BLACKBOARD 5 MASTER TERMS

THIS BLACKBOARD Platform Agreement Master Terms ("Master Terms"), made this _____ day of _____, 2000 ("Effective Date"), by and between Blackboard Inc., a Delaware corporation having an address at 1899 L Street, NW, Fifth Floor, Washington, DC 20036 ("Blackboard") and Ball State University having an address at Muncie, IN 47306 ("Customer").

The Blackboard Platform is a software and services standard that can be scaled to allow educators to host everything from single course Web sites to an entire online campus. Customer wishes to adopt the Blackboard Platform to enhance its own educational programs, and Blackboard is willing to provide the Blackboard Platform to Customer for this purpose.

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

1. SCOPE OF AGREEMENT.

1.1 <u>Exhibits and Schedules</u>. These Master Terms describe the general terms by which Customer may purchase Software (as defined below) and Services (as defined below) from Blackboard as set forth in a Schedule. The specific terms related to the purchase of Software and Services are described in the appropriate Software or Service Schedules, and Exhibits thereto (collectively referred to as "Schedules"). Each Schedule and these Master Terms together constitute a separate agreement (the "Agreement") between Blackboard and Customer. Schedules may be added or deleted from time to time by the agreement of the parties, but Customer is only authorized to purchase Software or Services hereunder to the extent that one or more applicable Schedules is executed and in force.

1.2 <u>Order of Precedence</u>. The provisions of any Schedule will take precedence over these Master Terms, to the extent that they are inconsistent.

2. DEFINITIONS

2.1 "<u>Confidential Information</u>" means any non-public information about a party, including, without limitation, the party's business, vendors, customers, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, nonliteral elements, capabilities and functionality, source code and object code, research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices; computer software programs and other information licensed or otherwise disclosed to a party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known.

2.2 "<u>Corrections</u>" shall mean a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which correct software errors in the Software, provided in temporary form such as a patch, and later issued in permanent form of an Update

2.3 "<u>Documentation</u>" means Blackboard's standard end user documentation for the Blackboard Solutions.

2.4 "<u>Services</u>" means any consulting, educational or support services provided by Blackboard to Customer under the Agreement.

2.5 "<u>Software</u>" means the Level One, Level Two and/or Level Three of the Blackboard 5 software, and Supported Interfaces (and any documentation and help files included within the Software) provided by Blackboard to Customer under the Agreement, including any, Updates and Upgrades provided pursuant to a separately executed Maintenance and Basic Support Agreement.

2.6 "<u>Supported Interfaces</u>" means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

2.7 "<u>Updates</u>" shall mean the object code versions of Level One that has been developed by BLACKBOARD to correct any software error therein and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1).

2.8 "<u>Upgrades</u>" shall mean the object code versions of the Level One software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

3. SERVICES

3.1 <u>Maintenance and Support Services</u>. Blackboard will provide Customer with the maintenance and support services set forth on the applicable Maintenance and Support Schedule attached hereto for each annual period that Customer has paid the associated annual support fees. If Customer decides to discontinue maintenance and support, Customer may continue to use the Software pursuant to the license granted hereunder but will not be entitled to receive maintenance and support services for such Software. To reinstate maintenance and support services, Customer must pay to Blackboard all accumulated maintenance and support fees plus any late payment fees specified on applicable Maintenance and Support Schedule for the period during which Customer did not purchase maintenance and support services.

3.2 <u>Professional Services</u>. Blackboard will provide Customer with the professional consulting services set forth on the Professional Services Schedule attached hereto. If no Professional Services Schedule is attached, Customer acknowledges that Blackboard has no obligation pursuant to this Agreement to provide Customer with any installation, configuration or other professional consulting services.

3.3 <u>Training Services</u>. Blackboard will provide Customer with the training services set forth on the Training Services Schedule attached hereto. If no Training Services Schedule is attached, Customer acknowledges that Blackboard has no obligation pursuant to this Agreement to provide any training services to Customer.

4. CONFIDENTIALITY

4.1 <u>Nondisclosure and Nonuse</u>. Each party receiving Confidential Information, including but not limited to, Materials containing Confidential Information shall (a) disclose such Confidential Information to only those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information; and (b) use such Confidential

Information only for the purposes set forth in this Agreement. Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. Notwithstanding the foregoing, each party may disclose Confidential Information to the extent necessary pursuant to applicable federal, state or local law, regulation, court order, or other legal process, provided the receiving party has given the disclosing party prior written notice of such required disclosure and, to the extent reasonably possible, has given the disclosing party an opportunity to contest such required disclosure at the disclosing party's expense.

4.2   Notice. The receiving party will notify the disclosing party immediately in the event the receiving party learns of any unauthorized possession, use or knowledge of the Confidential Information and/or Materials containing Confidential Information and will cooperate with the disclosing party in any litigation against any third persons necessary to protect the disclosing party's rights with respect to the Confidential Information and Materials.

4.3   Confidential Treatment of Agreement. Neither party shall disclose the terms of this Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its affiliates, attorneys and accountants, or to any potential investor or acquiror of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise) that is bound by a written agreement to keep such terms confidential, or as may be required by law.

5. TERM; TERMINATION

5.1   Term.   The Term of this Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year unless earlier terminated as provided below (the "Initial Term"). Thereafter, the license granted herein shall renew automatically for successive one (1) year terms, under the terms herein (each a "Renewal Term") and the Customer may continue to use the Software provided Customer remits the License Fee within thirty (30) days of receipt of an invoice from Blackboard. If Customer decides not to renew this Agreement or if the Agreement otherwise terminates pursuant to Section 5.2 below, Customer must immediately remove the Software from its server and provide Blackboard with proof of the destruction of the original copy and any other copies of the Software and return all Documentation and Training Materials to Blackboard within a reasonable time at Customer's cost. Termination of this Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to such termination, nor affect or impair the rights of either party arising under this Agreement prior to such termination, except as expressly provided herein.

5.2   Default. Either party may, at its option, terminate this Agreement if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default. Blackboard may terminate this Agreement immediately if Customer fails to comply with the terms and conditions in the Schedule(s) or in Sections 1 through 4 above.

5.3   Survival. The termination or expiration of this 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 this Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

6.   FEES

6.1   License Fees. Customer shall pay to Blackboard the non-refundable license fees specified in the Schedule of Fees attached hereto as Exhibit A to the Master Terms, in accordance with the terms and conditions of the applicable Schedule(s) and the Master Terms.

6.2   Maintenance and Support Fees. Customer shall pay to Blackboard the non-refundable support fees specified in the Schedule of Fees attached hereto as Exhibit A, if applicable, in accordance with the terms and conditions of the Maintenance and Support Schedule attached hereto and the Master Terms.

6.3   Hosting Services. Customer shall pay to Blackboard any applicable hosting fees specified in the Schedule of Fees attached hereto as Exhibit A, if applicable, in accordance with the terms and conditions of the applicable Hosting Agreement attached hereto and the Master Terms.

6.4   Professional Services Fees.   Customer shall pay to Blackboard the non-refundable professional services fees specified in the Schedule of Fees attached hereto as Exhibit A, if applicable, in accordance with the terms and conditions of the Professional Services Schedule attached hereto and the Master Terms.

6.5   Training Services Fees.   Customer shall pay to Blackboard the non-refundable training services fees specified in the Schedule of Fees attached hereto as Exhibit A, if applicable, in accordance with the terms and conditions of the Training Services Schedule attached hereto and the Master Terms.

6.6   Payment and Late Fees. Customer shall pay Blackboard the nonrefundable fees in accordance with the applicable fees set forth in the Schedule(s) no later than thirty (30) days of receipt of an invoice from Blackboard. Blackboard expressly reserves the right to change the license fee(s) and support fee(s) for any Renewal Term. Any overdue amounts will bear a late fee at the rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less. All fees are payable in U.S. dollars and shall be sent to the attention of Blackboard's Accounts Receivable Department.

6.7   Audit. For the sole purpose of ensuring compliance with this Agreement, Blackboard shall have the right, at its expense, to audit Customer's use of the Software upon at least seven (7) days advance notice. Any such audit shall be during Customer's normal business hours and shall not be made more frequently than once every twelve months.

6.8   Taxes. To the extent not exempt under a valid tax exempt certificate, a copy of which is provided to Blackboard, Customer shall pay any sales, use, excise, import or export, value-added or similar tax and interest, as well as any costs associated with the collection or withholding thereof, and all government permit fees, license fees and customs and similar fees levied on the delivery of the Blackboard Platform by Blackboard to Customer. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, pay the required amount to the relevant governmental authority, provide Blackboard with an official receipt or certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard, in addition to the payment to which Blackboard is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Blackboard equals the full amount Blackboard

would have received had no such deduction or withholding been required.

7. DISCLAIMERS AND REMEDIES

7.1 Disclaimer of Warranty. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED IN THE ATTACHED SCHEDULE(S), THE SOFTWARE AND ALL PORTIONS THEREOF, AND ANY WARRANTY, SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SPECIFICALLY PROVIDED IN THE ATTACHED SCHEDULES, NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR OPERATING SYSTEM. THE AVAILABILITY OF CONTENT DEPENDS ON MANY FACTORS, INCLUDING CUSTOMER'S CONNECTION TO THE INTERNET, THE AVAILABILITY OF THE INTERNET AND THE INTERNET BACKBONE, AND EQUIPMENT THAT, BY ITS NATURE, IS NOT FAULT TOLERANT. BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS OF ACCURACY OF THE CONTENT CONTAINED ON OR ACCESSED THROUGH THE PLATFORM.

7.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL BLACKBOARD OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE BLACKBOARD PLATFORM OR ANY PORTION THEREOF, DEFECTS IN WARRANTY, MAINTENANCE AND SUPPORT SERVICES, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF BLACKBOARD AND/OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THESE DISCLAIMERS OF WARRANTY PERMIT BLACKBOARD TO PROVIDE SOFTWARE AT A LOWER COST THAT IT OTHERWISE COULD, AND SUCH DISCLAIMERS OF WARRANTY ARE REASONABLE.

