offering with other products, equipment, devices, software, systems or data not manufactured or provided by Blackboard or with which Blackboard does not specify the Offering is to work, to the extent such claim is directed against such combination, (c) the Customer Content, or the use by Blackboard of the Customer Content in accordance with Section 3.5, or (d) any modifications or customization of the Offering by any person other than Blackboard or a Blackboard-authorized third party (any of the foregoing, separately and collectively, "**Customer Matters**").

8.3 **Customer Infringement Obligations.** Except to the extent prohibited by applicable law and except to the extent such indemnification constitutes an unlawful waiver of sovereign immunity by Customer (if applicable), Customer shall, at its own expense, indemnify and, at Blackboard's option, defend and hold harmless Blackboard and each other Blackboard Indemnitee against any losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Blackboard Indemnitee arising out of a Customer Matter (any of the foregoing indemnifiable matters, each a "**Blackboard Claim**"). Customer shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Customer will keep Blackboard informed of, and will consult with any independent legal advisors appointed by Blackboard at Blackboard's own expense regarding the progress of such defense. Blackboard agrees (a) to provide Customer with prompt written notice of any Blackboard Claim and make no admission in relation to any such alleged infringement, and (b) 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. CONFIDENTIALITY.

9.1 **Nondisclosure and Nonuse.** Each Party receiving Confidential Information agrees not to use such Confidential Information except for the purposes set forth in this Agreement, and pursuant to such use shall disclose such Confidential Information only to those directors, officers, employees and agents of such Party (a) whose duties justify their need to know such information, and (b) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. 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 (i) it shall not use less than the care a reasonable person would use under similar circumstances and (ii) the requirements of this Section shall not derogate from any specific data privacy or security obligations set forth elsewhere in this Agreement. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information.

9.2 **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.

9.3 **Terms of Agreement.** Except as otherwise provided by or required under applicable law, including but not limited to public information laws, 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 entered at least as strict as those set out in this Section 9 to keep such terms confidential.

9.4 **Exceptions to Confidential Treatment.** Notwithstanding the foregoing, the preceding provisions of this Section 9 will not apply to information that: (a) is publicly available or in the public domain at the time disclosed, (b) is or becomes publicly available or enters the public domain through no fault of the recipient, (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto, (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure, (e) is independently developed by the recipient, or (f) 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, unless expressly prohibited on the face of the subpoena, and made a reasonable effort to allow the other Party 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.

9.5 **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.

9.6 Other Rights. Customer hereby grants Blackboard the limited right to collect aggregated usage statistics with respect to the Offerings for the purpose of improving the Services and developing additional service offerings. Such usage statistics are and shall be aggregated and not identifiable of any individual, including any Authorized End User, and such statistics shall not be sold to a third party but may be shared by Blackboard with Internet2. To the extent that any Offering contains an Auto Report feature for this purpose, Customer will not disable the Auto Report feature of the Offering, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby. 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 Offering in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request. Upon Customer's request, Blackboard will provide reasonable assistance to Customer at Blackboard's then-current rates in connection with a Customer obligation to comply with an order of a court of competent jurisdiction or other governmental body having authority over Customer to make disclosure of Customer Content. Notwithstanding anything to the contrary in this Section 9, Customer authorizes Blackboard to share with Internet2 any Confidential Information relating to (i) the suspension of Services pursuant to Section 5.4 and (ii) any breach of the data protection provisions set forth in Section 3.8.

10. MISCELLANEOUS MATTERS.

10.1 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 (a) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law, and (b) 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.

10.2 Conflict Resolution. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the state in which Customer's main campus is located without regard to its conflicts of law or choice of law principles. In the event of any dispute between the parties which arises out or relates to this Agreement, such disputes shall be finally determined by binding arbitration in the major metropolitan area most closely situated to Customer's main campus, in accordance with the rules of the American Arbitration Association ("AAA"), except to the extent prohibited by applicable law, in which case such disputes shall be brought in and heard by the courts of the State in which Customer's main campus is located, and the parties voluntarily consent to the exclusive jurisdiction of the courts of this State for any such proceeding. All such disputes shall be determined by three arbitrators selected jointly by the parties, and in the event that the parties cannot agree on one or more arbitrators, such arbitrators shall be selected by AAA. All proceedings and documentation arising out of relating to such arbitration shall be considered Confidential Information hereunder. Each Party irrevocably submits to the exclusive jurisdiction of such arbitration panel. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10.3 Modification and Waiver. No modification, amendment, supplement, or other change to this Agreement 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.

10.4 Assignment. No right or obligation of either party 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 other party, except that Blackboard may assign its rights and obligations in connection with the acquisition of all, or substantially all, of its capital stock, assets or business, and any attempt to assign, delegate or otherwise transfer any of a party'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.

10.5 Remedies. The Parties agree that any breach of confidentiality or proprietary rights 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 such 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 Section 8. If any formal dispute resolution is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, costs and other collection expenses, in addition to any other relief it may receive.

10.6 Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to Blackboard, sent to Blackboard Inc., Attn: General Counsel, 650 Massachusetts Avenue NW, 6th Floor, Washington DC, 20001 or to such other address as shall be given in accordance with this Section 10.6, and, in the case of Customer, to the address on the applicable Order Form, and shall in each case be effective upon receipt. Alternatively, Customer may provide notices to GeneralCounsel@Blackboard.com, provided that Customer provides an email address to Blackboard for notices which Blackboard may send to Customer.

10.7 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, for so long as such cause is pending and a commercially reasonable time thereafter to resume fulfillment of such suspended obligation. Notwithstanding the final clause of the preceding sentence, in the event of the suspension of a material obligation of a party pursuant to the preceding sentence for more than forty-five (45) consecutive days, the other party may terminate this Agreement without penalty upon notice to the party whose material obligation was suspended pursuant to this Section.

10.8 U.S. Government Users. The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue NW, 6th Floor, Washington, DC 20001. All rights not specifically granted in this Agreement are reserved by Blackboard.

10.9 Export Control. Customer shall not export or allow the export or re-export the Offering, any components thereof or any Confidential Information of Blackboard without the prior, written consent of Blackboard, not to be unreasonably withheld. Upon such consent, Blackboard shall furnish its current determinations of the specific Export Control Classification Number for the Offering and subject to the Export Administration Act and its implementing regulations, the Export Administration Regulations, or its current determination of the applicable US Munitions List classification for Technology subject to the Arms Export Control Act and its implementing regulations, the International Traffic in Arms Regulations (collectively, "Export Control Laws") and such determinations shall be incorporated as part of this Agreement. Customer acknowledges its obligation to comply with the Export Control Laws.

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

10.11 Publicity. Any news release, public announcement, marketing materials, advertisement, or publicity proposed to be released by Blackboard concerning the procurement of Services hereunder by Customer will be subject to the prior written approval of Customer. Customer shall have the right to issue a news release, public announcement, marketing materials, advertisement, or publicity stating that it is a Blackboard customer without Blackboard's consent; provided, however, that any issuance containing statements or characterizations of Blackboard or the Services will be subject to the prior written approval of Blackboard.

10.12 Subcontractors. Blackboard shall have the right to use independent contractors, subcontractors, or other non-employees (collectively, "Contractors") to perform any of its obligations or to act on behalf of Blackboard, and all actions of such persons or entities in connection with this Agreement are attributable to Blackboard for all purposes under this Agreement.

10.13 Access Agreements. If Customer's standard policies and procedures regarding contractors working onsite or contractors with logon accounts to such Customer's network require the execution of a standard form access agreement containing commercially reasonable, industry standard requirements, Blackboard shall execute (for itself or on behalf of its employees, agents or Contractors), such access agreement prior to gaining access to Customer's premises or systems.

10.14 Insurance. Blackboard has in force, and will maintain in force, adequate workers' compensation, commercial general liability, errors and omissions, and other forms of insurance policies sufficient to protect from the conduct, acts or omissions of Blackboard (which, for the avoidance of doubt, also includes its employees and Contractors). Each such insurance policy must have only such deductibles as are reasonable and customary. Upon request, Blackboard will forward to Customer, prior to commencing provision of the Services or at any time thereafter, a certificate of insurance verifying such insurance coverage.

10.15 Entire Agreement. This Master Agreement, together with the Order Form(s), Schedule(s) and other Exhibit(s) constitutes the entire, full and complete Agreement between the Parties concerning the subject matter of the 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. Any component of this Agreement, including 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.

ATTACHMENT 2
BLACKBOARD
SOFTWARE LICENSE AND SERVICES SCHEDULE
INTERNET 2 NET+ PROGRAM

THIS BLACKBOARD SOFTWARE LICENSE AND SERVICES SCHEDULE ("SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER AGREEMENT – NET+ PROGRAM ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE SPECIFIC TERMS UNDER WHICH CUSTOMER MAY LICENSE THE SOFTWARE AND SERVICES AND PURCHASE SOFTWARE MAINTENANCE CONSTITUTING THE INTERNET 2 NET+ PROGRAM AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

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, the initial Active User Capacity will be equal to the number indicated on the Order Form.
- 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 **Available Date** means the date upon which Customer receives notice from Blackboard that the Hosted Software is available for access by Customer's Authorized End Users.
- 1.4 **Blackboard Materials** means the Blackboard training materials, course materials, instructor's manuals, product documentation and all other instructional materials specified on the Order Form and delivered to Customer pursuant to Section 3 below. For purposes of this Schedule, unless otherwise expressly stated in the applicable Order Form, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard pursuant to Section 3 below.
- 1.5 **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.
- 1.6 **Customer Systems** means any system Customer uses to house data for Mobile Learn.
- 1.7 **Designated Server Site** means the physical location where the Software will be installed, as identified in the Order Form.
- 1.8 **Event** means a single live broadcast event transmitted over the Service created and/or sponsored in whole or substantial part by Customer or Customer's employees that is branded under Customer's name. The term "Events" shall include both live and archived Events.
- 1.9 **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. FTE may be further described in the Order Form, and such definition in the Order Form shall control in the event of a conflict with this Schedule.
- 1.10 **Hosted Software** means the Software licensed to Customer for which Blackboard is to provide the Managed Hosting Services.
- 1.11 **Managed Hosting Services** means the Managed Hosting Services described in this Schedule.
- 1.12 **Schedule Effective Date** means the later of: (i) the date on which the Order Form has been executed by authorized representatives of both Parties; and (ii) the Effective Date of the Agreement.
- 1.13 **Seat** means each End User served by a Stream in the Service and shall include an Authorized End User's access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of unique Authorized End Users of the Service.
- 1.14 **Stream** means the stream of digitally encoded data that delivers an Event to an Authorized End User.
- 1.15 **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, (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software, or (vii) any use of the Software other than expressly authorized in this Schedule.
- 1.16 **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.
- 1.17 **Support Instance** is a unique request for support or service, and encompasses the cycle of communication from request initiation to instance resolution. Up to 250 Support Instances are included in the price in the Order Form ("Included Instances"). Support Instances in excess of the Included Instances are subject to purchase.
- 1.18 **Test Copy Hosted Software** means the Test Copy Software licensed to Customer 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 the Order Form is not covered by Service Level specifications described in Exhibit A.
- 1.19 **Third Party Software** means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software or SaaS Services.
- 1.20 **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.
- 1.21 **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.
- 1.22 **Version** means the release of Blackboard Materials made generally available by Blackboard that is marketed as a separate product or module and is identified by a number that differs from the prior release in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

2. DESCRIPTION OF INTERNET 2 NET+ PROGRAM

The Internet 2 NET+ Program is composed of the following product and service offerings, which are to be provided by Blackboard in accordance with the following categories, which will dictate the provisions of this Schedule applicable to each:

- A. **Software**. The following elements of the Internet 2 NET+ Program are delivered to the Customer as Software and are subject to the Software Terms set forth in Section I below:

Learn Course Delivery

Learn Content Management
Learn Community Engagement
Learn for Outcomes Assessment
xpLor
Analytics for Learn (A4L)
MyEdu
Pyramid Analytics

*Pyramid Business Intelligence tools for A4L is Third Party Software and is subject to the Terms of Exhibit B in addition to the terms set forth herein.