8. INDEMNIFICATION

8.1 Blackboard. Blackboard shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Customer by a third party for infringement or misappropriation of any U.S. patent, copyright, trade secret or other proprietary right of any third party by the Software ("Customer Claim") and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Claim; provided that Customer provides Blackboard with (i) prompt written notice of such Customer Claim, (ii) control over the defense and settlement of such Customer Claim; (iii) and proper and full information and assistance to settle or defend any such Customer Claim.

8.2 Exceptions. Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement based upon (i) any use of the Software in a manner other than as specified by Blackboard; (ii) any combination of the Software by Customer with other products, equipment, devices, software, systems or data not supplied by Blackboard

(including, without limitation, any software produced by Customer for use with the Software) to the extent such claim is directed against such combination; or (iii) any modifications or customization of the Blackboard Platform by any person other than Blackboard ("Customer Matter").

8.3 Customer. Customer shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against Blackboard arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter ("Blackboard Claim"); provided that Blackboard provides Customer with (i) prompt written notice of such Blackboard Claim; (ii) control over the defense and settlement of such Blackboard Claim; and (iii) proper and full information and assistance to settle or defend any such Blackboard Claim.

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

9. MISCELLANEOUS

9.1 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law, and the parties shall use their best efforts to substitute for the offending provision new terms having similar economic effect.

9.2 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia as those laws are applied to contracts entered into and to be performed entirely in the Commonwealth of Virginia by Virginia residents. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in a federal court in the Commonwealth of Virginia or in a local court of the Commonwealth of Virginia, and each party hereto irrevocably submits to the non-exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. Customer hereby acknowledges and agrees that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.3 Modification and Waiver. Any modification, amendment, supplement, or other change to this Agreement or any Schedule attached hereto must be in writing and signed by a duly authorized representative of Blackboard and Customer. All waivers must be in writing. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

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

9.5 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 and 6. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive. Customer waives any right or claim to which Customer may be entitled to immunity or exemption from liability.

9.6 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 below or to such other address as shall be given in accordance with this Section 8.6, and shall be effective upon receipt.

If to Customer, to

_____

_____

_____

If to Blackboard, to

1899 L Street, N.W.
Suite 500
Washington, DC 20036
Attn: Platform Agreement Notices
Fax: (202) 463-4863

9.7 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, or inability to obtain any export or import license or other approval of authorization of any government authority.

9.8 U.S. Government Sales. If Customer is a U.S. Government entity, the Blackboard Platform is provided with RESTRICTED RIGHTS. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs of (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Contractor/manufacturer is Blackboard Inc., 1899 L Street, N.W., Suite 500, Washington, DC 20036. All rights not specifically granted in this statement are reserved by Blackboard.

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

9.10 Relationship of the Parties. 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.

9.11 Entire Agreement. This Agreement constitutes the entire, full and complete Agreement between the parties concerning the subject matter hereof, and they collectively supersede all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter.

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

BLACKBOARD

_____

_____
Print Name and Title

Date

BALL STATE UNIVERSITY

_____
Signature

___Tom Brinson, Acting Director of Purchasing
Print Name and Title

Date: June 30, 2000

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

1.10   Term of Use. Blackboard shall provide to Customer a sample set of terms and conditions for end users that access Level Two through the Customer ("Terms of Use"). Customer shall provide to such end users with these terms and conditions governing the use of Level One. Customer may, at its sole discretion, elect to provide its own terms and conditions to its end users, provided however, that such terms and conditions are no less restrictive that the Terms of Use.

2.   FEES

Customer shall pay Blackboard fifty (50%) percent of non-refundable license fees on the Agreement Effective Date. Within thirty (30) days after receipt of an invoice from Blackboard, Customer shall pay Blackboard the remaining balance in accordance with the Schedule of Fees contained in Schedule 3-A below (the "License Fee"), and, for each Renewal Term (as defined below), Blackboard's then-current License Fee for Level Two.

3.   LIMITED WARRANTY BY CUSTOMER

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

4.   LIMITED WARRANTY BY BLACKBOARD

4.1   Authority. Blackboard represents and warrants that it has authorized the person who has signed this Agreement for Blackboard to execute and deliver this Agreement to Customer on behalf of Blackboard.

4.2   Performance Warranty. Blackboard represents and warrants that the Software (but not including any Third Party Software) will be free of Software Errors and substantially conform to the documentation for ninety (90) days after the Effective Date, provided Blackboard has received all amounts owed under the Agreement and its Schedule(s) and Customer is not in default of any part of the Agreement. Blackboard's sole obligation is limited to repair or replacement of the defective Software in a timely manner as specified in Schedule 3A, provided that Customer notifies Blackboard of the deficiency within the warranty period and provided that Customer has installed all Corrections, Upgrades and Updates. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BLACKBOARD DOES NOT WARRANT THAT OPERATION OF THE COMMERCIALLY AVAILABLE VERSION IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BLACKBOARD HEREBY DISCLAIMS ALL LIABILITY ON ACCOUNT THEREOF.

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

BLACKBOARD   BALL STATE UNIVERSITY

_____   _____
Signature   Signature
                                                       Tom Brinson, Acting Director of Purchasing
Print Name and Title   Print Name and Title

Date: Date: June 30, 2000

SCHEDULE OF FEES

License Fee

Description	Annual Net License Fee
Blackboard 5 Level Two[1]	$ 20,000

Specified License Use

Site: Ball State University, Muncie, IN
        (description of Server location)

Database Version:	Operating System:	Hardware Model:
Oracle	SOLARIS	SUN 450

---

[1] If and when available.

SCHEDULE 3
BLACKBOARD LEVEL TWO OPTION

This Blackboard 5 Level Two software Schedule between Blackboard and Ball State University ("Customer") is an attachment to the Master Terms between Blackboard and Customer and is effective as of the Effective Date. The Master Terms are an integral part of this Schedule and are incorporated herein by reference. Capitalized terms shall have the meaning set forth in the Master Terms.

1.   LICENSE

1.1   Level Two License. Subject to terms and conditions contained herein and in the Master Terms, Blackboard grants Customer a non-exclusive, nontransferable license to load and/or operate and use the Blackboard 5 Level One software ("Level One"), along with any Updates and Upgrades provided pursuant to a separate Maintenance and Basic Support Agreement, Supported Interfaces, and any Documentation and Training Materials, solely on the Internet or Intranet server at Customer's facility ("Server") designated below, in connection with Customer's own instructional activities.

1.2   Archival Copies; Restrictions on Copies. Customer may not copy Level Two, or any portion thereof, in whole or in part, except as is necessary to load and/or operate and use Level Two. In addition, Customer may make one (1) copy of Level Two provided under this Agreement for backup and archival purposes, provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in Level Two. Customer may transfer Level Two from one Server to another at no additional license fee, provided that Customer gives written notice to Blackboard within five (5) business days of such installation. Customer shall be responsible for the cost of any migration tools or additional software required for the new Server. Level Two must be deleted in its entirety from the Server no longer in use and from each back-up copy for that Server. Customer may not modify, create derivative works based on, loan, rent, lease, give, sublicense, transfer, publish, disclose, display, reverse engineer, decompile, translate, adapt, or disassemble Level Two, in whole or in part, to any other person or entity. Customer may not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on Level Two.

1.3   Third Party Software/Content. Customer acknowledges that Level One may utilize software and content made available to Blackboard by third parties ("Third Party Software"), including Web Logic Express, WebLogic Application Server and WebLogic JDDC Drivers ("BEA Software"). Pursuant to its agreements with these third parties, Blackboard hereby grants to Customer a non-exclusive, nontransferable license to load and/or operate and use the Third Party Software solely in connection with Customer's own instructional activities. The content licensed from third parties may be subject to additional terms and restrictions that shall be described in the Documentation or otherwise provided to Customer by Blackboard in writing. In addition Customer may not run any third party software applications on the BEA Software or any of its APIs, without purchasing a license for such user from BEA Systems, Inc.

1.4   Training Materials. Upon Customer's request, Blackboard will provide Customer with a reasonable number of copies of presentation materials, instructor and student manuals and/or other related Blackboard materials for Customer's use in connection with its own instructional activities ("Training Materials").

1.5   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 Blackboard Platform in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

1.6   Ownership of Level Two. Blackboard or its licensors has and shall have sole and exclusive ownership of all right, title and interest in and to Level Two and all portions and copies thereof. In addition, Blackboard or its Licensors shall have sole and exclusive ownership of any corrections, Updates and/or Upgrades provided to Customer for Level Two pursuant to a separate Maintenance and Basic Support Agreement executed by the Parties. If title to Level Two or any part or element thereof does not, by operation of law, vest in Blackboard, Customer hereby assigns to Blackboard, or its designee all right, title and interest in and to Level Two. Customer acknowledges that Blackboard shall be entitled to equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that Customer breaches either this section or the LICENSE GRANT above

1.7   Intellectual Property Restrictions. Except as otherwise expressly set forth in this Agreement or in the attached Schedules and Exhibits, Customer shall not (i) copy the Blackboard Platform or any Third Party Software, in whole or in part; (ii) adapt, alter, create derivative works based on, modify, or translate the Blackboard Platform or any Third Party Software, in whole or in part; (iii) sell, assign, distribute, lease, market, rent, sublicense, transfer, or otherwise grant rights to the Blackboard Platform or any Third Party Software in whole or in part to any third party in any form; (iv) electronically transfer the Blackboard Platform or any Third Party Software in whole or in part from one computer to another over a network or enable any timesharing or service bureau use of the Blackboard Platform; (v) obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings to the Blackboard Platform; (vi) add any other notices or markings to the Blackboard Platform or any portion thereof; or (viii) reverse engineer, decompile or disassemble any component of the Blackboard Platform or the Third Party Software or otherwise obtain or attempt to obtain the source code for the Software. Customer acknowledges that Blackboard shall be entitled to equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that Customer breached this Section 1.6 or the LICENSE GRANT above.

1.8   Termination of Access to Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Customer's access to all or any part of the Third Party 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.

EXHIBIT A TO THE
BLACKBOARD 5 MASTER TERMS

SCHEDULE OF FEES

<u>Software</u>   <u>Designated Level One(s)</u>

Blackboard 5 Level   ___One   Name of Institution: **Ball State University**
                            X   Two
                            ___Three   Date: _____. Platform: <u>Solaris</u>

First Server
Annual License Fee: <u>USD $20,000</u>

Hosting Services (Check one of the below, if applicable)

                   ___   Standard Hosting
                   ___   Level One Institutional Gateway
                   ___   Premium Hosting

Total Hosting Fees: <u>N/A</u>

Maintenance and Support (Check the applicable option)

                   ___   Level One Basic Support
                   ___   Level One Premium Support
                   ___   Level One Elite Support
                   X   Level Two Support
                   ___   Level Three Support

Total Annual Maintenance and Support Fees, if applicable   <u>USD $ 5,000</u>

Total Professional Services Fees, if applicable   <u>USD $</u>

Total Training Services Fees, if applicable   <u>USD $</u>

TOTAL FEES: <u>USD $25,000</u>

BLACKBOARD LEVEL TWO MAINTENANCE AND BASIC SUPPORT OPTION FOR THE <u>BALL STATE UNIVERSITY</u>

This Blackboard 5 Level Two Maintenance and Support Schedule is an attachment to the Master Terms between Blackboard and Customer and is effective as of the Effective Date. The Master Terms are an integral part of this Schedule and are incorporated herein by reference. Capitalized terms shall have the meaning set forth in the Master Terms. In consideration of the fees paid by Customer as specified below, Blackboard will provide the following technical support:

1.   <u>Support</u>. Blackboard will provide Customer with the maintenance and basic support services of Level Two (the "Software") in accordance with the terms and conditions outlined in Exhibit A, which is incorporated herein.

2.   <u>Installation Assistance</u>. Customer is responsible for all installation of Corrections, Upgrades and/or Updates (as defined in "Support Services") provided pursuant to this Agreement. Blackboard may provide such installation assistance pursuant to a separate Blackboard Professional Services Agreement.

3.   <u>Limitation on Support Services</u>. Notwithstanding any other provisions in this Agreement, Blackboard will provide Support Services only with respect to the three (3) most recent Updates of the Software. The Support Services also do not apply to third party software within the Software unless otherwise expressly provided in Support Services. Customer is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain the Support Services from Blackboard.

4.   <u>Additional Services</u>. Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Software or are not covered by the Support Services are billable to Customer at blackboard's then-existing rates, with a one-hour minimum charge per call.

5.   <u>Technical Contact</u>. Customer may identify two (2) technical contacts who are the only individuals who may contact Blackboard regarding the Support Services. Customer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed two (2) contact personnel. Please list Customer's technical contacts to receive the Support:

Name	*NANCY BAKER*
Company	*BALL STATE UNIV.*
Address	*UNIVERSITY COMPUTING SERVICES*
Phone	*(765) 285-1393*
Fax	*(765) 285-8412*
E-mail	*NBAKER@BSU.EDU*
Name	*PAUL NEUBAUER*
Company	
Address	
Phone	*(765)285-1536*
Fax	
E-mail	

6.   <u>Term: Termination</u>. This Support Agreement is effective for a period of one (1) year upon the Effective Date, and will automatically renew on the same terms for additional one year terms. Blackboard may immediately terminate this Support Agreement if Customer does not pay the annual Support Fee within thirty (30) days of receipt of an invoice from Blackboard. Either party, at its option, may terminate this Agreement (i) by giving the other party thirty (30) days written notice prior to the expiration of the initial term or any renewal term; or (ii) if a material default by the other party is not corrected within thirty (30) days after receipt of a written notice of the default.

7.   <u>Fees</u>. Customer agrees to pay Blackboard all fees outlined herein for the initial term, and, for each renewal term ("Support Fee"). Blackboard must pay the Support Fee by no later than thirty (30) days upon receipt of an invoice from Blackboard. In addition, Customer agrees to 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 Support Services and (ii) any other expenses described in the Support Services. Blackboard will receive Customer's prior approval for expenses greater than $250 and upon Customer's request will provide reasonable documentation indicating that Blackboard incurred such expenses. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Agreement, including the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel, supplies and the like.

8.   <u>Annual Support Fee</u>: USD $5,000 annually

9.   <u>Software Errors</u>. "Software Error" shall mean a Reproducible Defect or combination thereof in the Software that results in a failure of the Software, when used in accordance with the Documentation (as defined in the Blackboard CourseInfo Enterprise Edition Software License Agreement). A reproducible defect means a defect that Blackboard can reproduce using that version of the Software that Customer downloads. Software Errors do not include those errors caused by (1) Customer's negligence, (ii) any modification or alteration Customer makes to the Software, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any

system other than the operating system specified in the Documentation, or (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software.

10. **Telephone Support**. Blackboard telephone support representative(s) are available to receive Customer's telephone calls twenty-four hours a day, seven days a week. Such telephone support representative(s) serve as Customer's interface with Blackboard, accept error reports and ensure that reported Software Errors are handled in a timely manner. Telephone support is limited to questions on product installation, configuration and usage and is available by calling 1-888-788-5264. Upon receipt of Customer's call, Blackboard will determine whether the Software Error relates to the Software, or is directly caused by the Software. If so, Blackboard will (a) create an error report, (b) assign a Severity Level, and (c) attempt to resolve the software error in accordance with the procedures and processes for error resolution below.

11. **Error Resolution**.

(a) **Severity Level 1** Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software Errors are as follows: (i) Software is down and will not restart; (ii) Software is not able to communicate with external systems; and (iii) Software is generating a data corruption condition. Blackboard will use its commercially reasonable efforts to resolve Severity Level 1 Software Errors on a twenty-four (24) hour basis until the Software Error is resolved. When a Severity Level 1 Software Error is reported, Blackboard will assign resources necessary to correct the Software Error. If access to the Software is required, Customer will provide a contact available to Blackboard and access to Customer's system and other software for the duration of the error correction procedures.

(b) **Severity Level 2** Severity Level 2 implies that the Software is running but that Customer is unable to use major portions of the Software. Some examples of Severity Level 2 Software Errors are as follows: (i) intermitted Software Error and (ii) major functional component is unavailable. Severity Level 1 Software Errors will take priority over Severity Level 2 Software Errors. Blackboard will assign appropriate technical resources to Severity Level 2 Software Errors as long as there are no Severity Level 1 Software Errors.

(c) **Severity Level 3** Severity Level 3 implies that the Software is operating close to normal but there is a non-critical Software Error. Severity Level 3 Software Errors may be fixed in the next scheduled Upgrade or Update or made available on Blackboard's Web site. BLACKBOARD will research Severity Level 3 Software Errors after Severity Level 1 and Severity Level 2 Software Errors. Blackboard may correct Severity Level 3 Software Errors in the next scheduled Upgrade or Update or make corrections available to Customer on Blackboard's Web site.

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

12. **Corrections**. Blackboard will make available through its Website at http://www.blackboard.com Corrections for the resolution of Software Errors.

13. **Upgrades**. Blackboard shall provide Customer such Upgrades as it provides to other customers of the Software from time to time.

14. **Updates**. Blackboard shall provide to Customer such Updates as it provides to other customers of the Software from time to time.

BLACKBOARD   BALL STATE UNIVERSITY

_____   _____
Signature   Signature
                                                           Tom Brinson, Acting Director of Purchasing
_____   Print Name and Title
Print Name and Title

Date: Date: June 30, 2000

ADDENDUM TO THE
BLACKBOARD MASTER AGREEMENT, MANAGED HOSTING SCHEDULE,
AND DIAMOND ENGAGEMENT PLAN ORDER FORM
BETWEEN
BALL STATE UNIVERSITY AND BLACKBOARD, INC.

This Addendum is entered into pursuant to and forms a part of the **Master Agreement, Managed Hosting Schedule, and Diamond Engagement Plan Order Form** (collectively, "Agreement") between **Ball State University** ("Ball State") and **Blackboard, Inc.** ("Contractor").

Ball State and Contractor agree that this Addendum supplements and supersedes the terms of the Agreement with respect to the matters addressed herein. In the event of any conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall govern.

Ball State and Contractor hereby agree, by signing below, that the Agreement is modified as follows:

1.   **Services.** Contractor shall provide the software and services as further described in the Agreement ("Services").

2.   **Confidential Information.** Contractor acknowledges that the Agreement may allow the Contractor access to certain confidential information, which may include, but is not limited to: names, phone numbers, and other personally identifiable information in paper and/or electronic format ("Confidential Information"). Contractor shall develop, implement, maintain and use administrative, technical, and physical security measures conforming to the professional industry standards and controls to preserve the integrity and confidentiality of all Confidential Information received from, or on behalf of, Ball State. Contractor shall report to Ball State any use or disclosure of Confidential Information not authorized by the Agreement, as amended by this Addendum, or otherwise authorized in writing by Ball State. Contractor shall make the report to Ball State not later than one (1) business day after Contractor learns of such use or disclosure. Contractor's initial report shall identify, to the extent then believed or known: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor had done or shall do to mitigate any deleterious effect of unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Subsequent to a breach, Contractor shall then make a final report to Ball State detailing the final resolution of these issues. Contractor shall at all times make best efforts to ensure that personnel having access to Confidential Information, including all Contractor employees, subcontractors, service providers, independent contractors, or agents employed or otherwise used by Contractor in connection with the Agreement, will be subject to and shall comply with all security and confidentiality provisions contained in the Agreement and this Addendum and all established security and privacy policies and practices of Contractor, which will be shared in their entirety with Ball State upon execution of the Agreement. In the event such policies are modified subsequent to the execution of the Agreement, then Contractor shall promptly notify Ball State in writing of such changes.

3.   **Family Educational Rights and Privacy Act ("FERPA") Compliance.** Contractor agrees to become familiar with and abide by the applicable limitations on disclosure of personally identifiable information from education records as set forth in The Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99). Pursuant to 34 CFR 99.33 (a)(2), the officers, employees, and agents of a party that receives education record information from an educational institution may use such information only for the purposes for which the disclosure was made.