- B. SaaS Services. The following elements of the Internet 2 NET+ Program are delivered to the Customer as SaaS Services and are subject to the SaaS Services Terms set forth in Section II below:
- C. **Collaborate**
Mobile Learn
Learn SafeAssign
Open Education (MOOC) Platform
- D. Professional Services. The following elements of the Internet 2 NET+ Program are delivered to the Customer as Professional Services and are subject to the Professional Services Terms set forth in Section III below:
- Managed Hosting for Blackboard Learn Course Delivery
Managed Hosting for Blackboard Learn Content System
Managed Hosting for Blackboard xpLor
Managed Hosting for Blackboard Learn Community Engagement
Managed Hosting for Blackboard Outcomes Assessment
Adoption Services
Premium Support
End-user Support

I. SOFTWARE TERMS

3. DELIVERY FOR SOFTWARE

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, and, if applicable, Blackboard will make available a copy of the Software for downloading from the Internet by Customer for purposes of installation by Customer, and delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available for download. Customer acknowledges that the download site will be made available to Customer for a period not longer than thirty (30) days from the date of such notice, and Customer will have no right to download the Software after this thirty (30) day period.

4. AUDIT

Intentionally omitted.

5. LIMITED 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. The warranty set forth in this Section shall only be valid if: (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. 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.

II. SAAS TERMS

6. LIMITED WARRANTY

Blackboard warrants for Customer's benefit alone that, for the Term, the SaaS Services will perform substantially in accordance with the Documentation, provided that: (i) Blackboard has received all amounts owed under this Schedule; (ii) Customer is not in material breach of this Schedule; and (iii) Customer has notified Blackboard in writing of any failure of the SaaS Services to conform to the foregoing warranty within the warranty period.

7. AVAILABILITY AND OPERATIONAL SPECIFICATIONS

The SaaS Services will be available and accessible within the applicable parameters, and conform in all material respects to the applicable technical specifications and performance parameters, set forth in Exhibit A. Notwithstanding the foregoing, Blackboard will have no liability under this Section 7 to the extent any nonconformity with the standards set forth in Exhibit A arises, in whole or in part, from: (i) any use of the SaaS Services by Customer or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; or (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 this Agreement. It is agreed and acknowledged that the service credits referred to in Exhibit A shall be Customer's sole remedy, and Blackboard's sole obligation, with respect to failures of the SaaS Services to meet the applicable technical specifications and performance parameters set forth in Exhibit A.

8. MOBILE LEARN

8.1 **Distribution of User Software.** Subject to the terms and conditions of this Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable right during the Term to distribute any applications provided by Blackboard for use on mobile devices ("User Software"). Promotion and distribution of the User Software is the responsibility of Customer. Distribution of the User Software by Customer to its end users shall be pursuant to a license agreement which is reasonably satisfactory to Blackboard; provided, however, that the standard distribution terms utilized by Apple Inc. to distribute applications through its Apple App Store shall be deemed satisfactory unless Blackboard otherwise notifies Customer in writing. Additionally, if Customer has selected the Personal Pay Customer's End Users will pay the fees set forth in the Order Form for Blackboard Mobile products and services, except for those fees which are designated in such Order Form to be paid by Customer.

8.2 Customer's Obligations. Customer is responsible for promptly providing and maintaining Customer Content feeds to the Mobile Application for each of the licensed modules (the modules contained within Customer's Mobile Application) which Customer has selected for the User Software in formats which are compatible with the Mobile Application. Customer is responsible for maintaining Customer Applications, Customer Systems and Customer Content and promoting and distributing Customer applications which are not licensed by Blackboard to Customer, Updates and Upgrades to end users via Customer's distribution channels such as Customer's Apple application Store page. Customer will designate a qualified individual to serve as Customer's support contact with Blackboard for maintenance and support issues, requests and inquiries ("Site Administrator"). Customer may change its Site Administrator at any time by providing written notice to Blackboard. Customer and its Authorized End Users will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use Mobile Learn, including, without limitation, any and all costs, fees, expenses and taxes of any kind related to the foregoing.

8.3 Application Development Kit. Customers that license Mobile Learn may at its option utilize the Blackboard Mobile Software Development Kit under the terms located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website.

III. PROFESSIONAL SERVICES TERMS

9. MANAGED HOSTING SERVICES

9.1 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.

9.2 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 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 this Agreement.

9.3 Availability and Operational Specifications. The Managed Hosting Services will be available and accessible within the applicable parameters, and conform in all material respects to the applicable technical specifications and performance parameters, set forth in Exhibit A. Notwithstanding the foregoing, Blackboard will have no liability under this Section 9.3 to the extent any nonconformity with the standards set forth in Exhibit A 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; or (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 this Agreement. It is agreed and acknowledged that the service credits referred to in Exhibit A shall be Customer's sole remedy, and Blackboard's sole obligation, with respect to failures of the Managed Hosting Services to meet the applicable technical specifications and performance parameters set forth in Exhibit A.

9.4 Data Restoration Policy. Blackboard will back-up and archive Customer Content at a secure location for the retention period(s) specified in Exhibit A. 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.

9.5 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 onto 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.

9.6 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 during a sustained period of sixty (60) days or more, Blackboard will provide a report to Customer concerning Customer's current storage and bandwidth usage. In the event Customer does not purchase additional storage and/or bandwidth within thirty (30) days of receiving such report, Blackboard reserves the right to charge Customer additional fees at Blackboard's then-standard applicable rates.

9.7 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 by Customer. 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 services provided under this Agreement relating to IP addresses (including Internet use) may require registrations and related administrative reports that are public in nature, and Customer shall have no claim against Blackboard relating to such public registrations and reports that are required for Blackboard to perform its obligations under this Schedule.

9.8 General Usage Limitations. Notwithstanding anything to the contrary in this Agreement, during the Term 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, 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.

10. SUPPORT AND MAINTENANCE SERVICES

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.pdf> or [here](#), 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.

11. OTHER PROFESSIONAL SERVICES

11.2 Issuance of SOW and Modifications. For Professional Services other than Managed Hosting Services and Support and Maintenance Services ("Other Professional Services"), Customer may, at any time during the term of this Schedule, request that Blackboard (a) provide it with such Other Professional Services or (b) modify the provision of Other Professional Services contained in any pre-existing SOW(s) (either (a) or (b) the "Proposed Professional Services") by delivering to

Blackboard a written request describing the Proposed Professional Services. Blackboard may prepare an additional SOW or modified SOW upon receipt of a request for Proposed Professional Services, describing the services requested, its proposed fees, costs and expenses payable by the Customer to Blackboard in connection with the performance of such services and any other terms and conditions as Blackboard reasonably deems necessary. Customer, within five (5) business days after receipt of the proposed SOW, shall notify Blackboard of its acceptance of such addendum in which case the parties shall enter into a binding SOW. Until Blackboard's acceptance, Blackboard shall have no obligation to perform the Proposed Professional Services. Additional SOWs, regardless of whether they relate to the same subject matter as the initial SOW(s), shall become effective upon execution by authorized representatives of both parties.

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

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

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

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

IV. GENERAL TERMS

12. REGISTRATION; PASSWORDS AND ACCESS.

12.1. Registration. In consideration of Customer's use of the Software and SaaS Services, Customer or its Authorized End Users may be required to provide information in order to register for and/or use certain Software and SaaS Services. Customer agrees to (a) provide true, accurate, current and complete information about Customer and its Authorized End 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.

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

12.3. Consents. Customer is solely responsible for obtaining and maintaining any necessary consents or permissions from its Authorized End 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 SaaS Services or Software and agrees to obtain and maintain all such consents or permissions throughout the term of this Agreement. If Customer or any Authorized End User resides in the European Union, upon registration Customer or such Authorized End User will be indicating its explicit consent that the personal information it provided may be transferred and stored in countries outside the EU, including the United States. If Customer or such Authorized End User fails to provide such consent, Customer or such Authorized End User will not be permitted to access the Services for which registration is required. Personal information shall only be used in accordance with Blackboard's Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Center.aspx>.

12.4. Data Processing Addendum. If Customer is subject to the European Union Data Protection Directive 95/46/EC, the European Union General Data Protection Regulation or similar statute, then this Schedule expressly incorporates by reference the Data Processing Addendum available at <http://agreements.blackboard.com/bbinc/blackboardeudataprocessingaddendum.aspx>. Customer agrees that it is the controller of all Customer Content within the Hosted Software and that Blackboard is not a controller of such data.

12.5. Third Party Software. Customer may be required to enroll in a third party contractual arrangement in connection with the Third Party Software (e.g., the Apple Developer Program or any successor program in connection with the Mobile Service); such program enrollment is between Customer and such third party directly.

12.6. Customer Applications. Customer is granted the Blackboard Developers' Network rights set forth in Exhibit C in connection with the development of Customer Applications.

EXHIBIT A to Attachment 2
SAAS AND MANAGED HOSTING SERVICES SPECIFICATIONS

HOSTED SOFTWARE SETUP

Startup:

Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Customer server(s). This includes 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.~~

SERVICE LEVELS/CREDITS

Host Latency:

The Services provide 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. Failure to meet the Host Latency service level occurs when, during any calendar month, the average Host Latency for such calendar month is greater than two seconds. Service credits for failure to meet the Host Latency service level are as follows:

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

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

Availability:

Standard Service Levels:

Blackboard shall use commercially reasonable efforts to ensure the Services are Available twenty-four (24) hours a day, seven (7) days a week with a targeted uptime of 99.8% per calendar month. The 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 Services shall be determined without regard to any (i) packet loss, latency or network unavailability due to scheduled maintenance or (ii) the inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the reasonable control of Blackboard.

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

Length of Unavailability (per calendar month)	Service Credit
1 to 4 aggregate hours below 99.8% Availability	1 day of service fees credited (i.e., 1/30 monthly fees)
4 to 48 aggregate hours below 99.8% Availability	2 days of services fees credited (i.e., 1/15 monthly fees)
48 to 96 aggregate hours below 99.8% Availability	5 days of service fees credited (i.e., 1/6 monthly fees)

*Each block of 96 hours below 99.8% Availability thereafter shall be credited 5 days of service fees.

Upon Customer's request within seven (7) days from the end of the applicable calendar month, Blackboard will provide a report generated by a commercial tool showing Service Level performance for the preceding month. In order to receive any Service Credits, Customer must notify Blackboard within seven (7) days from receipt of the report for the applicable 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. Such Service Credits shall be Customer's sole remedy for failure to meet the applicable Service Level. The aggregate maximum number of Service Credits to be issued by Blackboard to Customer for any and all Service Level failures during any given calendar month shall not exceed the fees for one month of service. All Service Credits shall be applied to the next period's Service fees.

MONITORING AND MAINTENANCE

Blackboard will make network performance reports available to Customer via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment. In addition, upon request by Customer, Blackboard will provide Customer with monthly reports including information on 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.

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 Services, Blackboard will investigate the problem and determine if a System Outage exists. For purposes of this subsection, a "System Outage" means the 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).

DATA CENTER SPECIFICATIONS

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

Security:

- Single point of entry to co-location is guarded twenty-four (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 (2) hour battery backup (industry standard is only fifteen (15) minutes), diesel generator with full-load capability and additional fuel supply.

Network:

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

Environment:

- The data center is designed to maintain a constant temperature of 68°F, plus or minus 2°F, with humidity of 45%.

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 B to Attachment 2
PYRAMID ANALYTICS MASTER SOFTWARE LICENSE AGREEMENT

This Pyramid Analytics Master Software License Agreement ("Agreement") is made by and between Pyramid Analytics BV, a company incorporated under the laws of the Netherlands, with its principal place of business at Kingsfordweg 151, Amsterdam 1043GR, The Netherlands ("Pyramid"), and the party purchasing the Software ("Licensee") set forth in the applicable Order Form (define below). Each of Pyramid and Licensee may hereinafter be referred to individually as a "Party" and together, the "Parties". This Agreement supersedes any license agreement embedded in the Software.

In consideration of the promises and mutual covenants contained herein, the Parties hereby agree as follows:

1. PURPOSE. This Agreement sets forth the terms and conditions which govern Licensee's right to install, use and provide access to the Software. Additional license terms covering the type, functionality, and number of licenses for the Software will be set forth in Order Forms that incorporate this Agreement by reference and which Licensee may execute from time-to-time during the Term. This Agreement also applies to any Fixes, Updates and Upgrades except to the extent that there are terms that are included with those items which supersede this Agreement.

2. DEFINITIONS. The capitalized terms in this Agreement shall have the following meanings:

"Documentation" means the instructions, user guides and other manuals supplied by Pyramid for the Software.

"Fix(es)" means any change or workaround to the Software that corrects a problem with the Software that causes it to crash, lose data, or prevents it from performing substantially in accordance with the Documentation.

"FTE" or "Full Time Equivalent" means the number of full-time students plus half of the part-time students. To the extent that Licensee 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 Software, the total number of such other users shall be communicated to Blackboard Inc. (on Pyramid's behalf) to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total FTE number reported by Licensee.

"Improvements" means any and all modifications, changes, alterations, enhancements and derivative works to the Software or Documentation.