4.   **Term and Termination.** The Agreement, as amended by this Addendum, shall be effective on the date Ball State begins using the Services ("Effective Date") and shall continue for five (5) years from the Effective Date, unless sooner terminated as provided herein or extended by mutual written agreement of the parties. Either Party may terminate the Agreement without cause upon one hundred and twenty (120) days written notice. In the event of a material breach, either party may immediately terminate the Agreement upon written notice, provided that the terminating party has given the other party at least thirty (30) days written notice of and opportunity to cure the breach. Upon Ball State's notice of termination due to Contractor's uncured material breach or in the case of Contractor's termination for convenience, Contractor shall immediately cease performing under the Agreement and Ball State shall receive a pro rata refund of any prepaid fees.

5.   **Return or Destruction of Confidential Information.** Upon termination, cancellation, expiration or other conclusion of the Services, Contractor shall:
        (a)   Return to Ball State or, if return is not feasible, destroy all Confidential Information in whatever form or medium it was received from or created on behalf of Ball State. This provision shall also apply to all Confidential Information that is in the possession of subcontractors or agents of Contractor. In such case, Contractor shall retain no copies of such information, including any compilations derived from and allowing identification of Confidential Information. Contractor shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of the Services. Within such thirty (30) day period, Contractor shall certify in writing to Ball State that such return or destruction has been completed.

(b)   If return or destruction of Confidential Information is not feasible, Contractor shall provide the protections of this Addendum to Confidential Information received from or created on behalf of Ball State, and limit further uses and disclosures of such Confidential Information, for so long as Contractor maintains the Confidential Information.

6.   **Work Standards.** Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If Ball State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to provide Services under the Agreement, then Ball State may request in writing the replacement of any or all such individuals, and Contractor shall make reasonable efforts to grant such request.

7.   **Warranties.**
   (a)   *General Warranty* – The Services provided by Contractor shall be of first quality and shall conform to advertised specifications.
   (b)   *Warranty of Security* – Contractor agrees to hold Confidential Information in strict confidence. The Services provided under the Agreement shall be implemented and maintained using applicable industry standard best practices. Contractor warrants that, to the best of its knowledge, the Services, content, products, and software provided to Ball State under the Agreement shall be free of any viruses, trojan horses, worms, or other harmful or malicious code, files, script, or programs. Contractor will inform Ball State of any infections immediately after becoming aware of such infection. Contractor shall be responsible for remedying any infection(s) and any liability resulting from such infection(s).
   (c)   *Pricing* – Contractor represents and warrants to Ball State that throughout the term of the Agreement, all of the pricing set forth in the Agreement shall be equivalent to or better than the pricing or terms granted by Contractor to any other customer whose Services are substantially similar to Ball State's. If Contractor announces a price reduction or makes available to other customers more favorable pricing, such pricing shall be made available to Ball State on the first day of the next annual service period, at which time both Contractor and Ball State reserve the right to terminate the Agreement upon thirty (30) day written notification.

8.   **Loss of Data.** Contractor shall be liable for the protection of Ball State data and shall employ appropriate backup and retention safeguards to prevent against loss or inadvertent destruction. In the event of loss of any Ball State data or records while such data or records are in Contractor's, its agent's or subcontractor's possession, Contractor shall be responsible for re-creating such lost data at Contractor's sole cost and expense.

9.   **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT OR THIS ADDENDUM, NO LIMITATION OF LIABILITY SHALL APPLY TO LIABILITY ARISING FROM (A) PERSONAL INJURY OR DEATH; (B) DEFECT OR DEFICIENCY RELATED TO THE NEGLIGENCE OR MISCONDUCT OF CONTRACTOR; (C) BREACH OF CONFIDENTIALITY; OR (D) CIRCUMSTANCES WHERE THE AGREEMENT OR THIS ADDENDUM PROVIDES A RIGHT TO INDEMNIFICATION.

10.   **Indemnification and Liability.** Contractor shall defend, indemnify and hold Ball State, its Trustees, officers, agents and employees harmless from and against direct loss, expense, damage, claim, demand, judgment, fine, charge, lien, liability, action, cause of action or proceedings of any kind whatsoever arising directly in connection with the negligence or omission of Contractor during the performance of Services or activities as outlined in the Agreement, except for damage, loss or injury resulting from Ball State's gross negligence or willful misconduct. Except as otherwise allowed by applicable law, Ball State shall not provide such indemnification to Contractor.

11.   **Insurance.** Contractor shall maintain industry standard levels of Worker's Compensation and Comprehensive General Liability Insurance. Upon request, Contractor shall provide a copy of the Certificate of Insurance to Ball State. Contractor shall provide at least fourteen (14) days written notification of any substantial reduction in coverage levels.

12.   **Penalties/Interest/Attorney's Fees.** Ball State will in good faith perform its required obligations and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law.

13.   **Taxes.** Ball State will not be responsible for any taxes levied on the Contractor as a result of the Agreement, provided Contractor has received a copy of all applicable tax exempt documentation.

14.   **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.

15.   **Independent Contractor.** Contractor's engagement by Ball State is only for the purposes and to the extent set forth in the Agreement and shall be as an independent contractor and not as an employee of Ball State, and Ball State shall not be responsible for the payment of any payroll taxes under federal, state or local law.

16.   **Governing Law and Venue.** The Agreement, including this Addendum, shall be deemed to have been executed and delivered in the state of Indiana, and shall be interpreted and construed in accordance with and governed by the laws of such state, regardless of the form in which the Agreement, or any part thereof, may be submitted for construction, interpretation or enforcement. Any disputes between the parties hereto shall be brought in the state or federal courts of Indiana. The parties agree that venue shall be in the state courts of Delaware County, Indiana or in the federal district court for the Southern District of Indiana, Indianapolis Division.

17.   **Name and Marks.** Contractor will not use the name, marks, or trademarks of Ball State, or the name of any member of Ball State's staff, without the prior written consent and approval of Ball State in each instance. Title to and ownership of Ball State's marks shall remain with Ball State. Contractor shall use the marks exactly in the form provided and in conformance with any trademark usage policies. Contractor shall not take any action inconsistent with Ball State's ownership of the marks and any benefits accruing from use of such marks shall automatically vest in Ball State.

18.   **Survival.** The respective rights and obligations of the parties under this Addendum shall survive the termination of the Agreement.

19.   **Legal Authority.** Contractor warrants that it possesses the legal authority to enter into this Addendum and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Addendum and to bind Contractor to its terms. The person executing this Addendum on behalf of Contractor warrants that he or she has full authorization to execute this Addendum.

Except as provided by the terms set forth herein, the Agreement shall remain unchanged and in full force and effect.
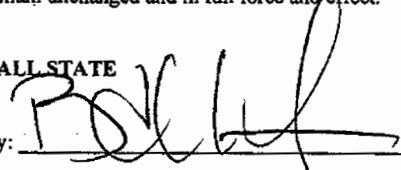
CONTRACTOR

By: _____

Printed Name: _____

Title: _____

Date: _____

BALL STATE

By: _____

Printed Name: _Bernard M. Hannon_

Title: _Associate VP for Business Affairs_

Date: _6/12/13_

Bb

Blackboard
AMENDMENT
TO THE BLACKBOARD STUDENT SERVICES SCHEDULE DATED JUNE 30, 2011
BETWEEN BLACKBOARD INC. AND BALL STATE UNIVERSITY

This Amendment to the Blackboard Student Services Schedule dated June 30, 2011 ("Agreement") between Blackboard Inc. ("Blackboard") and Ball State University ("Customer") is made as of the last signature date below ("Amendment").

The purpose of this Amendment is to extend Customer's Student Services for an additional two (2) months, from June 30, 2013 through August 31, 2013.

The parties hereby agree to the following terms regarding the use of the Blackboard Student Services:

1.   The pricing table in Attachment F entitled 'Fees' is hereby deleted in its entirety and replaced with the following:

Attachment F
Fees

Product Code	Product or Service Description	Total
SS APM ACCT	ACCOUNT MGMT	$1,666.67
SS SDI PARA ST	BB CRM SEAT - Includes 160 Seats	$16,000.00
SS-SDI-PARA-DPT	BB CRM DEPARTMENT	$1,666.67
SS SDI PARA ST	SS BUSINESS OBJECTS REPORTING	$750.00
SS-SDO-LMS-INC	LMS SUPPORT-INCIDENT - Includes 325 Incidents	$3,285.00
TOTALS:		$23,368.34

2.   The Parties agree that the fees indicated herein shall be due and payable within thirty (30) days from receipt of invoice.

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

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

BLACKBOARD   **CUSTOMER: Ball State University**

Signature   Signature

Tess Frazier, Vice President   Loren Malm
Print Name and Title   Print Name and Title
Date: Date:

DS
MC

Signed electronically
6/25/13

Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Ball State 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: (i) the Blackboard Master Agreement dated June 21, 2001, and (ii) the Ball State University Addendum to the Master Agreement and Blackboard Managed Hosting Schedule, both of which are 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 and Blackboard's acceptance of this Order Form, the Blackboard Master Agreement, and the Ball State University Addendum. Any additional, conflicting or different terms proffered by either party 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:

Product Code	Product or Service Description	Year 1 Initial Term Fee	Year 2 Initial Term Fee	Year 3 Initial Term Fee	Year 4 Initial Term Fee	Year 5 Initial Term Fee
AS-ASPDIA-1	DIAMOND ENGAGEMENT PL1 -BB HST	$134,625	$141,356	$147,010	$151,421	$155,963
AS-ASPADST-09	HST ADDL STORAGE 1TB	$39,000	$30,000	$30,000	$30,000	$30,000
	One Time Price Reduction	$9,000				
AS-SETASPDIA-NA	NA HST SETUP DIAMOND ENGAGE PL	$20,000				
	One Time Price Reduction	$10,000				
AS-ASPDIA-ADD-NA	NA ADD 7500 USERS HST DIAM ENG	$47,800	$37,548	$39,050	$40,221.33	$41,428.33
	One Time Price Reduction	$12,040				
AS-ASPDIA-ADD-NA	NA ADD 7500 USERS HST DIAM ENG	$47,800	$37,548	$39,050	$40,221.33	$41,428.33
	One Time Price Reduction	$12,040				
AS-ASPDIA-ADD-NA	NA ADD 7500 USERS HST DIAM ENG	$47,800	$37,548	$39,050	$40,221.33	$41,428.33
	One Time Price Reduction	$12,040				
AS-ASPCS-HENA	HOSTING CONTENT MGMT HENA	$28,800				
	One Time Price Reduction	$28,800				
AS-SETASPCS-NA	HST SETUP CONTENT MGMT NA	$10,000				
	One Time Price Reduction	$10,000				
AS-SETASPOS-NA	HST SETUP OUTCOMES NA	$5,000				
	One Time Price Reduction	$5,000				
AS-ASPOS-HENA	HOSTING OA HENA < 8K	$28,800				
	One Time Price Reduction	$28,800				
AS-SETASPSSL	HST SETUP SSL	$0				
AS-ASPSSL	HOSTING SSL	$500				
	One Time Price Reduction	$500				
	TOTALS:	**$281,905**	**$284,000**	**$294,160**	**$302,085**	**$310,248**

Licensing Renewal

Product Code	Product or Service Description	6/21/2013 - 6/20/2014	6/21/2014 - 6/20/2015	6/21/2015 - 6/20/2016	6/21/2016 - 6/20/2017	6/20/2017 - 6/21/2018
AS-LS-HENA05	COURSE DELIV HENA 15-25K	$94,128	$96,952	$98,891	$99,880	$100,879
AS-CCM-HENA05	CMTY ENGAGE HENA 15-25K	$46,746	$48,148	$49,111	$49,602	$50,098
AS-CS-HENA05	CONTENT MGMT HENA 15-25K	(12/22/2013-12/21/2014) $29,148	(12/22/2014 – 6/20/2015) $15,011	$30,622	$30,929	$31,238
AS-OS-HENA05	OUTCOMES HENA 15-25K	(12/22/2013-12/21/2014) $50,287	(12/22/2014 – 6/20/2015) $25,898	$52,832	$53,360	$53,894
	TOTALS:	**$220,309**	**$186,009**	**$231,456**	**$233,771**	**$236,109**
	Total Learn Software and Services:	**$502,214**	**$470,009**	**$525,616**	**$535,856**	**$546,357**

1. Initial Term: Unless otherwise specified in the Product or Service Description above, the Initial Term shall be five (5) years following the Effective Date.
2. Effective Date: June 21, 2013

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.
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.

1. All terms and conditions set forth in the attached Blackboard Managed Hosting Schedule shall be incorporated herein.
2. The Parties agree to include the following definition in the Agreement:
   a. "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.
3. **Blackboard Diamond Engagement Plan**
   - Includes hosting for Blackboard Learn™ Software and other software as provided in the Product and Pricing Summary
   - Includes Non-Production Test Environment, Staging Environment, and Service Delivery Team resources dedicated to Diamond Engagement Level clients, all described below.
   - Set-up Fee includes service for each installation of the Software or update/ upgrade requiring a revised or new hardware and/or software configuration.
   - Initial Term Annual Fee includes service for up to 30,500 Active Users* and **800 GB plus an additionally purchased** 1TB of storage and **20 Mbps** of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service.
   - Additional storage and bandwidth are separately charged
   - Additional Service units for 7,500 additional Active Users*, additional 1 Mbps bandwidth and 100 GB additional storage are separately charged.
   - Non-Production Test Environment
     o Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment designed to handle no more than 20 concurrent users at a time.
     o Includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and, as an option, grants Customer full root access to servers.
     o Is not designed to fully replicate or clone the production environment in terms of physical infrastructure or data set
     o By its nature DOES NOT meet the Service Level specifications under Exhibit A, and therefore, DOES NOT qualify for Service Level Guarantees.
   - Staging Environment
     o Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
     o Includes **100 GB** of storage (not including production clones).
     o Is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
     o Per Customer request, Managed Hosting will provide up to four (4) clones of the Customer production data per year. This cloned data will not be backed up.
     o 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.
     o 99.7% Availability guarantee as described in Service Level specifications in Exhibit A applies for all Staging Environments
   - Service Delivery Team Resources
     o Initial term annual fee includes Diamond 1 level monthly utilization of dedicated Service Delivery Team staff resources.
     o Customer will have ongoing support from a Service Delivery Team, consisting of named Service Delivery Manager (SDM) and Service Delivery Engineer (SDE) resources dedicated to Platinum and Diamond Engagement Plan clients only, with an aggregate team resource utilization rate averaging 10 hours per week. The SDM resource will be dedicated to Customer in terms of the management, communication and documentation responsibilities outlined below and the SDE resource will be dedicated to providing a premium level of technical support (Tier2 and Subject Matter Expertise on Blackboard Learn and a number of other Blackboard products). The Service Delivery Team will provide monthly Service Delivery Team resource utilization report to Customer, providing aggregate team resource consumption time detail.
     o Customer shall have the right to require the Blackboard to replace the personnel whom the University reasonably and in good faith deems to be unfit or otherwise unsatisfactory to perform duties, responsibilities or obligations hereunder, provided that the University specifies its reasons, in writing, to Blackboard prior to any removal of any personnel hereunder. Without limiting the foregoing, during the forty-eight (48) business hours immediately following notice to Blackboard of such request for replacement, designated representatives from each party shall meet as soon as practicable to discuss the request and any alternative solutions. Race, gender, age, religion, national origin, and other legally discriminatory characteristics and any other unlawful reason shall not be valid grounds for any such request by the Customer.
     o For purposes of this agreement the SDM and SDE assigned to the Customer are considered "Key Personnel" and provided the named individuals remain in the employ of Blackboard in the same or similar roles and Blackboard is otherwise reasonably able to do so (understanding that the individual may have been replaced due to health or other personal reasons) Blackboard shall not remove or temporarily reassign such Key Personnel. Where Key Personnel must be reassigned for health or personal reasons, or where the individuals are no longer employed by the Blackboard, then Blackboard will make reasonable effort to provide at least thirty (30) days prior written notice of such a change and work with Customer to select a suitable replacement.

     o Roles and responsibilities of the SDM will primarily fall under the following three objectives: management, communication and documentation.
       A. **Management** – Plan and project manage Customer's Managed Hosting infrastructure implementation, growth, and planned and reactive changes. To meet this objective, the SDM's tasks may include, but not be limited to, the following:
       - Central Point of Contact and Escalation: The SDM will be the central point-of-contact within Blackboard Managed Hosting and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Customer's hosted environment and act as a coordinator within Blackboard for all operational and support issues on Blackboard products that Customer owns.
       - 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 Diamond Engagement Plan Tier-1 Support Team, SDE resources and Managed Hosting Operations and Engineering, Blackboard Consulting Project Management and other elements of Blackboard as needed to deliver and manage Customer's requirements
       - Managed Hosting Support Activities: Manage directly support activities with hosted Blackboard applications and infrastructure, leveraging Tier-1 team dedicated to Service Delivery Team and SDE resources, including but not limited to:
         o Direct oversight of ticket prioritization and escalation within Blackboard
         o Risk assessment of support activities focused on impact analysis and evaluation based on updates and upgrades

- 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 and 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 SDM's tasks may include, but not be limited to, the following:
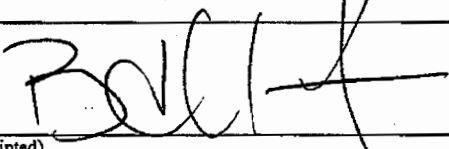
- Contact: Be fully dedicated to Customer's Systems Administrators and Operations staff through a dedicated phone number/email/instant messenger (or other contact method) for day-to-day Managed Hosting support requests and status reporting
- Project Communication: Build two-way communication processes in coordination with Customer for project management, support issue review and 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

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

- Operations and Plans: Develop detailed documents including Escalation process, Operations Handbook, Infrastructure overview and implementation plans
- Regular Status Reporting: Document and provide weekly reports on all project plans and updates, and post-meeting (conference calls) minutes to Customer
- Monthly Reporting: Document and provide monthly updated reports to Customer on items including but not limited to actual performance metrics against Service Level Agreement (SLA) requirements, monthly utilization rate of the Service Delivery Team resources, system utilization information and other relevant materials. Service Delivery Team will make best effort to customize the monthly reports per Customer's preferences.
- 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: Specifically against contractual SLA requirements, provide monthly reports on system utilization and performance, including host latency graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Customer, a standard set of reporting for overall systems performance and management.

4. Notes:
"95th Percentile calculation" means a 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. Additional Storage and Bandwidth Annual Fees are separately charged, fees for which are agreed upon as indicated in the attached rate schedule.

Customer: Ball State University	Blackboard ("Blackboard")
Signature	Signature
Name (printed) Bernard M. Hannon	Name (printed) TESS FRAZIER
Title (printed) Associate VP for Business Affairs	Title (printed) VICE PRESIDENT
Date 6/12/13	Date

Blackboard Managed Hosting Rate Schedule (for Ball State University)

The Parties agree that Customer shall receive pricing below for the duration of the contract.

Storage:

100 GB	$13,125
250 GB	$18,750
500 GB	$22,500
1 TB	$30,000

Bandwidth overage:

5 Mbps - $5,000

Additional Service units:

$35,760 Each

BLACKBOARD MANAGED HOSTING SCHEDULE

THIS BLACKBOARD MANAGED HOSTING SCHEDULE ("MANAGED HOSTING SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER TERMS (THE "AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY PURCHASE BLACKBOARD MANAGED HOSTING SERVICES AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE 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 **"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.

1.3 **"Hosted Software"** means the Software licensed to Customer pursuant to the Software Schedule for which Blackboard is to provide the Managed Hosting Services.

1.4 **"Managed Hosting Services"** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated on the Order Form and Exhibit A to this Managed Hosting Schedule.

1.5 **"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.

1.6 **"Software Schedule"** means the Software Schedule between 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.

1.7 **"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.

1.8 **"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 the Order Form is not covered by Service Level specifications described in Exhibit A.

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, such as through a data center or ISPs. 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. 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 the Master Terms as amended by the Ball State University Addendum and as provided herein.