"Instance" means a copy of the Software created by executing the Software's setup or install procedure or by duplicating an existing copy of the Software.

"Order Form" means Blackboard Inc.'s standard form for ordering Software licenses.

"Run," "Runs" or "Running" means to load an Instance of the Software into the memory of a Server and execute one or more instructions.

"Server" means a physical or virtualized hardware system capable of Running the Software. A hardware partition or blade is considered to be a separate physical hardware system. Servers must be owned or controlled by Licensee unless otherwise permitted herein or by Pyramid in writing.

"Software" means the computer software (in object code form unless stated otherwise) listed on the Order Form, which is owned or distributed by Pyramid and all Fixes, Updates and Upgrades thereto for which Licensee is granted a license pursuant to this Agreement.

"Updates" means minor releases of the Software containing bug fixes or error corrections. Updates are generally indicated by a change in the numeric identifier for the Software in the digit to the right of the first decimal point or a change to the right of the second decimal point (e.g., a change from version x.x.x to x.yx or from version x.x.x to x.x.y).

"Upgrades" means major releases of the Software containing new enhancements, functionality or features. Upgrades are generally indicated by a change in the numeric identifier for the Software in the digit to the left of the first decimal point (i.e., a change from version x.x.x to y.x.x).

"User" means an individual authorized by Licensee to use the Software according to the terms and conditions of this Agreement.

"User License" means a license for a User to use the Software solely in connection with the Blackboard Analytics module set forth in the applicable Order Form, and then solely in respect of the applicable maximum number of FTEs set forth in the applicable user band described therein.

3. SOFTWARE LICENSE.

3.1. General. Pyramid licenses the Software based on Blackboard Inc.'s user bands ("Blackboard User Bands"). Blackboard User Bands are comprised of the FTE (as defined above) of licensing institution PLUS the number of Users in outside programs. Pricing is based on Licensee's FTE. Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. For the Software, Licensee's license for the Software shall be expanded in increments as indicated below and Blackboard will assess additional license fees for increases in Licensee's FTE. 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 Licensee's merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing.

Licensee may install the Software on multiple Servers including backup Servers. The Software requires a valid license key in order for Users to access and use the Software (the "License Key"). The License Key sets forth the means by which Licensee may access and use the Software.

Licensee shall provide to Blackboard Inc. ninety (90) days prior to the commencement of any term a written acknowledgement of the number of individuals who have user IDs for the Software.

3.2. Use Rights. Upon Pyramid's receipt of payment in full for the applicable licenses set forth on an Order Form, Pyramid grants Licensee a limited, fully paid-up, royalty free, non-exclusive, non-transferable (except pursuant to Section 3.3(j)), non-sub-licensable (except as set forth in Section 3.3(c)), world-wide right and license to:

- (a) Install, load, Run, store, transmit and execute the Software; and
 - (b) Copy the Software for archival or back-up purposes. All archival or back-up copies of the Software are subject to the provisions of this Agreement and all Pyramid, or its licensor's titles, trademarks, copyrights and restricted rights notices shall be reproduced on such copies.
- The foregoing rights are limited to Licensee's own internal business purposes for the duration of the License Key, and to the number and type of licenses set forth on the applicable Order Form(s) and in the License Key. Licensee's use rights are restricted to use in connection with the Blackboard products specified in the applicable Order Form.

3.3. Additional Rights and Restrictions.

- (a) Support and Maintenance Agreement. Licensee may purchase and maintain an active Support and Maintenance Agreement for the Software.
- (b) Documentation. Any individual that has valid access to an Instance of the Software may copy and use the Documentation for Licensee's internal reference purposes.

- (c) Sublicensing. Licensee may allow third parties to access and use the Software located on Licensee's Servers through a web browser provided that Licensee has obtained either an Analyst User License or Consumer User License for each individual third party User that directly or indirectly accesses the Software. However, Licensee is not permitted to provide copies of the Software itself to such third parties. Notwithstanding the foregoing, Licensee may provide copies of the Software to a third party to host the Software solely for Licensee's benefit, provided that such third party has reviewed and agreed to be bound by the terms of this Agreement applicable to hosting the software. Licensee remains primarily liable to Pyramid for the third parties that access and use of the Software. Licensee will indemnify, defend and hold Pyramid harmless from and against any third party claims arising as a result of such third party access and use of the Software. No other sublicensing of Licensee's rights under this Agreement is permitted.
- (d) Additional Functionality. Pyramid may provide additional functionality for or enhancements to the Software. Other license terms and fees may apply.
- (e) Scope of License. The Software is licensed, not sold. This Agreement only gives Licensee some rights to use the Software. Pyramid reserves all other rights. Licensee may use the Software only as expressly permitted in this Agreement unless applicable law gives Licensee more rights despite this limitation. Licensee agrees that it will not, and will not permit others to:
- work around any technical protections in the Software with an intent to exceed the scope of the licenses granted under this Agreement;
 - reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits despite this limitation;
 - make more copies of the Software than specified in this Agreement and applicable Order Forms or as allowed by applicable law despite this limitation;
 - publish the Software for others to copy;
 - rent, lease or lend the Software; or
 - use the Software to operate a service bureau or subscription service or for commercial software hosting services except as expressly permitted herein.
- No rights other than those expressly set forth herein shall pass to Licensee. All right, title and interest in or to the Software and the Documentation and the intellectual property rights therein, including, but not limited to: (a) any and all Improvements thereto, and (b) any and all copyrights, trademarks, patents, and trade secret rights shall at all times remain the exclusive property of or vest on creation in Pyramid or its licensor. Licensee agrees to execute all such documents as may become reasonably necessary for the purpose of vesting or assigning any intellectual property rights in the Improvements to Pyramid or its nominee. Licensee will not knowingly do anything to impair Pyramid proprietary rights in the Software or seek to acquire or register any rights in Pyramid's proprietary marks, copyrights or information.
- (f) Multiplexing. Licensee's use of hardware or software to: (i) pool connections; (ii) re-route information; or (iii) reduce the number of Users that directly access or use the Software (sometimes referred to as "multiplexing" or "pooling") does not reduce the number of licenses Licensee is required to purchase in order to use the Software.
- (g) Benchmarking and Competitive Analysis. Licensee will not disclose the results of any benchmark test of the Software without Pyramid's prior written consent. Licensee will not permit the Software to be used for purposes of competitive analysis or the development of a competitive product.
- (h) Marks and Use of Licensee Name. This Agreement does not grant Licensee any rights to Pyramid's trademarks or service marks. Licensee will not remove or modify any Software markings or any notice of Pyramid's proprietary rights. Licensee agrees that Pyramid may include Licensee's name in lists, presentations, webpages and displays used by Pyramid which generally describe its customers, subject to written pre-approval by customer.
- (i) Third Party Software. Certain functionality in the Software such as the geospatial analytics module may require that Licensee separately contract with a third party software or data provider in order to fully use such functionality. Pyramid makes no representations or warranties with respect to such third party providers and any agreement with such third party providers will be strictly between Licensee and the third party provider. Licensee acknowledges and agrees that Pyramid will have no obligation or liability with respect to Licensee's contract with such third parties.
- (j) Transfer to a Third Party. The rights granted to Licensee in this Agreement are personal to Licensee, and may not be assigned or transferred to a third party without the previous written consent of Pyramid.
- (k) Export Restrictions. Licensee acknowledges that the Software may be subject to United States export jurisdiction. Licensee will comply with all applicable national and international laws that apply to Licensee's use of the Software, including United States Export Administration Regulations, as well as end user, end use and destination restrictions which may be issued by the United States and other governments.
- (l) U.S. Government Restricted Rights. The Software and Documentation are Commercial Computer Software and Commercial Computer Software Documentation and are licensed to U.S. government end users only as commercial items and only with those rights as are granted to all other end users under the terms and conditions set forth herein. Use, duplication or disclosure of the Software and Documentation by the U.S. Government or a U.S. Government contractor or subcontractor is subject to the restrictions set forth herein and as provided in FAR 12.211 and 12.212 (48 C.F.R. §12.211 and 12.212) or DFARS 227.7202 (48 C.F.R. §227.7202) as applicable.

4. INTENTIONALLY OMITTED

5. WARRANTIES

- 5.1. Scope of Warranties.** Pyramid warrants that the Software will be capable of performing the functions described in the Documentation for a period of twelve (12) months from the date of delivery unless it has been modified by Licensee or a third party.

PYRAMID DOES NOT WARRANT OR GUARANTEE THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT PYRAMID WILL CORRECT ALL ERRORS IN THE SOFTWARE. THE WARRANTIES STATED IN THIS SECTION 5 ARE LICENSEE'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SOFTWARE AND DOCUMENTATION. TO THE EXTENT PERMITTED BY LAW, THE WARRANTIES CONTAINED HEREIN ARE EXCLUSIVE AND PYRAMID EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT AN

IMPLIED WARRANTY OR GUARANTEE CANNOT BE DISCLAIMED, IT WILL ONLY BE EFFECTIVE FOR THE TERM OF THE LIMITED WARRANTY.

- 5.2. **Exclusive Remedies.** Licensee's exclusive remedy, and Pyramid's entire liability for any breach of the warranties contained in Section 5.1, shall be the correction of errors that cause the breach of the warranty, or if Pyramid is unable to make the Software operate as warranted, Licensee shall be entitled to terminate the license for the Software and recover amounts up to the license fees paid based on straight-line amortization of the Software over a five (5) year period beginning on the due date for the license fees set forth in the applicable Order Form.

6. INTELLECTUAL PROPERTY RIGHT INDEMNITY AND LIABILITY

- 6.1. **Infringement Indemnification.** Pyramid shall defend, indemnify, and hold Licensee harmless against a claim that any of the Software used within the scope of this Agreement infringes any third party copyright or patent or other intellectual property right provided that: (a) Licensee informs Pyramid in writing within thirty (30) days of the claim; (b) Licensee grants to Pyramid sole control of the defense and all related settlement negotiations; and (c) Licensee provides the assistance, information and authority reasonably necessary for Pyramid to perform its obligations under this Section 6.
- 6.2. **Limitations on Indemnity Obligations.** Pyramid shall have no liability for any claim of infringement based upon (a) modification of the Software by any party other than Pyramid; (b) use by Licensee of a superseded or altered release of the Software or Documentation if such infringement would have been avoided by the use of a current unaltered release of the Software or Documentation that Pyramid provides to Licensee; (c) the combination, operation or use of any Software furnished under this Agreement with software, data, hardware or other materials not furnished by Pyramid if such infringement would have been avoided by the use of the Software and Documentation without such software, data, hardware or other materials or data; or (d) any trade secret claim, where Licensee acquires the trade secret: (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (3) from a person (other than Pyramid) who owed to the Party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.
- 6.3. **Remedies.** Without in any way limiting Pyramid's obligations to indemnify and defend Licensee under Section 6.1, in the defense or settlement of such claims (or if Pyramid reasonably believes the Software or Documentation do infringe), Pyramid shall have the option at its own expense to: (a) modify the Software or Documentation so it becomes non-infringing or (b) obtain a license for Licensee to continue using the Software or Documentation. If it is not commercially reasonable to perform either of the above options, then Pyramid shall refund amounts up to the license fees paid for the infringing Software based on straight-line amortization of the Software over a five (5) year period beginning on the due date for the license fees set forth in the applicable Order Form. This Section 6.3 states Pyramid's entire liability and Licensee's exclusive remedy for infringement.

7. CONFIDENTIALITY.

Neither Party will disclose the other Party's Confidential Information without the other Party's prior written consent except in furtherance of this Agreement. "Confidential Information" means non-public information that is designated as confidential or which a reasonable person knows or should reasonably understand to be confidential. Licensee Data is Confidential. Confidential Information does not include information that a Party can document through competent written evidence:

- is or becomes publicly available without a breach of this Agreement;
- was lawfully known by the other without an obligation to keep it confidential;
- is received from another source who can lawfully disclose it; or
- is independently developed.

Neither Party will disclose the other Party's Confidential Information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the Party compelled to make the disclosure will use its best efforts to give the other Party notice of the requirement so that the disclosure can be contested. Each Party will take reasonable precautions to safeguard the other's Confidential Information. Such precautions will be at least as great as the receiving Party takes to protect its own Confidential Information. Each Party will only disclose the other Party's Confidential Information to its employees, consultants, or subcontractors only on a need-to-know basis, provided that such employees or subcontractors are subject to confidentiality obligations no less restrictive than those contained herein. Either Party may provide suggestions, comments or other feedback to the other with respect to the other Party's products and services. Feedback is voluntary and the Party receiving feedback may use it for any purpose without obligation of any kind except that the Party receiving feedback will not disclose the source of feedback without the consent of the Party providing it.