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 A; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit A. The Service Levels (e.g. Security, Power, Network, Startup, and Initial Access Date) detailed in Exhibit A may be modified from time to time by Blackboard, upon notice to Customer, but in no event shall any modifications made lessen the service or support 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 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 provided that Customer has been notified of such alleged violation of these terms and conditions and given reasonable period to cure or object to such alleged violation; (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 provided Customer has been notified of such alleged violation of these procedures, technical standards or protocols and given reasonable period to cure or object to such alleged failure to comply; 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 regional telecommunication or digital transmission links and regional Internet slow-downs or failures which are beyond the control of Blackboard and any data center and service provider Blackboard or its contractors may use for data center connectivity, up through a Tier-one Internet backbone connection. 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 technical specifications and performance parameters set forth in Exhibit A. 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 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 per annual term at no charge to Customer; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the Managed Hosting Services, Customer agrees to pay Blackboard its then-standard applicable rates for such restoration services.

2.5   **Data Archiving and Cleanup Policy.** Blackboard will undertake commercially reasonable efforts to accommodate Customer's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Customer's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a database query. Blackboard will make reasonable efforts to perform up to four (4) data archiving and cleanup related tickets per Customer per year (the tasks can be grouped together as one support ticket to be addressed at once per semester or per quarter). After four (4) free services per year, Blackboard reserves the right to charge a flat fee of $1,000 per ticket created for data archiving and cleanup related tasks. If Customer requires Blackboard to batch archive data on to a hard-drive and ship to Customer, Blackboard will charge $200 for the cost of each of 2 TB hard-drive and shipping required. Customer may ship the hard drive back to Blackboard for reuse in the next such task, in which case Customer shall not be charged an additional fee.

2.6   **Additional Storage and Bandwidth Policy.** As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Customer's storage and bandwidth usage. In the event Customer has exceeded contracted storage and/or contracted bandwidth 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, which shall not exceed those in the attached rate schedule.

2.7   **Additional Managed Hosting Services.** In the event that Customer desires to receive Managed Hosting Services in addition to the particular services specified in the Order Form, including, by way of example, incremental storage capacity, 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 the duration of this Managed Hosting Schedule or such purchase order, whichever is shorter. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Customer with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

2.8   **IP Addresses.** Any IP addresses assigned or allocated to Customer by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable 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.

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 anything to the contrary in this Agreement (including 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, Customer agrees promptly to remove the Hosted Software from such computer server(s). In the event Customer confirms an intention to Blackboard that it intends to migrate away from the Blackboard Managed Hosting Services, Customer shall have the right to install and operate the then-current version of the Hosted Software as may be reasonably necessary to prepare, execute, and complete the migration away from the hosted environment. 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 2.7. 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; however nothing in this section or agreement will prevent the Customer from employing third-party support services to assist with Customer student, faculty, or staff use of the Hosted Software and Blackboard acknowledges such third-party personnel may in the course of providing such assistance have temporary access to the Hosted Software such as may be necessary to provide such support services. 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 the Customer Content may be accessed but not copied or moved to 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 its receipt of the Managed Hosting Services, Customer shall, during the Initial Term (as defined below) pay to Blackboard: (i) an annual fee in an amount set forth in the Order Form with respect to the particular Managed Hosting Services provided under this Managed Hosting Schedule, which fees shall be due and payable upon execution of the Order Form; as well as (ii) any other fees otherwise required by this Managed Hosting Schedule (for additional services, additional bandwidth, or additional users). In the event that Customer requests additional Managed Hosting Services as contemplated in Section 2.7, 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, unless in accordance with the Termination for Non-Performance clause.

4.2   Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Customer becomes more than sixty (60) days past due in regards to payment of Customer's Blackboard Learn license or Managed Hosting fees, provided that Blackboard notifies Customer of the intent to suspend at least twenty (20) days in advance by all reasonable means including certified letter, phone, and fax. The act of issuing a bona fide purchase order for the outstanding renewal balance less any disputed amounts shall toll any suspension. The act of suspending Managed Hosting Services does not, in itself, constitute a termination or suspension of this Agreement nor does such suspension of Managed Hosting Services alleviate Customer's obligation to pay past, current, or future charges incurred hereunder. Once Customer pays in full the past due fees or issues a bona fide purchase order for the same less any disputed amounts, Blackboard will resume the Managed Hosting Services in accordance with this Agreement in a reasonable amount of time. Should any disputes arise with respect to this Agreement, Blackboard and the Customer agree to act immediately to resolve such disputes. Blackboard agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement not affected by the dispute. For example, a bona fide dispute concerning payments or resolution of invoices will not result in a work stoppage or suspension of hosting services. Should Blackboard fail to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the Customer or Blackboard as a result of such failure to proceed shall be borne by Blackboard and Blackboard shall make no claim against the Customer for such costs.

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. In the event of a termination for cause due to Blackboard's breach of this agreement, the Customer shall not be liable for any early termination fee or for charges for the period after the effective date of such termination and in the event of advance fees, the Customer shall be entitled to a pro rata refund through the date of final termination. In no event shall Customer be liable for payment of any fees for periods extending beyond the anniversary date immediately following the date of termination. 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 five (5) years (the "Initial Term") or as otherwise specified in the Order Form. Thereafter, the Managed Hosting Schedule may be renewed by mutual written agreement of the parties for successive one (1)-year periods (each, a "Renewal Term" and together with the Initial Term, the "Term"), for Customer's then-current usage level. Any increase in pricing for each Renewal Term shall not exceed the rates of the immediately preceding annual period by an amount great than the lesser of: (a) 2.7% (two point seven percent), (b) the rate of annual inflation as reflected by the Consumer Price Index - Urban for all US Cities, unadjusted ("CPI-U"), or (c) the rate increase Vendor charges to its general customer base. Prices for subsequent terms shall not be increased more than once every three years.

Upon the expiration of this Agreement or its termination by either party ("Transition Notice Date") for any reason, including the breach of this Agreement by the other party, Blackboard shall provide reasonable assistance to Customer, for an additional fee based on a pro-rated monthly fee based on the rates currently being charged to Customer at the time of termination, to develop a plan for the orderly transition of all services provided by Blackboard under this Agreement (the "Transition Plan") such that after transition Customer will be able to resume services that were being performed by Blackboard, or a third party of Licensee's choice can take over performance of services in place of Blackboard as may be determined by the customer. Regarding the Transition Plan:

- Such Transition Plan shall be developed by Blackboard in conjunction with Customer.
- The Transition Plan shall set forth the target date on which a cut-over from Blackboard's system to a new system will occur (the "Target Cut-Over Date"). Blackboard shall continue to provide to Customer all Services required by Customer during the Transition Period under existing rates.
- The parties shall endeavor to complete the cut-over from Blackboard's system to a new system, to the extent possible, by the Termination Date, or within such time period as requested by Customer in serial thirty (30) day extension terms. For each thirty (30) day extension period, hosting fees including established rate escalators, shall apply for each extension period based on the rate as provided under this agreement.
- Blackboard shall not suspend service during this period provided Customer continues to make payments as provided herein.

Subsequent to the completion of the final cut-over and upon final 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.

EXHIBIT A

MANAGED HOSTING SERVICES SPECIFICATIONS

SERVICE LEVELS:

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.

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.

HOST LATENCY:

The Managed Hosting Service is designed to provide a user experience free from excessive web page load latency. Blackboard recognizes Customer utilizes the Blackboard Learning Management System to deliver education, which is the primary product of the institution, and excessive latency within Blackboard Learn may have significant and far-reaching consequences directly impacting the Customer's mission of the delivering education to students. While this acknowledgment is not an agreement by Blackboard to reimburse customer for consequential damages, Blackboard does agree to take all reasonable actions commensurate with then-prevailing industry standards for enterprise-class mission-critical environments such as may be necessary to prevent ongoing periods of excessive latency and to remediate excessive latency promptly.

Latency is measured and remediated in two different ways. First, an objective standard tied to a service credit and second by a more subjective method remediated by specific actions set forth below. These are independent measures with independent triggers, requirements, and outcomes.

1. **Measured Latency Credit:**
   Blackboard tracks objective host latency by measuring the time between the first packet of data transmitted from Customer reaches the external firewall of the Blackboard datacenter environment and when the first packet of data responding to such transmission leaves the external firewall of the Blackboard datacenter environment. Failure to meet this "measured latency" service level occurs when, during any calendar day, the average Host Latency for such calendar day is greater than two (2) seconds. Latency measurements will not be measured during scheduled maintenance windows. Host Latency excludes any latency incurred on the Customer site or when traversing the internet between the Customer site and the Blackboard datacenter environment. Upon Customer's request, Blackboard will provide a report generated by a commercial tool showing Host Latency for the preceding 30 days.

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

Time of Latency (per calendar day)	Service Credit
>=2	1 days of service fees credited (i.e. 1/30 monthly fees)

   In order to receive any service credit for Host Latency, Customer must notify Blackboard within forty-five (45) days from the time Customer becomes eligible to receive a service credit, which is the end of each calendar month. Failure to comply with this requirement will forfeit Customer's right to receive a service credit.

2. **General Web Page Latency:**
   The parties recognize Internet users generally expect web pages to respond without perceptible delay during normal usage. Although on occasion a complete web page may take more time to fully load, end-users will often abandon a web site or begin calling support if web pages load times continue to appear sluggish in response to clicks or other user actions. Customer and Blackboard will work together to monitor the user experience and end user latency so that latency does not become excessive, and in the event latency becomes or is trending towards being excessive, Blackboard and BSU will utilize best efforts to resolve excessive latency. General web page latency does not apply to situations such as large file transfers where progress is clearly indicated, unless delay during such actions becomes unreasonable. Additionally, Blackboard shall not have any responsibility to remediate latency which is the fault of the Customer site or client, or due to network latency outside the control of the Blackboard datacenter environment.

   For purposes of this section, General Web Page Latency will be evaluated by reviewing the "time-taken" field of a Microsoft IIS webserver, the %D logging field of a Linux based web server, or another equivalent metric recorded in the local web server access logs. Blackboard will make such logs available to Customer through an appropriate method on a least a daily basis, and Customer will be responsible for notifying Blackboard should the review of these logs indicate the environment appears to be exhibiting or trending towards excessive latency.