8. LIMITATION OF LIABILITY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS SUBSIDIARIES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. PYRAMID'S MAXIMUM AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNTS PAID BY LICENSEE FOR THE SOFTWARE GIVING RISE TO THE CLAIM AS SET FORTH IN THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATION WILL NOT APPLY TO LIABILITY CAUSED BY PYRAMID'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY OR DEATH, IN EACH CASE CAUSED BY PYRAMID'S NEGLIGENCE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

9. TERM AND TERMINATION

- 9.1. **Term.** Each license under this Agreement is granted, subject to payment, for the term set forth in the applicable Order Form, unless terminated under the provisions of this Section 9.
- 9.2. **Termination.** Either Party may terminate this Agreement for a material breach of its terms by the other Party, provided the breach has not been remedied within thirty (30) days of receipt of a written notice from the non-breaching Party specifying the breach. Licensee may terminate this Agreement at any time for its convenience by giving Pyramid thirty (30) days written notice.
- 9.3. **Termination in the Event of Bankruptcy.** Any license provided under this Agreement may be terminated immediately by a Party, upon the occurrence of any of the following events: (a) any assignment of the other Party's assets for the benefit of creditors; (b) any dissolution or substantial attachment or execution of judgment against the other Party which remains undischarged or undischarged for a period of ninety (90) days; or (c) any voluntary or involuntary act of bankruptcy which is not resolved in the other Party's favor within ninety (90) days of filing.

9.4. Effect of Termination. The termination of this Agreement other than for Licensee's material breach only prevents Licensee from purchasing new licenses under its terms. Any existing licenses will be unaffected and the terms of this Agreement will survive for purposes of such existing licenses unless and until such licenses are terminated. If Pyramid terminates this Agreement for Licensee's material breach, such termination will also automatically terminate all outstanding licenses. In addition, the Parties' rights and obligations under Sections 7, 8, 9, and 10 shall survive termination of this Agreement. Termination of this Agreement shall not limit nor restrict either Party from pursuing any other remedies available to it, including, but not limited to, injunctive relief where appropriate. Such termination shall not relieve Licensee of its obligations to pay all undisputed fees and charges which have accrued prior to such termination.

9.5. Return or Destruction of Software and Documentation upon Termination of License. If any license granted under this Agreement is terminated according to the terms of this Agreement, Licensee must immediately: (a) cease using the Software and Documentation associated with such license; and (b) within thirty (30) days thereafter, certify in writing to Pyramid that it has destroyed or returned to Pyramid all copies of the Software and Documentation. This requirement applies to copies of the Software and Documentation in all forms, partial and complete, in and on all types of media and computer memory, and whether or not modified or merged into other materials.

10. GENERAL

10.1. Communications. All written notices and invoices required to be sent shall be deemed to have been sent when posted by pre-paid post or sent by courier or overnight delivery service to the addresses set forth on the cover page of this Agreement or to such other address as may be designated by a Party and shall be deemed received within five (5) working days if sent by first class post or within one working day if sent by courier or overnight delivery service.

10.2. Severability. In the event any provision or part of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, it shall be amended to the extent required to render it valid, legal and enforceable, or deleted if no such amendment is feasible, and such amendment or deletion shall not affect the enforceability of the other provisions hereof.

10.3. Waiver. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or any subsequent default or breach.

10.4. Entire Agreement. This Agreement, including any referenced written addenda, Order Forms and exhibits constitutes the entire agreement between the Parties and supersedes all previous agreements or representations, written or oral, with respect to the Software and Documentation. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each Party.

10.5. Governing Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the state in which Licensee's main campus is located without regard to its conflicts of law or choice of law principles. The Parties hereby consent to the exclusive jurisdiction of the state and federal courts located in the state in which Licensee's main campus is located without regard to its conflicts of law or choice of law principle. The Parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

10.6. Attorney's Fees. Except to the extent prohibited by applicable law, in any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

10.7. Informal Dispute Resolution. Except for the right of either Party to apply to a court of competent jurisdiction for injunctive relief, if any dispute arises between the Parties, the Parties shall first attempt to resolve such dispute among themselves prior to resorting to any formal legal action. Either Party may notify the other Party in writing of the occurrence of a dispute and establish a mutually convenient time and place to discuss the dispute. In any event, the meeting shall occur within a commercially reasonable period of time (which period shall not exceed fifteen (15) days from the date of the notice) and shall take place between Pyramid's account executive, Licensee's equivalent representative and Licensee's Chief Information Officer. If the meeting does not resolve the dispute, either Party may then give the other Party written notice that the dispute continues. Within a commercially reasonable period of time after such notice, which period shall not exceed fifteen (15) days from the date of such notice, designated executives of both Parties shall meet to discuss the issue at a mutually convenient time and place. Such executives shall be at each Party's Vice President level or above. If the dispute has not been resolved within a reasonable period of time thereafter, then either Party may pursue applicable remedies under this Agreement, at law, or in equity.

10.8. Independent Contractors. Nothing in this Agreement shall be construed to create any agency, employment, joint venture, or franchise relationship between Licensee and Pyramid. Pyramid shall be an independent contractor of Licensee for the performance under this Agreement.

EXHIBIT C to Attachment 2
BLACKBOARD LEARN DEVELOPER'S NETWORK EXHIBIT

1. PROGRAM DESCRIPTION

1.1 Blackboard desires to create a community of developers who design software that is interoperable with Blackboard's existing software. In order to do so, Blackboard makes available, subject to the terms of this Agreement, membership in a Blackboard Developers Network (the "Developers Network" or "BbDN"). Members of the BbDN have access to a Software Development Kit (the "SDK"), a package containing APIs and documentation that allow Customer to write code that interfaces with certain Blackboard software, reference materials and other documentation, support provided via a community discussion forum and a copy of Blackboard Academic Suite™. If you wish to join the Developer's Network and get access to the SDK and other benefits of membership, you must agree to the terms of this Agreement. This program relates to the Blackboard Learn applications only.

2. DEFINITIONS.

2.1 "**Blackboard Software**" means the Blackboard software, limited to a maximum of 150 users, 100 courses, and 1,000 enrollment records, provided pursuant to this Agreement, and Supported Interfaces (and any Documentation and help files included within such software), as well as any additional materials that Blackboard may, in its sole discretion, provide, such as corrections, updates and Upgrades. ~~Blackboard shall have no obligation to provide such additional materials, and any such additional materials that it does provide shall be deemed to be part of the Blackboard Software under this Agreement.~~

2.2 "**Developer Software**" means: (i) software application programs created by the Developer that are designed to operate in combination with the Blackboard Learn™ software that is provided pursuant to the Agreement; and (ii) all documentation for these software application programs; provided that: (a) the software application programs and documentation are authored or created by Developer or on Developer's behalf and that such software programs do not contain intellectual property from the Blackboard Software, and (b) the software application programs do not incorporate any part of the Blackboard Software, other than the connectors into the APIs of the Blackboard Software; or (c) such software applications programs and documentation do not otherwise constitute a Derivative Work of the Blackboard Software.

2.3 "**Developer's Network Information**" means the sample software code developed by Backboard pursuant to the Developer's Network, related Documentation and other proprietary information made available to Developer as a result of this Agreement.

2.4 "**Purpose**" means the purpose of this Exhibit, which is to create a community of developers who design software that is interoperable with Blackboard's existing software.

2.5 "**Specifications**" means the technical specifications for the Blackboard Software as set forth in the applicable documentation.

2.6 "**Supported Interfaces**" means application programming interfaces ("API"), network protocols, data formats, database schemas, and file formats used in the Blackboard Software as described in the Documentation.

2.7 "**Upgrades**" mean the object code versions of the Blackboard 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 has been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

3. OBLIGATIONS

3.1 **General.** Developer shall use the Blackboard Software to develop the Developer Software in a manner and for purposes that are consistent with the Purpose of this Exhibit.

3.2 Blackboard Obligations.

3.2.1 Blackboard shall provide Developer with: (a) access to the Developer's Network Information; and (b) one (1) copy of the Blackboard Software, pursuant to the licenses in Section 4 below, together with Documentation to assist in developing the Developer Software.

3.2.2 For thirty (30) days after the Effective Date, Blackboard shall provide web-based technical support, for installation purposes only, to two (2) technical contacts at Developer's location who are the only individuals who may contact Blackboard regarding installation support services. Developer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed two (2) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, except federal holidays. Except with regard to the foregoing, Blackboard will have no obligation to provide: (a) any support regarding the Blackboard Software, (b) any development tools for, or updates to, the Blackboard Software, and (c) any maintenance or training for the Blackboard Software.

3.3 Developer Obligations

3.3.1 Developer agrees and represents that it shall develop the Developer Software in accordance with the Purpose of this Exhibit and to enable simple installation and integration of the Developer Software into the Blackboard Software, as installed by a Customer.

3.3.2 Developer shall provide its standard customer support to Customers using and installing the Developer Software. Developer shall be solely responsible for providing all end-user support for any Developer Software.

3.3.3 Prior to permitting a third party to resell or distribute the Developer Software, Developer shall provide Blackboard a right of first refusal to resell or distribute the Developer Software based upon mutually agreeable terms which shall be no worse than the most favorable terms granted to such third party.

3.3.4 Developer shall not disable the Auto Reporting Option of the Blackboard Software.

3.3.5 The Developer may provide consulting services to third parties relating to the Developer Software, but the Developer shall not use the Blackboard Software licensed to the Developer under this Exhibit to provide consulting services that are related to the Blackboard Software and not the Developer Software.

4 LICENSE

4.1 **Developers' Network Information Grant.** Solely in connection with the Purpose of this Exhibit, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a limited, nonexclusive, nontransferable right and license to download, review and use up to twenty five (25) copies of the Developer's Network Information on the Internet or Intranet server or servers at Developer's site. Developer may use the Developer's Network Information solely in connection with its own internal development purposes in connection with the Purpose of this Schedule. Developer may copy the Developer's Network Information, or any portion thereof, in whole or in part only for the Purpose of this Exhibit.

4.2 **Blackboard Software License Grant.** Solely in connection with the Purpose of this Exhibit and the development of the Developer Software, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a nontransferable, nonexclusive right and license to use the copy of the Blackboard Software provided to Developer by Blackboard, but only at the address at which Developer provides pursuant to this Exhibit (or other locations, provided that Developer notifies Blackboard in writing and Blackboard does not object within ten (10) days of receiving such notice), and solely for the purposes of: (1) creating the Developer Software at the Designated Server Site; and (2) supporting the Developer Software at the Designated Server Site. No right is granted to distribute all or any portion of the Blackboard Software or the Documentation. In the event that Developer desires to receive a license to use the Blackboard Software other than in connection with development or support of the Developer Software, or on operating system other than the one at the Designated Server Site, such license shall be pursuant to a separate license agreement. Developer may only make one (1) backup copy of the Blackboard Software for its own internal purposes, but otherwise may not copy, duplicate or reproduce the Blackboard Software in any manner.

4.3 **Third Party Software/Content.** Developer acknowledges that the Blackboard Software may utilize software and/or content made available to Blackboard by certain third parties (the "Third Party Software"). Pursuant to its agreements with such third parties, Blackboard hereby grants to Developer a non-exclusive, nontransferable and sublicensable right and license to load and/or operate and use the Third Party Software solely to the extent of the license in Section 4.2.

4.4 **Termination of Access to Third Party Software.** Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Developer's access to all or any part of the Third Party Software at any time for any reason without prior notice or liability. Blackboard's licensors and suppliers may change, suspend or discontinue all or any aspect of the Third Party Software, including the availability, without prior notice or liability.

4.5 No Other Rights Granted. Apart from the licenses expressly granted in Sections 4.1 and 4.2, no license or other right is granted by Blackboard to Developer under this Exhibit. Developer shall have no right or access to the source code of the Blackboard Software. Developer shall appoint no resellers, other developers, or sub-distributors or ASPs of the Blackboard Software, and shall not permit any third party to access the Blackboard Software, including, without limitation, any subcontractors for the purpose of subcontracting the development of the Developer Software.

4.6 Nondisclosure and Nonuse. Developer shall (a) disclose Developer's Network Information during the term of this Agreement to only those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Developer's Network Information; and (b) use such Developer's Network Information during the term of this Agreement only for the Purpose set forth in this Agreement. Developer shall treat the Developer's Network Information as strictly confidential, and shall use the same care to prevent disclosure of such information as it uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances.

4.7 Restrictions. Except as may be expressly permitted during the Term of this Agreement in Section 4.2, Developer shall not: (a) modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Blackboard Software or any part thereof, or grant any other person or entity the right to do so or take any action that would assist any other person or entity in doing so (and Developer will promptly notify Blackboard of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify the Blackboard Software); (b) modify, delete, replace, change, prepare derivative works of or otherwise alter any files in the Blackboard Software; (c) loan, rent, lease, give, sublicense, distribute, transfer, publish, disclose, display, or otherwise make available the Blackboard Software, in whole or in part, to any other person or entity except as expressly permitted herein; (d) use the Blackboard Software in connection with the development of any products other than the Developer Software or (e) transmit the Blackboard Software over a network or from one computer to another (other than on a limited basis within Developer's local area network), or upload the Blackboard Software to electronic bulletin boards, web sites, or otherwise distribute them (or any portion), whether electronically, or on tangible media.

5 MARKETING

5.1 License for Marks. Contingent upon the requirements set forth in this Section 5, Blackboard grants to the Developer, for the term of this Exhibit, a limited, nonexclusive, royalty-free license to use the "Blackboard®" the "Bb" logo, and "Blackboard Building Blocks™", "Blackboard Developer's Network™", "Blackboard Developer's Network Catalog", "BbDN", "Blackboard PowerLinks™", "Blackboard PowerLinks DevNet" trademarks and trade names, each only in order to show that Developer is a member of the Developer's Network and that the Developer Software is compatible with the Blackboard Software (the "Blackboard Licensed Marks"). Developer grants to Blackboard a limited, nonexclusive, royalty-free license to use the following Marks: (1) the Developer's corporate name and/or trade name, (2) the Developer's corporate logo; and (3) the product name of the Developer Software developed under this Exhibit; each only in order to identify Developer Software that is compatible with the Blackboard Software (the "Developer Licensed Marks"). Collectively, the Blackboard Licensed Marks and the Developer Licensed Marks shall be referred to as the "Licensed Marks"). Each of these two licenses is contingent on the requirements that each Party: (a) does not create a unitary composite mark involving a Mark of the other Party without the prior written approval of such other Party; (b) displays symbols and notices clearly and sufficiently, indicating the trademark status and ownership of the other Party's Marks in accordance with applicable trademark law and practice; and (c) uses the other Party's Marks in a manner that is consistent with the Purpose of this Exhibit. In no event shall Developer use the word "Blackboard" in the name of any of its products or services, including, without limitation, the use of "[product] for Blackboard". Each Party acknowledges that its utilization of the Licensed Marks under this Exhibit will not create in it, nor will it represent that it has any right, title or interest in or to such Licensed Marks other than the licenses expressly granted herein. Blackboard may, but is not obligated to, list the Developer Licensed Marks on web sites and product marketing materials associated with the Developer's Network and the Blackboard Building Blocks and Blackboard PowerLinks Programs. Neither Party will do anything to contest or impair the trademark rights of the other Party and will comply with such Party's standard trademark usage guidelines as such Party may provide from time to time.

5.2 Press Releases. Subject to Section 7.3, any news release, public announcement, marketing materials, advertisement or publicity proposed to be released by either Party concerning the activities of either Party in connection with this Exhibit, including the Developer Software, will be subject to the written approval of the other Party prior to release. Any such publicity shall be consistent with the Purpose of this Exhibit and will give due credit to the contribution of each Party.

5.3 Marketing Costs. Any costs of promotion and marketing shall be borne solely by the respective Party, and nothing in this Exhibit shall be interpreted to require promotion of products or services through marketing media forms which either Party normally charges a fee to provide.

5.4 Marketing Materials. Each Party will submit to the other Party for its prior written approval, which shall not be unreasonably withheld, any marketing materials to be used in connection with performing its obligations or rights under, or related to, this Exhibit, including but not limited to business card, website or jewel case design, that incorporates any of the other Party's Marks. Each Party will undertake to respond to any such request for approval within ten (10) business days. Each Party reserves the right to disapprove such marketing materials if it reasonably determines that its Marks are improperly used or if the marketing materials do not accurately represent the business relationship between the Parties or the services or products of the other Party.

5.5 Quality Standards. Each Party agrees that the nature and quality of its products and services supplied in connection with the other Party's Marks shall conform to quality standards communicated in writing by the other Party for use of its Marks. Each Party agrees to supply the other Party, upon request, with a reasonable number of samples of any marketing or other materials publicly disseminated by such Party which utilize the other Party's Marks. Each Party shall comply with all applicable laws, regulations and customs and obtain any required government approvals pertaining to use of the other Party's Marks.

6 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Blackboard Intellectual Property. Except as specifically set forth in this Exhibit, no title to or ownership of any portion of the Developer's Network Information or Blackboard Software as well as any other products or services manufactured, sold and/or distributed or otherwise made available by Blackboard, or to any proprietary rights related to those products/services, is transferred pursuant to or by virtue of this Exhibit and all rights and interest to the foregoing shall remain the sole and exclusive property and proprietary information of Blackboard.

6.2 Ownership Rights in the Developer Software. Developer retains all rights in the Developer Software that it creates pursuant to this Exhibit, provided that the Developer Software does not contain or constitute Blackboard intellectual property.

6.3 Ownership Rights in Derivative Works. All Derivative Works of the Blackboard Software shall be owned exclusively by Blackboard. All Derivative Works shall be deemed to be "works made for hire." To the extent that title to the Derivative Works does not, by operation of law, vest in Blackboard or the Derivative Works are not considered "works made for hire," Developer hereby irrevocably assigns all right, title and interest therein to Blackboard. Blackboard, however, shall grant and hereby grants to Developer a nonexclusive, royalty-free, world-wide, license to use any such Derivative Works for the Purpose set forth in this Exhibit during the Initial Term and any subsequent Renewal Terms. In the event that Blackboard permits Developer in writing to use non-employees to perform the obligations of Developer under this Exhibit, Developer shall take all necessary action to secure on behalf of Blackboard all rights to the Derivative Works from such non-employees.

7 LIMITED WARRANTY

7.1 Blackboard Warranties. Blackboard represents and warrants that: (a) it has authorized the person who has signed this Exhibit for Blackboard to execute and deliver this Exhibit to Developer on behalf of Blackboard; (b) it and/or its suppliers and licensors possess all rights necessary to grant the rights herein; and (c) it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.

7.2 Developer Warranties. Developer represents and warrants: (a) that it has authorized the person who has signed this Exhibit for Developer to execute and deliver this Exhibit to Blackboard on behalf of Developer, (b) the Developer Software shall be developed in a good and workmanlike manner and in compliance with the requirements and Purpose of this Exhibit, and (c) that it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.

ATTACHMENT 3
BLACKBOARD
PRICING EXHIBIT
INTERNET 2 NET+ PROGRAM

THIS BLACKBOARD PRICING SCHEDULE ("SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER AGREEMENT – NET+ PROGRAM ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD AND DESCRIBES THE SPECIFIC FEES AND OTHER PRICING TERMS UNDER WHICH CUSTOMER MAY LICENSE THE SOFTWARE AND SERVICES AND PURCHASE VARIOUS ASSOCIATED PROFESSIONAL SERVICES CONSTITUTING THE INTERNET 2 NET+ PROGRAM AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

1. SERVICES OFFERINGS.

1.1 Composition of Bundles. The Internet 2 NET+ Program is composed of two different bundles of product and service offerings, the "NET+ Bundle" and the "Learning Essentials Bundle", which include the individual Services as set forth below, that the Customer may choose to purchase subject to the terms in Section 1.2:

Included Services	NET+ Bundle	Learning Essentials Bundle
Learn Course Delivery	✓	✓
Learn Community Engagement (enterprise portal)	✓	✓
Learn Content Management (enterprise file management)	✓	✓
Collaborate	✓	✓
Mobile Learn	✓	✓
xpLor (standards-based Learning Object Repository, community sharing)	✓	✓
Blackboard Learn SafeAssign (plagiarism detection)	✓	✓
Outcomes Assessment (accreditation & program eval.)	✓	
Analytics for Learn (data warehouse, 60+ OOTB reports, in-course analytics, customizable, integration w/ additional data sources)	✓	
Pyramid Analytics (OLAP/Relationship BI tool: dashboards, reports, push reporting)	✓	
Blackboard Open Education (MOOC) Platform by Blackboard™	✓	✓
MyEdu (lifelong profiles, integrated with employer and CSPO support)	✓	✓
Adoption Services (customized consulting) for Learn and Collaborate Capabilities	✓	✓
Premium Support (global follow-the-sun, 24*7 for two system administrators)	✓	✓
End-user Support (self-help, CRM, 24*7 call center) for faculty and students	✓	
Managed Hosting for Learn Course Delivery, Learn Community Engagement and Learn Content Management	✓	✓

1.2 Availability of Learning Essentials Bundle. To be eligible to elect the Learning Essentials Bundle, immediately prior to the Effective Date Customer must not be purchasing any of the following services from Blackboard:

- Managed Hosting for Learn,
- Analytics for Learn,
- Outcomes Assessment, or
- Faculty/Student End-User Support

1.3 Mandatory Upgrade from Learning Essentials Bundle to NET+ Bundle. If Customer is eligible for and has elected the Learning Essentials Bundle, Customer is required to upgrade to the NET+ Bundle on or before the second anniversary of the Effective Date, at the pricing associated with the NET+ Bundle for the remaining Term.

2. TERM.

The Term for the NET+ Bundle shall be three (3) years beginning on the Effective Date. The Term for the Learning Essentials Bundle shall be four (4) years beginning on the Effective Date (in each case, the "Initial Term"). Thereafter, the Term shall automatically renew for additional one (1) year periods (each, a "Renewal Term") at the applicable Fees set forth herein unless either party shall give notice to the other of the intent to terminate on or before ninety (90) days prior to the expiration of the then-current Term, except to the extent such automatic renewal is prohibited by applicable law, in which case, the Term may be renewed for Renewal Terms upon the mutual agreement of the parties prior to the expiration of the then-current Term.

3. FEES.

3.1 NET+ Bundle Initial Year. The Fees for the first year of the Initial Term for the NET+ Bundle are calculated based on three variables: the total number of FTEs at all Internet2 member institutions who have purchased the NET+ Bundle or the Learning Essentials Bundle (including Customer) as of the Effective Date; the number of months that have elapsed since August 1, 2014 until the Effective Date; and the number of Customer's FTEs (calculated in accordance with the most recent fall IPEDS submissions). The first two variables create a pricing discount tier structure as described in the first table set forth in Section 3.3. Based on the applicable pricing tier discount, Customer's fees for the NET+ Bundle for the first year of the Initial Term are calculated in accordance with the second table set forth in Section 3.3; note that, in the event the minimum adoption thresholds for Tier 1 are not met in any given period, the Baseline Pricing will apply.

3.2 NET+ Bundle Subsequent Years. The Fees for the NET+ Bundle for the second and third year of the Initial Term and any Renewal Term shall be calculated as follows: (i) in the event the pricing discount tier achieved as of the date ninety (90) days prior to the commencement of such year (the "Pricing Calculation Date") has not changed and Customer's FTE count remains in the same band as the preceding year, the Fees for such year shall increase by 3.5% over the preceding year's Fees; (ii) in the event that as of the Pricing Calculation Date either the pricing discount tier achieved has changed, or Customer's FTE count places Customer in a different pricing band pursuant to the second table set forth in Section 3.3, the Fees for such year shall be calculated in accordance with the second table set forth in Section 3.3 on the basis of such new pricing discount tier/Customer FTE count data.

3.3 NET+ Bundle Pricing Tables.

Progressive Discount Tiers based on Overall Adoption by FTE of Internet2 Members

	Tier 1	Tier 2	Tier 3
Months 1-18	85,000	150,000**	250,000
Months 18-48	150,000	250,000	500,000
Months >48	250,000	500,000	800,000

**Note – in the event 4 of the 5 members of the Internet2 validation group purchase a NET+ Program offering from Blackboard during the first 18 months from August 1, 2014, this number shall be reduced to 65,000.

Pricing band based on Customer's FTE Count*		Baseline Pricing	Tier 1	Tier 2	Tier 3
From:	To:				
-	5,000	\$268,750	\$241,875	\$215,000	\$174,688
5,001	10,000	\$361,300	\$325,170	\$289,040	\$234,845
10,001	15,000	\$457,100	\$411,390	\$365,680	\$297,115
15,001	20,000	\$529,885	\$476,897	\$423,908	\$344,425
20,001	25,000	\$624,400	\$561,960	\$499,520	\$405,860
25,001	30,000	\$692,125	\$622,913	\$553,700	\$449,881

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30,001	35,000	\$764,550	\$688,095	\$611,640	\$496,958
35,001	40,000	\$840,496	\$756,446	\$672,397	\$546,322
40,001	45,000	\$922,150	\$829,935	\$737,720	\$599,398
45,001	50,000	\$1,002,409	\$902,168	\$801,927	\$651,566

Note: Over 50,000 requires custom pricing analysis

*Based on the most recent fall IPEDS FTE submission

3.4 Pricing Modifications.

a. Phase In for Existing Blackboard Customers. If immediately prior to the Effective Date Customer was purchasing any services from Blackboard (the “Pre-existing Services”), and Customer has purchased the NET+ Bundle, then upon execution of the Agreement Customer may elect to extend the Initial Term for the NET+ Bundle for an additional one (1) year, and for the first year of the Initial Term the Fees shall be calculated as follows:

Fees = Total Fees for Pre-existing Services + 0.6 x (Fees as calculated pursuant to Section 3.1 – Total Fees for Pre-existing Services)

b. Pricing Discount Tier Protection. Upon execution of the Agreement Customer may elect to prevent any pricing change associated with any potential increase in pricing associated with a change in the pricing discount tier in the forty-eighth (48th) month from August 1, 2014 as set forth in the first table in Section 3.3. Upon such election, the Initial Term shall be extended for an additional (1) year, and pricing for such additional year and any Renewal Term thereafter shall be at the pricing tier calculated in accordance with the “Months 18-48” row in the first table in Section 3.3.

c. Pricing Discount Tier Change. If the pricing discount tier achieved pursuant to the first table in Section 3.3 changes within ninety-one (91) days of the Effective Date to a higher tier (*i.e.*, lower price), and Customer has purchased the NET+ Bundle, Customer’s pricing will change to the purchase price for the NET+ Bundle at the then-new discount tier, and shall receive a credit based on the difference between the original NET+ Bundle price, and the purchase price for the NET+ Bundle at the then new discount tier, such credit to be issued against the next calendar year’s Fee invoice.

3.5 Learning Essentials Bundle Initial Year. The Fees for the first year of the Initial Term for the Learning Essentials Bundle are calculated based on the number of Customer’s FTEs (calculated in accordance with the most recent fall IPEDS submissions) in accordance with the table set forth in Section 3.7.

3.6 Learning Essentials Bundle Subsequent Years. The Fees for the Learning Essentials Bundle for the second year of the Initial Term shall be calculated as follows. Until the earlier of (i) the date Customer upgrades the Services to the NET+ Bundle and (ii) the second anniversary of the Effective Date (the “Conversion Date”), (x) in the event that as of the Pricing Calculation Date the Customer’s FTE count remains in the same band as the preceding year, the Fees for such year shall increase by 3.5% over the preceding year’s Fees and (y) in the event that as of the Pricing Calculation Date Customer’s FTE count places Customer in a different pricing band pursuant to the table set forth in Section 3.7, the Fees for such year shall be calculated in accordance with the table set forth in Section 3.7 on the basis of such new Customer FTE count data. After the Conversion Date, the pricing shall be calculated as if the Customer purchased a NET+ Bundle as of the Conversion Date for the remainder of the Initial Term.

3.7 Learning Essentials Bundle Pricing Table.

Pricing band based on Institution's FTE Count*		Price
-	2,000	\$125,799
2,001	4,000	\$162,336
4,001	8,000	\$194,625
8,001	15,000	\$249,948
15,001	25,000	\$343,251
25,001	50,000	\$422,284

Note: Over 50,000 requires custom pricing analysis

*Based on the most recent fall IPEDS FTE submission

3.8 Storage and Bandwidth Limits.

The storage and bandwidth limits for the NET+ Program offerings are as follows, based on the number of Customer’s then-current FTEs (calculated in accordance with the most recent fall IPEDS submissions):

From:	To:		Storage (GB)	Bandwidth (Mbps)*
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-	5,000		600	5
5,001	10,000		1050	7
10,001	15,000		1500	10
15,001	20,000		1950	13
20,001	25,000		2400	17
25,001	30,000		2850	20
30,001	35,000		3300	20
35,001+			3750	20

*Note the Bandwidth limits do not include Internet2 backhaul bandwidth usage

VOID IF EXECUTED AFTER June 30, 2015
CUSTOMER: Marshall University

EXHIBIT TO
BLACKBOARD ORDER FORM
STATEMENT OF WORK
Attachment 4

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

This Statement of Work (SOW) is an exhibit to the Order Form between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

Engagement Summary

Marshall University ("Customer") has requested that Blackboard provide Customer with consultants (each a "Consultant") to perform services as defined in this agreement in connection with the Blackboard Net+ Solution

Overview of Customer Deployment

Marshall University is a Diamond level Blackboard Managed Hosting client.

Scope of Services

Based on discussions with the customer and our derived understanding, Blackboard will deliver the following Services in support of the learning management software and help desk components as part of the included scope. Services associated with analytics and outcomes related functionality are not included as part of this scope.

Project Management

Blackboard will assign a project manager to facilitate communication within Blackboard and with the customer related to this engagement. The project manager will coordinate Blackboard's activities to address engagement objectives, schedule and budget, and the project manager will be responsible for day-to-day engagement management, documentation, status reporting, and organization of Blackboard resources.

Consulting Services

The objective of the Blackboard Net+ Consulting Services phase is to assist institutions that have had some experience with large-scale software implementations with the configuration and initial implementation of the Learning Management, Web Conferencing, and Instant Messaging features of the Blackboard Net+ Solution. This program will provide Customer with some initial training, planning, configuration guidance, and suggested effective practices and instructions on these tools/ features for the Net+ Solution.

More specifically, Blackboard will assign consultants who will lead and direct a series of remote and onsite workshops and training engagements, which include:

1. Program Initiation
 - a. Blackboard will provide preliminary self-paced or facilitated training for key customer project team members to build familiarity with solution capabilities and features.
 - b. Blackboard and Customer project leadership work remotely to schedule and build agenda for Program Kickoff Call.
2. Program Kickoff Call
3. Program Workshops and Training
 - a. Onsite Strategy planning meeting. Up to 5 days onsite with 1 to 3 consultants covering intended usage of Solution, strategy planning and use case development for the online learning tools.
 - b. Remote workshops (6 sessions, 2 hours each, synchronous or asynchronous) to familiarize system administrators with the core GUI administrative functions of:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - vi. Administration of included LMS integrations
 1. Web Conferencing
 2. Enterprise Instant Messenger
 - c. A series of 5 module configuration and review workshops to guide the customer through key configuration decisions (2 hours each, online)
 - d. A series of 8 synchronous online workshops (2 hours each, online) on the end user capabilities of the Net+ Solution including:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - e. Three additional elective workshops (2 hours each, online) to be chosen from the currently available elective options.
 - f. A concluding general Question and Answer session (2 hours each, online) to review the implementation and discuss any refinements needed.
 - g. Prototype development and consulting (up to 15 hours, remote)
 - h. Phase Review and Closeout (2 hours each, online)

Artifacts

- Engagement Report
- Configuration Guide
- Pre-questionnaire for training
- Agendas for all Onsite and Synchronous Online Sessions

Customer Requirements/Assumptions

- Project is carried out over 6 months from kick-off date
- Timely response from the Customer project leadership with regard to scheduling workshops and onsite sessions
- Pre-installation of production and test environments for all Blackboard Learn Academic and Collaboration modules

- Access to Blackboard System Administrator during onsite activities to resolve issues, if they arise.
- Creation of users and courses as requested by trainer prior to training

Student Services

The objective of the Blackboard Net+ Student Services phase is to provide planning assistance and implementation support for the Student Services implementation as part of the Blackboard Net+ Solution.

The Blackboard Student Services team's experience, resources, and best practices ensure a collaborative approach that focuses on:

- Identifying/confirming key objectives
- Evaluating current processes against those objectives, known best practices, as well as student, faculty and staff feedback
- Providing final recommendations for scope and implementation timeline

The planning process begins with a formal kick-off that includes sessions designed to establish clear expectations of ownership, timeline, and deliverables. These sessions, conducted remotely, include:

Documenting business processes to be integrated with Student Services technologies

- Requirements gathering for implemented tools and interfaces
- Collaboration to create a core knowledge base leveraged by the self-help portal and customer advisors for swift and repeatable assistance
- Telephony solution that will automate routing of calls for self-service and to advisors for effective problem resolution
- Development of on demand and ticketing portal using BbCRM
- BbCRM end-user training

The outcome of this phase is a framework for the Student Service engagement, technology integration plans, and a shared understanding of the critical metrics Customer seeks to monitor and improve. As part of this process, baseline metrics and a process for tracking and measuring against them throughout the engagement will be identified. Through each step of the process, our implementation team will bring to bear our experience with systems of similar size and engagements of similar scope.

The key deliverable of this phase is a jointly managed implementation and project management plan that sets the stage for successful, results-oriented engagement. The timeline for implementation is up to 12 weeks, but may proceed more quickly based on the complexity of the implementation. Blackboard Student Services will manage all elements of the engagement—from technology implementation to training—to ensure the timing and the methodology is consistent and reflects the multiple interdependencies of the technology, people, and processes.

Artifacts

- Detailed Project plan
- Requirements documents
- Test plans
- In-depth service catalogue to be used as knowledge base
- IVR system and call routing
- Self-help portal
- BbCRM Ticketing Access
- Advisor training plan

Customer Requirements/Assumptions

- Timely response from the Customer project leadership with regard to scheduling workshops and onsite sessions and return of requirements and data documents
- Strict adherence to project timeline/milestones/change request deadlines

Customer Responsibilities

Blackboard's Consulting model assumes active participation from the Customer team. Customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to successfully execute required tasks. Customer will staff the resources set forth below. This includes a Customer 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 project costs, as well as ensuring the necessary Customer project personnel, resources, etc. are available to successfully complete the project(s).

Customer Role	Involvement
Project Owner/Executive Sponsor	The Project Owner provides strategic direction and executive sponsorship of the engagement.
Project Manager	Responsible for management of customer project tasks, schedules, and resources
Data Owners	Personnel responsible for access to and interoperation of student information data.
Information Technology Representation	Personnel responsible for the technology infrastructure of the institution.
Academic Computing/Education Technology Representation	Personnel responsible for the education technology infrastructure and training needs of the institution.
Training & Support Personnel	Personnel responsible for the ongoing training and support of the end users of the Blackboard solution.
Blackboard Solution Administrator(s)	Individuals responsible for the configuration and administration of the component systems that comprise the Blackboard solution. Activities like, but not limited to: Create institutional hierarchy, manage user roles, perform system administration and maintain integration components. While the Blackboard solution will be software as a service, there will still be day-to-day management responsibility.
Faculty	Participate in use case development sessions.

Professional Fees, Expenses and Terms

The Net+ Solution pricing is inclusive of services fees, with the exception of travel expenses associated with the delivery of services.

Expenses related to Services

Blackboard will invoice Customer for travel costs and other expenses incurred in connection with this agreement. These expenses are not included in the Solutions Pricing section. Blackboard will make reasonable efforts to manage travel costs without compromising project objectives.

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 scheduled days at the then current daily rate for the scheduled consultant(s) plus any incurred travel change fees.

Cancellation on Synchronous On-Line Training or Consulting Engagements or Workshops

In the event the Customer chooses to cancel a scheduled synchronous on-line training workshop or consulting engagement within two (2) days of the scheduled event, Blackboard Consulting may invoice the Customer for the scheduled days at the then current rate for the scheduled consultant(s).

Project Timeline

The actual project schedule will be finalized with the Customer's project leadership upon project initiation. Note, the program is expected to be completed within 6 months of initiation.

Change Control

~~Changes to scope, resources, staffing, or timeline may impact the pricing set forth herein. In the event a change occurs, the parties may capture and assess the impact, and relevant implications through the project change control process. In this process, the parties will agree on a Project Change Request ("PCR") document. Any PCR must be approved by both Customer and Blackboard.~~

General Engagement Assumptions

Blackboard's approach, timeline, team structure, and professional fees are based on the assumptions below. Variance from these assumptions will be considered a request to change the scope of services performed under this agreement subject to the Blackboard Professional Services Schedule between Customer and Blackboard, and may affect the actual schedule and cost of the project.

- All workshops and trainings, onsite or online, will have a maximum attendance of 15.
- Pricing estimates outlined herein expire 30 days from date this agreement is presented to Customer. All services must be used within one (1) year of purchase.
- The services provided under this agreement are independent of any other software or services Customer may have purchased from Blackboard, and payment may not be offset or delayed in light of any such software or other services.
- Customer will provide Blackboard with access to the appropriate Customer physical and technical environments in the timeframes confirmed with the Blackboard Project Manager to the extent required for Blackboard to successfully complete the effort outlined in this document.
- When Blackboard asks Customer to make a decision on any aspect of the project set forth herein, or to review any draft working products, Customer will respond within 5 business days.
- Quality involvement and working products from the Customer are critical to the project's success. 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 Customer-side 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.
- Customer shall provide hardware and software configuration and environment(s), either managed or self-hosted which can support the functional/technical services included in this agreement.
- Customer shall ensure that all interfacing systems in the environment(s) designated for functional testing will be available as needed for Blackboard to perform the Services hereunder.
- Customer will separately procure and provide all third-party products and services in a timely manner to support the Services as defined in this agreement. Blackboard is not responsible for making changes to the configuration or data contained or used in third-party systems, including but not limited to Customer's Student Information System.
- Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time; provided that any such change shall not affect the Services that Blackboard is agreeing to provide under this agreement.
- In the event Customer chooses to cancel a scheduled consulting visit within two (2) weeks of the scheduled event, Customer will be responsible to pay the cost of all Blackboard consultant hours scheduled for the site visit plus incurred travel change fees.
- While on Customer's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer, to the extent that such practices and procedures have been notified to Blackboard in writing in advance. Blackboard's employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and shall have no effect. Customer shall be responsible for all costs associated with Blackboard's compliance with Customer's security practices and procedures.

EXHIBIT TO
BLACKBOARD ORDER FORM
STATEMENT OF WORK
Attachment 5

This Work Statement is a preliminary expectation of both Blackboard and Marshall University ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated representatives of each Blackboard and Customer.

This Statement of Work (SOW) is an exhibit to the Order Form between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

Engagement Summary

Marshall University ("Customer") is currently in the process of implementing Blackboard Analytics for Learn.

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

Marshall University is currently a Diamond level Managed Hosting client.

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 (remove if not needed)

The objective of the Baseline Implementation for Analytics for Learn is to assist the institution with the configuration and implementation of the Blackboard Analytics™ product based upon the institution's objectives. This program will provide clients with implementation planning, configuration and build guidance, and suggested effective practices and instructions for Blackboard Analytics for Learn.

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

- Project Management through the life of the implementation
 - 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.
- A one-day session to develop:
 - A mutual understanding of the implementation initiative and its alignment with the academic and business goals of the client organization.
 - A process for identification of opportunities for client data process improvements.
 - A definition of the project work streams, success criteria and measures.
 - A detailed Project Plan
 - A defined Blackboard Analytics for Learn pilot, designed to help clients address immediate needs as well as long term objectives measured by specific success criteria.
- One day of effort to define and identify:
 - Mapping relationship of SIS data to Analytics for Learn data model
 - Baseline configuration of the Analytics for Learn for an initial implementation.
 - Potential client desired customizations to be scoped.
- Installation of baseline Analytics for Learn and initial data load (Up to 5 days, remote).
- Configuration of baseline Analytics for Learn (Up to 3 days, remote).
- Development and delivery of estimated scope for any client desired customizations and any configurations not achievable within scheduled hours (Up to 2 days, remote).
- Review of Configuration and data model (up to 2 days onsite or remote)
- Configuration Validation Support (up to 2 days onsite or remote)
- One-day, remote workshop on administration of Analytics for Learn
- One-day, remote or onsite workshop on baseline dashboards and reports and ad hoc reporting.
- Three days additional training and support for deployment
- Post-Deployment status meetings to help address new questions, or provide continued project guidance.

Assumptions and Limitation

- All workshops, online or onsite, have a maximum attendance of 15.
- Blackboard Analytics will configure the ETL process and execute the initial load of the Analytics for Learn™ baseline system from one identified Blackboard Learn production system. ETL failure resulting from customer SIS, Learn, Network, or Security configurations may require investigation and resolution activities that are out of scope. Any such activity or any additional installations on other servers may be performed at an additional cost at the customer's option.
- Blackboard Analytics will assist in defining a strategy for securing the reporting environment. Blackboards' role in this process will be consultative, working with Customer resources responsible for managing the Authority services and toolsets in use. Blackboard Analytics modules are installed with a single basic security role to secure access to delivered reports and databases. Customized network specific security beyond role level security (e.g., custom port level security) is NOT included in the scope of the product installation. Blackboard has not included any time in the Estimated Hours to assist customer with any non-default security configuration and troubleshooting. Customer may request in writing for Blackboard to provide additional assistance on a time and materials basis related to security design, configuration and troubleshooting.

- The Student Information System (SIS) Integration within the Analytics for Learn™ product requires the ability to precisely map Blackboard Learn courses to SIS course sections and assumes standard mappings exist within the SIS between courses and faculties.
 - Analytics for Learn™ has a defined set of pre-built, standardized SIS data elements that can be integrated with Learn data within the Learn Analytics data model. The deliverable for this task is a data specification document for SIS data elements that are needed to complete the integration. The Customer will provide credentials and connection to the SIS in order to extract data based on this specification on a nightly basis. Providing secure connectivity between the SIS and Analytics is the responsibility of the Customer.
 - The pre-built SIS integration capability assumes that the Batch UID field in Learn can be readily parsed into the required SIS keys to uniquely identify the related course in the SIS database based on a single methodology and single algorithm. If any courses in Learn do not adhere to this standardized methodology for linking back to the SIS database, additional effort beyond the scope of this project may be required to customize the SIS integration to successfully link all courses.
 - Customers using an SIS without a prebuilt integration are required to use the Analytics for Learn™ SIS Integration Framework to develop an integration from their SIS. This integration will map all relevant Customer SIS data fields to the appropriate SIS fields within Analytics for Learn. Where required, Blackboard will provide documentation and review with Customer staff of the required data formats as well as assist with facilitating testing of the integration.
 - Based on the results of an integration audit and analysis conducted during the implementation, there may be customizations and/or enhancements identified that exceed the scope of the baseline Analytics for Learn™ system. Examples may include, but not necessarily be limited to, additional SIS data dimensions not part of the baseline Analytics for Learn™ data spec. Any such desired customizations will be evaluated for additional level of effort and fulfilled through a separate statement of work with any applicable development hours and standard rate fees.
- Configuration changes or new customizations scoped during validation will fall outside the scope of a standard engagement.
- Actual hours to complete activities may deviate from estimates and/or estimates of available hours may be impacted by changes in actual hours of other activities. Additional hours above those estimated in this SOW and associated costs will be submitted to client for prior approval.

Artifacts

1. Client Workplan
2. Learn Analytics SIS Integration Overview
3. Learn Integrated Reports Overview
4. Data Dictionary

Client Requirements/Assumptions

- Blackboard Analytics will configure the ETL process and execute the initial load of one installation of the Analytics for Learn system. ETL failure resulting from client SIS, Network, or Security configurations may require investigation and resolution activities that are out of scope. Any such activity or any additional installations on other servers may be performed at an additional cost at the client's option.
- Blackboard Analytics will assist in defining a strategy for securing the reporting environment. Blackboards' role in this process will be consultative, working with Client resources responsible for managing the Authority services and toolsets in use. Blackboard Analytics modules are installed with a single basic security role to secure access to delivered reports and databases. Customized network specific security beyond role level security (e.g., custom port level security) is NOT included in the scope of the product installation. Blackboard has not included any time in the Estimated Hours to assist client with any non-default security configuration and troubleshooting. Client may request in writing for Blackboard to provide additional assistance on a time and materials basis related to security design, configuration and troubleshooting
- Within the available days, Blackboard will make changes to configuration of the Analytics for Learn environment. Configuration changes are most commonly of the nature described below:
 - Changes to the Global Parameters defined in the Analytics HeAdmin site. The purpose of the parameters varies, but in general are used to influence the behavior of the Transformation of the data loaded into the data warehouse
 - Hiding unused Dimensions & Measures
 - Adjustments to thresholds and rollup categories within delivered Band dimensions
 - Adjustments within established Analysis Services objects. For instance, the creation or elimination of an attribute hierarchy in a delivered dimension
- Out of scope of this SOW are customizations to the Analytics for Learn system, such as:
 - The creation of new database objects such as Fact and Dimension tables, Stored Procedures, or reporting Views.
 - The creation of new Analysis Services cubes or perspectives
 - Changes to baseline ETL processes
- Any time remaining from the available days for Configuration may be applied to client requested Customization through the Project Change Request Process.
- Client must use all services within 12 months of contract date.

Resource Requirements

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

Role	Activities and Responsibilities
Project Manager	Manages project tasks, schedules, resources and status reporting
Leadership/Oversight	Provides engagement oversight, aligns effort to client needs, and manages delivery quality
Functional Consultant	Provides requirements gathering, end user training, and setup of reports and dashboards
Technical Consultant	Provides technical implementation and configuration of baseline BbA Analytics for Learn product.

Customer Responsibilities

Blackboard's Consulting model assumes active participation from the Customer team. Customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to successfully execute required tasks. Customer will staff the resources set forth below. This includes a Customer 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 project costs, as well as ensuring the necessary Customer project personnel, resources, etc. are available to successfully complete the project(s).

Role / Skills Needed	During which project phase/service	Level of involvement
Project Owner	The Project Owner provides strategic direction and executive sponsorship	

Project Manager	of the engagement. Responsible for management of project tasks, schedule, and resources	
Data Owners	Personnel responsible for access to and interoperability of student information data.	
Information Technology Representation	Personnel responsible for the technology infrastructure of the institution.	
Training & Support Personnel	Personnel responsible for the ongoing training and support of the end users of the Blackboard solution.	
Blackboard Solution Administrator(s)	Individuals responsible for the configuration and administration of the component systems that comprise the Blackboard solution. Activities like, but not limited to: Create institutional hierarchy, manage user roles, perform system administration and maintain integration components.	

Professional Fees, Expenses and Terms

Customer will pay the fees set forth under the Services Pricing section below in connection with the Services performed under this SOW. All fees are non-cancelable and non-refundable. The Services Pricing section below specifies which method of billing will apply.

Time and Materials Basis

- 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, with a maximum forty (40) hour work week per Consultant. Blackboard may charge 125% of the standard rates below for evening and weekend service delivery.

Integration and Customization Maintenance Services Billed on a Firm-Fixed Price Basis

If Blackboard and Customer have agreed to integration and customization maintenance services to be billed on a firm-fixed price basis in the Services Pricing section below, then this Section applies.

- Integration and Customization Maintenance ("ICM") is an annual maintenance fee for the named service consulting project(s). ICM will be invoiced upon go-live of the named service consulting project. Year 2 ICM fees will be invoiced on a prorated basis to align with the renewal date of Customer's Blackboard software license. Thereafter, ICM will automatically renew on an annual basis at Blackboard's then-current rates.

Expenses related to Services

Blackboard will invoice Customer for travel costs and other expenses incurred in connection with this SOW. These expenses are not included in the Services Pricing section. Blackboard will make reasonable efforts to manage travel costs without compromising project objectives.

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:

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

Services Pricing

CONSULTING SERVICES	Est. Hours	Rate	Est. Amount
Project Manager	26	\$215	\$5,590
Functional Consultant	110	\$215	\$23,650
Technical Consultant	80	\$215	\$17,200
GRAND TOTAL ESTIMATE		216	\$46,440

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 the pricing set forth herein. In the event a change occurs, the parties may capture and assess the impact and relevant implications through the project change control process. In this process, the parties will agree on a Project Change Request ("PCR") document. Any PCR must be approved by both Customer and Blackboard.

General Engagement Assumptions

Blackboard's approach, timeline, team structure, and professional fees are based on the assumptions below. Variance from these assumptions will be considered a request to change the scope of services performed under this SOW subject to the Blackboard Professional Services Schedule between Customer and Blackboard, and may affect the actual schedule and cost of the project.

- Pricing estimates outlined herein expire 30 days from date this SOW is presented to Customer.
- The services provided under this SOW are independent of any other software or services Customer may have purchased from Blackboard, and payment may not be offset or delayed in light of any such software or other services.
- Customer will provide Blackboard with access to the appropriate Customer physical and technical environments in the timeframes confirmed with the Blackboard Project Manager to the extent required for Blackboard to successfully complete the effort outlined in this document.
- When Blackboard asks Customer to make a decision on any aspect of the project set forth herein, or to review any draft working products, Customer will respond within 5 business days.

- Quality involvement and working products from the Customer are critical to the project's success. 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 Customer-side 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.
- Customer shall provide hardware and software configuration and environment(s), either managed or self-hosted that are able to support the functional/technical services included in this SOW.
- Customer shall ensure that all interfacing systems in the environment(s) designated for functional testing will be available as needed for Blackboard to perform the Services hereunder.
- Customer will separately procure and provide all third-party products and services in a timely manner to support the Services as defined in this SOW. Blackboard is not responsible for making changes to the configuration or data contained or used in third-party systems, including but not limited to Customer's Student Information System.
- ~~Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time; provided that any such change shall not affect the Services that Blackboard is agreeing to provide under this SOW.~~
- In the event Customer chooses to cancel a scheduled consulting visit within two (2) weeks of the scheduled event, Customer will be responsible to pay the cost of all Blackboard consultant hours scheduled for the site visit plus incurred travel change fees.
- While on Customer's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer, to the extent that such practices and procedures have been notified to Blackboard in writing in advance. Blackboard's employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and shall have no effect. Customer shall be responsible for all costs associated with Blackboard's compliance with Customer's security practices and procedures.

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.
 - a. Each onsite training workshop is structured as a hands-on/active training seminar held in a computer classroom unless otherwise agreed. To insure the best learning experience, clients must provide:
 - i. A computer lab containing one computer for each learner. Each computer must have at least a 2 GHz processor and 1024MB of RAM and monitors capable of at least 1024x768 resolution.
 - ii. A high bandwidth Internet connection from each computer.
 - iii. Windows XP SP 2 or later installed.
 - iv. Microsoft Internet Explorer 7.x or later OR Firefox 3.5 or later installed on each computer.
 - v. Recommended software includes Microsoft Office, Adobe Acrobat Reader, Windows Media Player, QuickTime, and Flash Player.
 - vi. Java JRE 6 Update 13 or later
 - vii. A video projection device capable of 1024x768 resolution attached to a "lead" computer.
 - viii. 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.

EXHIBIT TO
BLACKBOARD ORDER FORM
STATEMENT OF WORK
Attachment 6

This Work Statement is a preliminary expectation of both Blackboard and Marshall University ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated representatives of each Blackboard and Customer.

This Statement of Work (SOW) is an exhibit to the Order Form between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

Engagement Summary

Marshall University ("Customer") has requested that Blackboard provide Customer with consultants (each a "Consultant") to perform services as defined in this agreement in connection with the Blackboard Net+ Solution

Overview of Customer Deployment

Marshall University is a Diamond level Blackboard Managed Hosting client.

Scope of Services

Based on discussions with the customer and our derived understanding, Blackboard will deliver the following Services in support of the learning management software and help desk components as part of the included scope. Services associated with analytics and outcomes related functionality are not included as part of this scope.

Project Management

Blackboard will assign a project manager to facilitate communication within Blackboard and with the customer related to this engagement. The project manager will coordinate Blackboard's activities to address engagement objectives, schedule and budget, and the project manager will be responsible for day-to-day engagement management, documentation, status reporting, and organization of Blackboard resources.

Consulting Services

The objective of the Blackboard Net+ Consulting Services phase is to assist institutions that have had some experience with large-scale software implementations with the configuration and initial implementation of the Learning Management, Web Conferencing, and Instant Messaging features of the Blackboard Net+ Solution. This program will provide Customer with some initial training, planning, configuration guidance, and suggested effective practices and instructions on these tools/ features for the Net+ Solution.

More specifically, Blackboard will assign consultants who will lead and direct a series of remote and onsite workshops and training engagements, which include:

4. Program Initiation
 - a. Blackboard will provide preliminary self-paced or facilitated training for key customer project team members to build familiarity with solution capabilities and features.
 - b. Blackboard and Customer project leadership work remotely to schedule and build agenda for Program Kickoff Call.
5. Program Kickoff Call
6. Program Workshops and Training
 - a. Onsite Strategy planning meeting. Up to 5 days onsite with 1 to 3 consultants covering intended usage of Solution, strategy planning and use case development for the online learning tools.
 - b. Remote workshops (6 sessions, 2 hours each, synchronous or asynchronous) to familiarize system administrators with the core GUI administrative functions of:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - vi. Administration of included LMS integrations
 1. Web Conferencing
 2. Enterprise Instant Messenger
 - c. A series of 5 module configuration and review workshops to guide the customer through key configuration decisions (2 hours each, online)
 - d. A series of 8 synchronous online workshops (2 hours each, online) on the end user capabilities of the Net+ Solution including:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - e. Three additional elective workshops (2 hours each, online) to be chosen from the currently available elective options.
 - f. A concluding general Question and Answer session (2 hours each, online) to review the implementation and discuss any refinements needed.
 - g. Prototype development and consulting (up to 15 hours, remote)
 - h. Phase Review and Closeout (2 hours each, online)

Artifacts

- Engagement Report
- Configuration Guide
- Pre-questionnaire for training
- Agendas for all Onsite and Synchronous Online Sessions

Customer Requirements/Assumptions

- Project is carried out over 6 months from kick-off date
- Timely response from the Customer project leadership with regard to scheduling workshops and onsite sessions
- Pre-installation of production and test environments for all Blackboard Learn Academic and Collaboration modules

- Access to Blackboard System Administrator during onsite activities to resolve issues, if they arise.
- Creation of users and courses as requested by trainer prior to training

Student Services

The objective of the Blackboard Net+ Student Services phase is to provide planning assistance and implementation support for the Student Services implementation as part of the Blackboard Net+ Solution.

The Blackboard Student Services team's experience, resources, and best practices provide a reasonable assurance of a collaborative approach that focuses on:

- Identifying/confirming key objectives
- Evaluating current processes against those objectives, known best practices, as well as student, faculty and staff feedback
- Providing final recommendations for scope and implementation timeline

The planning process begins with a formal kick-off that includes sessions designed to establish clear expectations of ownership, timeline, and deliverables. These sessions, conducted remotely, include:

- Documenting business processes to be integrated with Student Services technologies
- Requirements gathering for implemented tools and interfaces
- Collaboration to create a core knowledge base leveraged by the self-help portal and customer advisors for swift and repeatable assistance
- Telephony solution that will automate routing of calls for self-service and to advisors for effective problem resolution
- Development of on demand and ticketing portal using BbCRM
- BbCRM end-user training

The outcome of this phase is a framework for the Student Service engagement, technology integration plans, and a shared understanding of the critical metrics Customer seeks to monitor and improve. As part of this process, baseline metrics and a process for tracking and measuring against them throughout the engagement will be identified. Through each step of the process, our implementation team will bring to bear our experience with systems of similar size and engagements of similar scope.

The key deliverable of this phase is a jointly managed implementation and project management plan that sets the stage for successful, results-oriented engagement. The timeline for implementation is up to 12 weeks, but may proceed more quickly based on the complexity of the implementation. Blackboard Student Services will manage all elements of the engagement—from technology implementation to training—to provide reasonable assurance that the timing and the methodology is consistent and reflects the multiple interdependencies of the technology, people, and processes.

Artifacts

- Detailed Project plan
- Requirements documents
- Test plans
- In-depth service catalogue to be used as knowledge base
- IVR system and call routing
- Self-help portal
- BbCRM Ticketing Access
- Advisor training plan

Customer Requirements/Assumptions

- Timely response from the Customer project leadership with regard to scheduling workshops and onsite sessions and return of requirements and data documents
- Strict adherence to project timelines/milestones/change request deadlines

Customer Responsibilities

Blackboard's Consulting model assumes active participation from the Customer team. Customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to execute required tasks. Customer will staff the resources set forth below. This includes a Customer 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 project costs, as well as ensuring the necessary Customer project personnel, resources, etc. are available to successfully complete the project(s).

Customer Role	Involvement
Project Owner/Executive Sponsor	The Project Owner provides strategic direction and executive sponsorship of the engagement.
Project Manager	Responsible for management of customer project tasks, schedules, and resources
Data Owners	Personnel responsible for access to and interoperability of student information data.
Information Technology Representation	Personnel responsible for the technology infrastructure of the institution.
Academic Computing/Education Technology Representation	Personnel responsible for the education technology infrastructure and training needs of the institution.
Training & Support Personnel	Personnel responsible for the ongoing training and support of the end users of the Blackboard solution.
Blackboard Solution Administrator(s)	Individuals responsible for the configuration and administration of the component systems that comprise the Blackboard solution. Activities like, but not limited to: Create institutional hierarchy, manage user roles, perform system administration and maintain integration components. While the Blackboard solution will be software as a service, there will still be day-to-day management responsibility.
Faculty	Participate in use case development sessions.

Professional Fees, Expenses and Terms

The Net+ Solution pricing is inclusive of services fees, with the exception of travel expenses associated with the delivery of services.

Expenses related to Services

Blackboard will invoice Customer for travel costs and other expenses incurred in connection with this agreement. These expenses are not included in the Solutions Pricing section. Blackboard will make reasonable efforts to manage travel costs without compromising project objectives.

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 scheduled days at the then current daily rate for the scheduled consultant(s) plus any incurred travel change fees.

Cancellation on Synchronous On-Line Training or Consulting Engagements or Workshops

In the event the Customer chooses to cancel a scheduled synchronous on-line training workshop or consulting engagement within two (2) days of the scheduled event, Blackboard Consulting may invoice the Customer for the scheduled days at the then current rate for the scheduled consultant(s).

Project Timeline

The actual project schedule will be finalized with the Customer's project leadership upon project initiation. Note, the program is expected to be completed within 6 months of initiation.

Change Control

Changes to scope, resources, staffing, or timeline may impact the pricing set forth herein. In the event a change occurs, the parties may capture and assess the impact and relevant implications through the project change control process. In this process, the parties will agree on a Project Change Request ("PCR") document. Any PCR must be approved by both Customer and Blackboard.

General Engagement Assumptions

Blackboard's approach, timeline, team structure, and professional fees are based on the assumptions below. Variance from these assumptions will be considered a request to change the scope of services performed under this agreement subject to the Blackboard Professional Services Schedule between Customer and Blackboard, and may affect the actual schedule and cost of the project.

- All workshops and trainings, onsite or online, will have a maximum attendance of 15.
- Pricing estimates outlined herein expire 30 days from date this agreement is presented to Customer. All services must be used within one (1) year of purchase.
- The services provided under this agreement are independent of any other software or services Customer may have purchased from Blackboard, and payment may not be offset or delayed in light of any such software or other services.
- Customer will provide Blackboard with access to the appropriate Customer physical and technical environments in the timeframes confirmed with the Blackboard Project Manager to the extent required for Blackboard to complete the effort outlined in this document.
- When Blackboard asks Customer to make a decision on any aspect of the project set forth herein, or to review any draft working products, Customer will respond within 5 business days.
- Quality involvement and working products from the Customer are critical to the project's completion. 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 Customer-side 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.
- Customer shall provide hardware and software configuration and environment(s), either managed or self-hosted which can support the functional/technical services included in this agreement.
- Customer shall ensure that all interfacing systems in the environment(s) designated for functional testing will be available as needed for Blackboard to perform the Services hereunder.
- Customer will separately procure and provide all third-party products and services in a timely manner to support the Services as defined in this agreement. Blackboard is not responsible for making changes to the configuration or data contained or used in third-party systems, including but not limited to Customer's Student Information System.
- Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time; provided that any such change shall not affect the Services that Blackboard is agreeing to provide under this agreement.
- In the event Customer chooses to cancel a scheduled consulting visit within two (2) weeks of the scheduled event, Customer will be responsible to pay the cost of all Blackboard consultant hours scheduled for the site visit plus incurred travel change fees.
- While on Customer's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer, to the extent that such practices and procedures have been notified to Blackboard in writing in advance. Blackboard's employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and shall have no effect. Customer shall be responsible for all costs associated with Blackboard's compliance with Customer's security practices and procedures.

RFQ No. P1600 003

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: blackboard Inc.

Authorized Signature: Tess Flynn Date: 10/25/2015

State of District of Columbia

County of D.C., to-wit:

Taken, subscribed, and sworn to before me this 25th day of June, 2015.

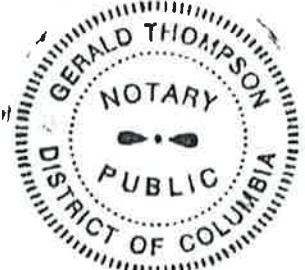
My Commission expires October 15, 2015.

AFFIX SEAL HERE

NOTARY PUBLIC

Gerald Thompson
Gerald Thompson
Notary Public
District of Columbia

Purchasing Affidavit (Revised 07/01/2012)



UC Defaulted Accounts Search Results

Sorry, no records matching your criteria were found.

FEIN: 522081178

Business name: BLACKBOARD INC

Doing business as/Trading

as:

Please use your browsers back button to try again.

WorkforceWV	<u>Unemployment Compensation</u>	<u>Offices of the Insurance Commissioner</u>
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