Where Blackboard and Customer agree excessive latency exists or is trending towards an excessive level, Blackboard and Customer will work together to take one or more of the following actions as may be necessary to remediate the latency issue:

    a. Performance tuning of the hardware or software, databases, network, application, or other component of the environment.
    b. Isolating and correcting poorly performing features, modules, or components.
    c. If necessary temporarily disabling non-essential components, especially if they are non-standard and clearly responsible for poor performance.
    d. Adding additional front-end or back-end sever capacity, RAM, CPU, or other component as may be reasonably required to provide a high-quality customer experience.
    e. Examining logs to identify egregious end-user actions, such as asking large numbers of students to download very large files simultaneously and remediating these actions through Customer involvement.
    f. Engaging internal Blackboard senior performance experts, third-party consultants, or vendor-specific services as may be necessary to identify the source of the excessive latency, if it is not known or cannot be readily remedied through other means.

In the event of disagreement between Blackboard and Customer regarding the existence, severity, or nature of excessive latency, Blackboard and customer agree to engage a third-party to test and review the customer experience and investigate the underlying cause. The third party will be agreed upon by the parties but generally will be a primary-source vendor who will render an opinion regarding the existence, nature, and underlying cause of the excessive latency. The third-party must be free from undue influence or predisposition, and full results of the review will be shared between Blackboard and Customer. A remediation plan will be implemented incorporating recommended actions using the best efforts of the parties.

If the above steps are taken and a dispute remains regarding promptness or sufficiency of remediation, failure to implement third-party recommended actions, or ongoing disagreement regarding matters not otherwise covered within this section a representative from the executive leadership of Customer and Blackboard will discuss the issue and agree upon a course of action. The parties will make every reasonable effort to promptly agree however in the event no agreement can be reached, Customer may make a final demand to be reviewed by the independent third party. Upon approval of the final demand by the independent third-party, Blackboard will take the steps set forth in the final demand.

The parties agree to be diligent in taking the steps outlined in this section and that failure to do so constitutes a material breach of duty under this agreement, commensurate with the severity and impact of the excessive latency. For example, extremely slow response which is generating a significant number of user calls requires prompt action, whereas a slow trend of very slightly increasing latency will generally not require immediate or ongoing response.

AVAILABILITY/SERVICE CREDIT:
The Managed Hosting Service is designed to provide a user experience free from unscheduled downtime. Blackboard recognizes unscheduled downtime may have far-reaching consequences since downtime prevents the Customer from delivering education. While this acknowledgment is not an agreement by Blackboard to reimburse customer for consequential damages Blackboard does agree to take all reasonable actions commensurate with then-prevailing industry standards for enterprise-class mission-critical environments such as may be necessary to monitor and prevent unscheduled downtime, to resolve any unscheduled downtime quickly, and to alert and communicate with Customer regarding such events. For purposes of this section, an "Incident" means any significant disruption in the function of the Managed Hosting Services including the Blackboard LMS and other hosted components rendering them less than fully available for all users, but does not include isolated transitory services gaps of less than fifteen minutes provided such gaps are not recurring frequently or issues outside of Blackboard's control (e.g. regional ISP outage) or *force majeure* circumstances. In a like manner, an ongoing Incident is not broken or halted by similar transitory periods of Services availability.
In the event of an Incident Blackboard will promptly notify Customer's designated contacts via email and begin remediation efforts. The parties agree to remain diligent in taking the steps outlined in this section and failure to do so constitutes a material breach of this agreement. The additional measures described below are dependent upon the Incident length and cumulative downtime within any 30 day period:

1. **Level One Remediation: At least fifteen minutes and less than one hour.**
Blackboard will schedule a conference call with Customer to take place within two business days of the Incident and will provide a verbal accounting of the Incident including a root cause and remediation plan with specific dates and checkpoints, or accounting of the steps taken if remediation is complete. If at the time of the call the root cause has not been confirmed, Blackboard will indicate what further actions will be taken to determine the root cause and remediate the impact of reoccurrence. Blackboard will provide Customer at least daily updates via email or otherwise agreed with Customer until either final closure of the issue or exhaustion of reasonable efforts to determine a root cause, and at that time provide a final summary of events, steps taken, and resolution.

2. **Level Two Remediation: At least one hour and less than four hours, or three incidents.**
    a. **Additional Immediate Actions:** Should a single Incident reach one hour of downtime and remain ongoing, Blackboard will assemble a team of senior named technical experts who will continue to work to the problem 24/7/365 until the Services are fully operational. A Blackboard hosting manager will contact Customer's designated Sponsor or designee via phone within thirty minutes after reaching one hour and indicate the nature of the outage to the extent known, the steps being taken to resolve the issue, an expected resolution time if known, and a named contact who will remain with the problem until resolved or relieved. Email updates will occur at least every sixty minutes until Services are fully restored and confirmation obtained from the Customer Blackboard response can be suspended.
    b. **Follow-Up Action:** Blackboard will schedule a conference call with Customer and a Blackboard technical lead to take place within two business days of reaching one hour of cumulative Incident downtime or three separate Incidents. Blackboard will provide a verbal accounting of the Incident including steps taken to that point and will appoint an "Incident Owner" through final resolution. Within 24 hours of the call, the Incident Owner will deliver a written plan for a root cause discovery and mitigation of reoccurrence, with specific dates and times, checkpoints, and actions. The Incident Owner will email status updates at least daily or otherwise agreed with Customer through final Incident closure.
    c. **Final Report:** Upon full and final resolution and implementation of the plan, or exhaustion of reasonable efforts to determine a root cause, the Incident Owner will provide a report to Customer and the Blackboard hosting manger formally closing the issue, detailing an accounting of the steps taken to resolve the problem, and steps taken to prevent reoccurrence.

3. **Level Three Remediation: At least four hours and less than eight hours, or six incidents.**
    a. **Additional Immediate Actions:** A Blackboard hosting manager will contact Customer's designated Sponsor or designee via phone not more than fifteen minutes after reaching four hours of downtime. The Blackboard hosting manager will be copied on all subsequent e-mail updates.
    b. **Follow-Up Action:** The conference call described in the previous section will include the Blackboard hosting manager and will occur within two business days of reaching four hours of cumulative Incident downtime or six separate Incidents. The named "Incident Owner" will be a senior technical lead or manager. The Incident report and plan will describe the underlying process and technical factors leading to the Incident, set forth steps taken, and will detail specific timetables, actions, and named owners for subsequent steps to prevent the Incident from reoccurring. The plan will be signed by the Incident

Owner and a Blackboard hosting manager. In addition to the daily status reports described in the previous section a summary update will be provided at least weekly through final Incident closure signed by a Blackboard hosting manager.

c. **Final Report:** The final report will be as in the previous section but will also be signed by a Blackboard hosting manager and will include a clear acknowledgment downtime at this level may have serious consequence for Customer, and continued occurrences of downtime at this level may constitute a substantial breach of the Agreement. The report will be delivered to Customer and Blackboard Hosting Services Owner within ten days of the conference call.

4. **Level Four Remediation: At least eight hours and less than fifteen hours, or twelve incidents.**
   a. **Additional Immediate Actions:** Should an Incident reach eight hours of downtime and remain ongoing:
      i. The Blackboard Hosting Services Owner will contact Customer's designated Sponsor or designee via phone not more than fifteen minutes after reaching eight hours of downtime. All relevant Blackboard Executive Leadership including at minimum the executive having overall responsibly for managed services will be notified via phone, text, and any other then-current Blackboard emergency communication protocols the Incident is ongoing and is severely impacting Customer operations. Updates to all parties will occur at least every 60 minutes through relevant emergency communication channels. The Blackboard Hosting Services Owner will stay in periodic phone contact with the Customer's designated Sponsor or designee until the Services are fully operational.
      ii. Blackboard will activate internal emergency protocols treating the outage as a corporate-level emergency, and will engage relevant internal and external experts, service providers, and vendors all on an emergency basis. Efforts will continue at this level until Services are fully operational.
   b. **Follow-Up Action:** Upon reaching eight hours of cumulative Incident downtime or twelve separate incidents:
      i. The Incident report and plan will be as described in the previous section, but will acknowledge downtime at this level is severely disruptive to Customer operations, and that continued occurrences of this level of downtime will constitute a substantial breach of the agreement with Customer.
      ii. Blackboard will schedule a video conference with Customer's relevant leadership, a member of Blackboard's Executive and Technical Leadership, and the Blackboard Hosting Services Owner to present the plan and progress. The video conference will take place no more than 10 days of reaching eight hours of cumulative Incident downtime or eight separate Incidents. Customer may request reasonable additions to the plan, and the final plan will be signed by the Blackboard Hosting Services Owner and the Blackboard Executive. The Blackboard Hosting Services Owner will serve as the Incident owner for purposes of remediation and will provide subsequent written status reports as described in the previous section, which will be delivered to Customer and Blackboard Executive Leadership.
   c. **Final Report:** The final report will be as in the previous section but will also be signed by the Blackboard Hosting Services Owner and will prominently acknowledge the fact downtime at this level is severely disruptive to Customer's operations and continued occurrences of this level of downtime will constitute a substantial breach of the agreement. The report will be delivered to Customer and Blackboard Executive Leadership within 15 days of the conference call.

5. **Level Five Remediation: At least fifteen hours and less than twenty-four hours, or fifteen incidents.**
   a. **Additional Immediate Actions:** Should an Incident reach fifteen hours of downtime and remain ongoing, the actions are a continuation of emergency communication and remediation with Customer and Blackboard executives as described above. Communications and reports will acknowledge downtime at this level constitutes a grave impact to customer operations, and that any recurrence of this level of downtime constitutes a substantial breach of the agreement with Customer.
   b. **Follow-Up Action:** Upon reaching fifteen hours of cumulative Incident downtime or fifteen separate incidents Blackboard will draft a formal written incident report and remediation plan, schedule the video conference, present and receive feedback and approval from Customer for the draft plan, and the Hosting Manager will serve as Incident owner as above. Before final sign-off on completion of the remediation plan however, Blackboard will engage Third-Party review of the relevant portion or portions of the environment and verify the sufficiency of the remediation plan.
   c. **Final Report:** The full and final report will be provided as described in the previous section, and will also include the final Third-Party reports validating execution of the plan. The final report will also prominently acknowledge downtime at this level constitutes a grave impact to customer operations, and recurrences of this level of downtime will constitute a substantial breach of the agreement with Customer. The Incident Owner will provide at least weekly status reports, and the final report will be delivered to Customer and Blackboard Executive Leadership within 30 days of the conference call.

6. **Level Six Remediation: Twenty-Four hours or more, or eighteen incidents.**
   a. **Additional Immediate Actions:** Should an Incident reach twenty-four hours of downtime and remain ongoing, the actions are a continuation of emergency communication and remediation with Customer and Blackboard executives as described above. Communications and reports will acknowledge downtime at this level has effectively halted Customer's ability to operate and unless resolved will cause irreparable harm to the Customer for which no adequate remedy may be possible, and that any recurrence of this level of downtime constitutes a substantial breach of the agreement with Customer.
   b. **Follow-Up Action:** Upon reaching twenty-four hours of cumulative Incident downtime or eighteen separate incidents Blackboard will draft a formal written incident report and remediation plan, schedule the video conference, present and receive feedback and approval from Customer for the draft plan, and engage Third Party review as described above.
   c. **Final Report:** The full and final report will be as described above but will be delivered on-site with the Customer. The report will prominently acknowledge downtime at this level constitutes a grave impact to customer operations, effectively halts Customer's ability to operate, and any recurrence of this level of downtime constitutes a substantial breach of the agreement with Customer. The Incident Owner will provide at least weekly status reports, and the final report will be delivered to Customer and Blackboard Executive Leadership within 30 days of the conference call.

7. **Frequent Transitory Service Gaps:** Blackboard acknowledges frequently recurring service gaps can be highly disruptive, even if transitory in nature such as gaps of less than two minutes; core LMS functions such as test taking, collaborative learning, and classroom use are a few examples. In the event transitory disruptions become frequent, such as lasting 30 seconds and occurring ten times in one day, or lasing five minutes and occurring five times in a week, or any other recurrence which is reasonably construed to have an ongoing impact on Customer operations, Blackboard and Customer will agree upon a remediation level commensurate with the cumulative Customer impact and likelihood of recurrence.

8. **Reports And Communications:** Blackboard will make available to Customer all relevant information regarding monitoring configurations, logs, monitoring history, and any other relevant data to conduct an "after incident review" to discuss root cause and as may be necessary to evaluate and recommend adjustments to monitoring parameters, response windows, or other areas. All reports and communications will be complete, candid, and provide accurate technical and procedural details regarding the cause of the unscheduled outage. The degree of formality for the report shall be commensurate with the amount of downtime or disruption associated with the unscheduled downtime.

9. **Third Party Engagement:** The "Third Party" described above will be agreed upon by the parties but generally will be a primary-source vendor such as Oracle, Microsoft, Cisco, HP, however the parties will agree on the most relevant vendor or vendors. If appropriate more than one Third-Party may be used. The vendor or vendors will render an opinion regarding the existence, nature, and underlying cause of Incident or Incidents. The Third-Party must be free from undue influence or predisposition, and full results of the review will be shared between Blackboard and Customer. The remediation plan will be implemented incorporating recommended actions using the best efforts of the parties. The Third Party or parties will provide a final written evaluation of the plan's execution

which will be provided to Blackboard and Customer. In the event additional recommendations are made which are reasonable, Blackboard will implement such additional recommendations.

10. **Dispute Regarding Response Or Remediation:** If the above steps are taken and a dispute remains regarding promptness or sufficiency of remediation, failure to implement third-party recommended actions, or ongoing disagreement regarding matters not otherwise covered within this section a representative from the executive leadership of Customer and Blackboard will discuss the issue and agree upon a course of action. The parties will make every reasonable effort to promptly agree; however, in the event no agreement can be reached, Customer may make a final demand to be reviewed by the independent third party. Upon approval of the final demand by the independent third-party, Blackboard will make reasonable efforts to take the steps set forth in the final demand.

11. **Unreasonably Excessive Downtime:** Within any given ninety day period, if the Customer experiences twenty-four or more separate Incidents of at least Level One or greater, or fifteen or more Level Two or greater incidents, or six or more Level Three or greater incidents, or three or more Level Four or greater incidents, or two or more Level Five or greater incidents, or any single incident in excess of ninety-six (96) hours, this will be considered a substantial breach for which the University may terminate this agreement as provided herein. A right to terminate under this section shall remain effective for six (6) months.

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.

MONITORING AND PERFORMANCE:

a) **Services Monitoring:** Blackboard will utilize an alerting system which will at minimum perform periodic verification checks to ensure the all services are operating within normal parameters and are fully available to the Customer. 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, except for scheduled maintenance and required repairs, in advance of which Customer shall be notified by email. Blackboard will employ monitoring to discover and alert anomalies regarding the health of the services and promptly respond to potential performance or stability events. Blackboard and Customer agree the goal will be to detect and resolve issues before they become service disruptions, and as such Blackboard and the Customer will maintain appropriate technologies, staffing, procedures, and an ongoing level of effort commensurate with then-current industry best practices for mission-critical high-availability services. 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.

b) **Monitoring Reports:** Blackboard will make network performance reports available to Customer via Service Delivery Manager, upon request. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment. In addition, upon request by Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month.

c) **Monitoring Configuration:** Blackboard will work with the Customer to ensure services monitoring is optimally configured and is providing full and accurate availability information. Blackboard acknowledges the crucial importance to Customer in maintaining real-time situational awareness of the services, and will include Customer in automated e-mail or other alert messages generated by the Blackboard's monitoring systems to the extent reasonably possible. In the event the monitoring systems used by the Blackboard cannot be configured to accommodate the Customer's needs, or should Blackboard determine such configuration is undesirable, Blackboard will not impede Customer from implementing a separate monitoring and alerting system (provided such system or alerting does not involve any server agent or Blackboard installed agent, or any additional installed components on the Blackboard servers) and will work collaboratively with the Customer to facilitate operation, such as by arranging an account for services checks without access or load charges provided the Customer's own monitoring is configured and performed in a commercially reasonable manner.

d) **Blackboard Confidential Information:** 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. However, neither this section nor anything in this Agreement to the contrary shall prevent Customer from discussing or sharing reports or information which Customer may create or assemble with institutional peers or support.

ONGOING:

a) **Scheduled Maintenance:** Blackboard will use diligent efforts to announce scheduled maintenance, and in any event must arrange scheduled maintenance with the Customer at a minimum of seventy-two (72) hours in advance unless otherwise agreed prior to a particular individual maintenance incident. "Scheduled Downtime" is defined as downtime which meets these criteria. Prior to the start of any scheduled maintenance, Vendor must notify the University that work is about to begin, and when complete also so notify the University. Vendor will be responsible for testing basic functionality to ensure Services are operating normally subsequent to any maintenance or change which the Vendor has implemented. All unscheduled outages require immediate alerts to the University with periodic (at least hourly) updates regarding status. Notices and alerts under this section will be sent via e-mail and follow a common format and originate from a common e-mail address. 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.

b) **Hosting Hardware:** 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.

c) **Bandwidth Usage:** Blackboard collects bandwidth usage and web hit statistics on all Customer-hosted machines and will provide this information to Customer and as otherwise provided in this Agreement.

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://insitutionname.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 a 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.

Blackboard

This Blackboard Order Form ("Order Form") by and between **Blackboard Inc.** ("Blackboard") and **Ball State University** ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form, together with the Blackboard Master Agreement ~~located~~ dated June 21, 2001, and the June 2013 Ball State University Addendum to the Master Agreement and Managed Hosting Schedule, which are hereby at ~~http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx~~ 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:

Qty	Product Code	Product or Service	Initial Term Period #1 Effective Dates	Initial Term Period #1 (USD)
		A- Software & Services Product and Pricing Summary		
1	AS-ASPDIA-1	DIAMOND ENGAGEMENT PLAN 1 -BB MANAGED HOSTING		$155,963.00
1	AS-CD	COURSE DELIVERY, 15,001 - 25,000 FTE		$100,879.00
1	AS-CM	COMMUNITY ENGAGEMENT, 15,001 - 25,000 FTE		$50,098.00
1	AS-ASPDIA-ADD-NA	ADD 7500 USERS - HOSTING FOR DIAMOND ENGAGEMENT PL		$42,976.25
1	AS-ASPDIA-ADD-NA	ADD 7500 USERS - HOSTING FOR DIAMOND ENGAGEMENT PL		$42,976.24
1	AS-ASPDIA-ADD-NA	ADD 7500 USERS - HOSTING FOR DIAMOND ENGAGEMENT PL		$42,976.24
5	AS-HST-STOR1TB	HOSTING ADDITIONAL STORAGE 1TB		$40,356.27
1	MOB-LRN	MOBILE SOLUTIONS, 15,001 - 25,000 FTE		$38,288.00

1	AS-CS	CONTENT MANAGEMENT, 15,001 - 25,000 FTE		$31,238.00
1	AS-HST-STOR1TB	HOSTING ADDITIONAL STORAGE 1TB		$30,000.00
1	AS-HST-OPDB	HOSTING OPEN DB REPORTING ENV		$12,075.00
10	AS-HST-BNDW1	HOSTING ADDITIONAL BANDWIDTH 1 MBPS		$0.00
			Total	**$587,826.00**

B. Terms

1. The Initial Term of this Order Form shall be as specified in the Product and Services Pricing Summary above.

SS 2. Unless otherwise specified in the Product or Service Description above, this Order Form ~~shall~~ may 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.~~ only upon advance written agreement of the parties.

3. Effective Date: July 01, 2018   Termination Date: June 30, 2019   *SS*

C. Payment Terms

1. All initial and subsequent payments shall be due Net 30. Unless otherwise stated, all prices are in United States currency.
2. 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

SS

Sales Approved: Kelly Hamilton

Initial: *kH*

Customer: Ball State University

Signature: *Scott M Stachler*

Name:

Scott M. Stachler

Title:

Interim Assoc. VP for Budgets and Finance

Date:

Is a Purchase Order (PO) required for the purchase or payment of the products on this Order Form?

    No

    Yes - Please complete below

PO Number:

PO Amount:

Attach PO :

Blackboard Inc.

Signature: *Bill*

Name: Bill Jones

Title: Deputy General Counsel

Date: May 16, 2018

SS

Attach Tax Exemption: