

Blackboard Inc.
650 Massachusetts Ave NW
6th Floor
Washington DC 20001
P +1 202.463.4860
F +1 202.463.4863
blackboard.com



June 18, 2013

Ms. Roberta Wagner
Department of Administration, Purchasing Division
State of West Virginia
2019 Washington Street East
P.O. Box 50130
Charleston, WV 25305-0130

Dear Ms. Wagner:

Thank you for providing us with the information in the Request for Quote, Solicitation Number HHR14004, Hosting and Licensing of Blackboard Learn 9.1 software or equal, and the vision into the business environment of State of West Virginia (State of West Virginia). We welcome the opportunity to provide our response to the requirements.

In particular, you mentioned the need for Blackboard to provide the uninterrupted delivery of the West Virginia Department of Health and Human Resources online and blended learning training. This training is to consist of technical and non-technical training. The *Blackboard Learn*™ platform will meet these requirements. As Web-based server software, our proposed solution will enable a complete e-Education enterprise including online teaching and learning, community building, content management, and integration capabilities with multiple business and administrative enterprise software systems.

We believe Blackboard can continue to be an excellent partner for State of West Virginia. We are committed to our customer base and strive to exceed expectations through teamwork, innovation, and a commitment to customer satisfaction.

I will be contacting you soon to discuss this proposal in detail and to schedule the next steps.

Sincerely,

A handwritten signature in black ink, appearing to be 'R Park', written over a horizontal line.

Ritchie Park
Regional Sales Executive

06/19/13 09:47:53 AM
West Virginia Purchasing Division

SOLICITATION PAGES



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Solicitation

NUMBER
HHR14004

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER 804-558-0067

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE
 Blackboard Inc.
 650 Massachusetts Avenue, NW
 Washington, DC 20001-3796

SHIP TO

HEALTH AND HUMAN RESOURCES
 BUILDING MANAGEMENT
 VARIOUS LOCALES AS INDICATED

DATE PRINTED
05/21/2013

BID OPENING DATE: 06/19/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		961-20	\$22.11 per user/year	\$176,900
	ONE (1) YEAR LICENSE FOR BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.					
0002	12	MN		961-20	\$11.16 per user/year	\$89,300
	MONTHLY MANAGED HOSTING OF BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.					
0003	1	YR		961-20	\$23.22 per user/year	\$185,745
	OPTIONAL 2ND. YEAR LICENSE FEE FOR BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.					
0004	1	YR		961-20	\$24.38 per user/year	\$195,032
	OPTIONAL 3RD. YEAR LICENSE FEE FOR BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.					

SIGNATURE <i>Ann Fegan</i>	TELEPHONE 202-463-4860	DATE June 17, 2013
TITLE Vice President, Contracts	FEIN 52-2081178	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Solicitation

NUMBER
HHR14004

PAGE
2

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER 804-558-0067

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE
 Blackboard Inc.
 650 Massachusetts Avenue, NW
 Washington, DC 20001-3796

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HEALTH AND HUMAN RESOURCES
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 VARIOUS LOCALES AS INDICATED

DATE PRINTED
05/21/2013

BID OPENING DATE: 06/19/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0005	12	MN		961-20	\$11.72 per user/year	\$93,765
OPTIONAL 2ND YEAR MONTHLY MANAGED HOSTING FEE FOR BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.						
006	12	MN		961-20	\$12.30 per user/year	\$98,453
OPTIONAL 3RD YEAR MONTHLY MANAGED HOSTING FEE FOR BLACKBOARD LEARN 9.1 OR EQUAL FOR 8,000 USERS.						
TERM SHALL BE UPON AWARD AND CONTINUE FOR A PERIOD OF ONE YEAR WITH THE OPTION OF TWO (2), ONE (1) YEAR RENEWALS.						
***** THIS IS THE END OF RFQ HHR14004 ***** TOTAL:						\$839,195

SIGNATURE <i>Ann Fegan</i>	TELEPHONE 202-463-4860	DATE June 17, 2013
TITLE Vice President, Contracts	FEIN 52-2081178	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

A FLEXIBLE AND COMPREHENSIVE LEARNING MANAGEMENT SYSTEM

A QUOTE FOR STATE OF WEST VIRGINIA COST PROPOSAL

*Request for Quote, Solicitation Number HHR14004
West Virginia Department of Health and Human Resources*

Presented to:

Ms. Roberta Wagner
Department of Administration, Purchasing Division
State of West Virginia
2019 Washington Street East
P.O. Box 50130
Charleston, WV 25305-0130

Presented by:

Ritchie Park, Regional Sales Executive
Blackboard Inc.
650 Massachusetts Avenue, NW
Washington, DC 20001-3796
ritchie.park@blackboard.com
(202) 463-4860

June 19, 2013

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ATTACHMENT 1

Sample Order Form

EXECUTIVE SUMMARY

State of West Virginia (State of West Virginia) worked hard to find the right people. You carefully chose a team that embodies your corporate values, unleashing a vibrant culture that resonates at every level of the organization. State of West Virginia employees are not only an important representation of your brand but also your most powerful asset.

Empowering these talented professionals to reach their full potential can lead to effective results such as improved customer satisfaction, lower costs, and increased profits. A thriving training program encourages your team to execute these goals with a sense of urgency and focus, strengthening the connection between engaged employees and happy customers.

A user-friendly learning platform streamlines the delivery of valuable lessons your team needs to impact the bottom line. *Blackboard Learn*™ keeps targeted, actionable content at employees' fingertips so learners can apply new skills to their daily work lives. Unlike traditional learning technologies used for compliance or "check-the-box" solutions, Blackboard transforms the way employees learn by fostering collaboration and communication, increasing engagement, and providing access to measurable outcomes.

As savvy consumers, you know that not all learning management systems are the same. We believe that Blackboard is the best vendor to meet the requirements of this RFP for the following reasons.

- **Proven Solutions, Global Expertise:** Over 20 million users across the globe rely on Blackboard every day. We have successfully delivered strategic teaching and learning initiatives for professional, corporate, and government organizations such as Westinghouse, Living Social, Mortgage Bankers Association, Waston Pharmaceutical and ADP, to name a few. Our unmatched expertise and organizational know-how allows you to focus on creating tomorrow's education experience today.
- **Setting the Standard of Excellence:** Last year, Blackboard took home one of the software industry's most prestigious honors from the Software & Information Industry Association's (SIIA) CODiE Awards. We are proud that Blackboard Learn was named the Best Corporate Learning solution and the Best Professional Education solution. The distinction is especially meaningful given that judging is driven by educators, administrators and IT leaders who review nominated products.
- **Author Content in a Few Simple Steps:** Today's learners are accustomed to being content creators and collaborators via Blogs and Wikis on social media sites, and expect the same user-friendly online environment in the classroom. Blackboard makes it easy for administrators, instructors or students to upload virtually any file type with tools fully integrated into the Learn platform. Also, legacy content is easily repurposed into any course.
- **Flexible Instructional Design:** The Blackboard Learn platform addresses numerous instructor-centric use cases, including support for unique teaching styles across all levels of technology adoption, interactive and traditional assessment preferences, and a range of communication and collaboration opportunities. Additionally, we recognize the value of focused insight on employee performance and activity by providing the ability to align learning outcomes with course content and activities and relying on course reports to inform data driven decisions.

- **Commitment to Accessibility:** Blackboard has been a leader in accessibility, believing that it's more than just standards and checklists. It's about helping to enable education for everyone by ensuring the Blackboard Learn platform is accessible. With an approach that is both technical and programmatic, we make sure that accessibility is core to design and development of our software.
- **Interoperability and Openness:** We are committed to the long-term usability and portability of content and tools and take steps to ensure other software and solutions can be easily integrated with the Blackboard Learn platform. Blackboard is firmly aligned with leading industry standards and openness bodies such as IMS (Common Cartridge and Basic LTI) and ADL (SCORM). Also, we support publishing, sharing and consumption of open educational resources (OER) across all of our products and services through a partnership with Creative Commons.
- **Best-in-class Hosting Services:** As one of the largest private clouds in the education industry, Blackboard has 7 state-of-the-art data centers around the world that serve more than 1,000 organizations. Our team of over 250 across four continents is skilled both in Blackboard applications and in managed hosting, enabling us to provide superior customer support and technical service. To support your online programs today and as they grow over time, we offer four progressive levels of service.
- **Broadest Partner Network:** Blackboard's partner network introduces more choice for clients to extend their learning environment with tools and content unique to their needs. From content providers, media and technology companies to system integrators and more, extensions allow you to engage more learners, increase safety and convenience, take education mobile, and inspire greater outcomes.
- **Anytime, Anywhere Access:** Mobile formatted websites are an inexpensive way to deliver content on a mobile device, but only a native application can take advantage of the capabilities of the various mobile platforms for a unique user experience. Blackboard Mobile Learn provides native applications for iPad, iPhone, iPod Touch, Android, Blackberry and Palm smartphones that offer new and compelling opportunities for employees to see what is happening in their training sessions. Blackboard Connect for Learn allows instructors to communicate with learners via text and voice directly from within the course as well.
- **Strategic, Experienced Consultation:** Blackboard Consulting partners with organizations to align their people, processes, and technology with their educational vision. Our consultants and trainers have a successful history of supporting implementations that can readily scale to support millions of users. Our team of experts makes up the largest e-learning consulting group in the industry.

Finally, it would be an honor to partner with an organization that shares Blackboard's commitment to go above and beyond what is expected. In all we do, we aim to empower our clients by making education immediate, direct, and personalized. Together, we can make teaching more effective, and learning more exciting—in and beyond the traditional walls.

3. QUALIFICATIONS:

Vendor shall have the following minimum qualifications:

3.1. Must have 5 or more years experience administering managed hosting of Learning Management Systems (LMS).

We are pleased to provide the following list of clients:

Account Name	ST	Country	Blackboard Learn Client Since
Administrative Office of the U.S. Courts	DC	USA	4/26/2000
Air Force Institute of Technology	OH	USA	4/23/2002
Alabama A & M University	AL	USA	4/20/2000
Arizona State University	AZ	USA	9/25/2000
Centers for Medicare and Medicaid Services	VA	USA	4/10/2006
Central Texas College	TX	USA	6/29/2001
Certified General Accountants of Ontario	ON	Canada	12/18/2000
CUNY - Office of the Chancellor	NY	USA	12/22/1999
Defense Information School	OH	USA	9/16/2008
Duquesne University	PA	USA	6/22/1999
Eastern University	PA	USA	9/22/2000
Embry-Riddle Aeronautical University	FL	USA	6/1/2000
Florida International University	FL	USA	7/13/2005
George Mason University	VA	USA	3/15/2005
George Washington University	VA	USA	1/1/2000
Holy Family University	PA	USA	9/28/2001
Howard University	DC	USA	3/5/2001
International Union of Operating Engineers	DC	USA	12/16/2008

Ivy Tech Community College of Indiana	IN	USA	9/21/2000
Jacksonville State University	AL	USA	6/1/2000
Kentucky Community and Technical College System	KY	USA	2/1/2001
Lamar University	TX	USA	3/1/2006
Laureate Education Inc.	MD	USA	7/15/2002
Marshall University	WV	USA	12/21/2004
Mayo Clinic	MN	USA	12/16/2005
McDaniel College	MD	USA	6/17/2002
National Defense University	DC	USA	6/28/2000
Oberlin College	OH	USA	4/10/2000
Philadelphia College of Osteopathic Medicine	PA	USA	3/23/2000
Rancho Santiago Community College District	CA	USA	6/29/2005
Regent University	VA	USA	3/29/1999
San Bernardino Community College District	CA	USA	6/6/2005
Sentara Corporation	VA	USA	11/20/2003
Seton Hall University	NJ	USA	12/13/2000
Southern New Hampshire University	NH	USA	12/21/1999
State Center Community College District	CA	USA	12/23/2004
Texas A & M University - Kingsville	TX	USA	10/1/2001
U.S. Army Training and Doctrine Command	VA	USA	12/3/2008
U.S. Naval Academy	MD	USA	6/6/2000
UMassOnline	MA	USA	9/10/2001
University of British Columbia	BC	Canada	1/19/2005
University of Illinois at Urbana-Champaign	IL	USA	5/11/1999
University of Texas at Tyler	TX	USA	10/22/2001

University of the Incarnate Word	TX	USA	10/6/2000
VA - Asheville Medical Center	TX	USA	4/29/2008
Villanova University	PA	USA	6/2/2005
Virginia State University	VA	USA	8/7/2001
Watson Pharmaceuticals	NJ	USA	12/23/2008
West Virginia University	WV	USA	12/21/2004
WVNET- West Virginia Network for Education	WV	USA	12/21/2004

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables:

Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 Licensed Access to Blackboard 9.1 or equal

4.1.1.1 Must be available for up to 8,000 Department-identified students to take Department-specified training.

Blackboard Inc. complies.

4.1.1.2 Must be available for Department-identified instructors for course development and delivery.

Blackboard Inc. complies.

4.1.1.3 Must be available during the period commencing July 1, 2013 and ending on June 30, 2014.

Blackboard Inc. complies.

4.1.2 Managed Hosting of Blackboard 9.1 or equal

4.1.2.1 Must provide for Department-specific instance of Blackboard 9.1 or equal, not to be shared with any other institution or entity without the express permission of the Department.

Blackboard Inc. complies.

4.1.2.2 Must provide 24 hour customer and/or technical support via phone, email, and/or automated online help desk system.

Yes, We offer this as a standard "follow the sun" model.

Blackboard Inc. complies.

4.1.2.3 Must provide system troubleshooting for all outages and/or defects.

Blackboard Inc. complies.

4.1.2.4 Must provide secure data center for storage/access of all Department-related data residing on Vendor's systems.

Blackboard Inc. complies.

4.1.2.5 Must provide 24x7 Network Security monitoring for all traffic related to Departmental Blackboard instance.

Blackboard Inc. complies.

4.1.2.6 Must provide access to a Blackboard test system/sandbox for evaluation of new features and Building Blocks.

Blackboard Inc. complies.

4.1.2.7 Must provide Uninterruptable Power Supply (UPS) and/or generator to ensure continuity of services.

Blackboard Inc. complies.

HHR14004 – PRICE PAGE

HHR14004 – Price Page

Item #	Description	Item Cost
1.	One (1) year License for Blackboard Learn 9.1 or equal for 8,000 users	\$ 176,900
2.	One (1) year Managed Hosting for Blackboard Learn 9.1 or equal for 8,000 users	\$ 89,300
3.	Optional Year Two license for Blackboard Learn 9.1 or equal for 8,000 users	\$ 185,745
4.	Optional Year Three license for Blackboard Learn 9.1 or equal for 8,000 users	\$ 195,032
5.	Optional Year Two Managed Hosting for Blackboard Learn 9.1 or equal for 8,000 users	\$ 93,765
6.	Optional Year Three Managed Hosting for Blackboard Learn 9.1 or equal for 8,000 users	\$ 98,453
	Total Cost:	\$ 839,195

The award of this contract (HHR14004) will go to the bidder with the lowest overall total cost that meets the specifications for three (3) years of licensing and managed hosting of Blackboard Learn 9.1 software or equal.

Vendor Name: Blackboard Inc.

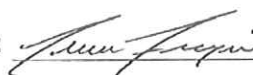
Vendor Address: 650 Massachusetts Avenue, NW, Washington, DC 20001-3796

Remit to Address: Blackboard, PO Box 2699, Portland, OR 97208

Phone #: 202-463-4860

Vendor Fax #: 202-463-4863

Email Address: tess.frazier@blackboard.com

Signature: 

Date: June 17, 2013

CERTIFICATION AND SIGNATURE PAGE

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with ~~any State agency that may require registration~~ the West Virginia Purchasing Division.

Blackboard Inc.
(Company)


(Authorized Signature)

Tess Frazier, Vice President, Contracts
(Representative Name, Title)

202-463-4860 202-463-4863
(Phone Number) (Fax Number)

June 17, 2013
(Date)

SOFTWARE ATTACHMENT

Software Attachment

Attachment

PO#:

~~This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.~~

If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Agreed

[Signature] 6/17/13
Signature Date

Vice President, Contracts
Title

Blackboard Inc.
Company Name

Signature Date

Title

Agency/Division

AGREEMENT ADDENDUM FOR SOFTWARE

WV-96A
Rev. 12/12

AGREEMENT ADDENDUM FOR SOFTWARE

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

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____

If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

PURCHASING AFFIDAVIT

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

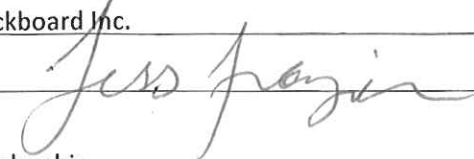
"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers'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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Blackboard Inc.

Authorized Signature:  Date: June 17, 2013

State of District of Columbia

County of _____, to-wit:

Taken, subscribed, and sworn to before me this 17th day of June, 2013.

My Commission expires October 31, 2015.

AFFIX SEAL HERE

NOTARY PUBLIC 

VENDOR PREFERENCE CERTIFICATE

Not applicable, Blackboard is not a West Virginia resident business.

COMMENTS AND CLARIFICATIONS

General Terms and Conditions:

Blackboard believes that the State of West Virginia understands and accepts the notion that contract terms that reflect a reasonable allocation of risk are in the best interest of the parties and that they provide for mutual incentives to further this long term engagement's success. Blackboard believes a commercially reasonable agreement is one that includes indemnities limited in scope only to death and personal injury to the extent cause by Blackboard's gross negligence and intellectual property infringement claims from third parties with appropriate associated conditions and procedures, a dollar liability limit equal to amounts paid under relevant schedules and that waives all consequential and indirect damages, warranty terms that do not extend beyond requiring deliverables to comply with their description in the applicable software schedule and lastly any other terms and conditions that Blackboard and the State of West Virginia may negotiate. To this end, if selected for award, Blackboard looks forward to reaching agreement on commercially reasonable terms and conditions as outlined in our Sample Agreement under a resulting final contract.

Section 1, Contractual Agreement: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 11, Exceptions and Clarifications: Blackboard respectively takes exception to this section and, if selected for award, agrees to negotiate mutually agreeable terms and conditions that are in accordance with Blackboard's Sample Agreement. Blackboard respectfully requests the opportunity to present comments, exceptions and deviations to terms of the RFQ. If any of the comments will result in a bid disqualification, Blackboard respectfully requests the opportunity to present our reasoning and negotiate with the State of West Virginia prior to a final determination.

Section 12, Liquidated Damages: Blackboard respectively takes exception to this section and, if selected for award, agrees to negotiate mutually agreeable terms and conditions that are in accordance with Blackboard's Sample Agreement.

Section 13, Acceptance/Rejection: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 17, Payment: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 20, Interest: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 21, Preference: Blackboard is not a West Virginia resident vendor.

Section 23, Taxes: Should the State of West Virginia be exempt from paying taxes, then Blackboard will require a copy of the State's Tax Exemption Certificate.

Section 26, Time: Blackboard respectively takes exception to the above paragraph of this section as Blackboard believes that this is not applicable to its bid for this type of commodity.

Section 31, Modifications: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 33, Subsequent Forms: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 34, Assignment: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 35, Warranty: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 38, HIPAA Business Associate Addendum: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 40, Disclosure: Blackboard believes that the disclosure of its financial data (such as pricing) in this proposal would provide an unfair competitive advantage to its competitors. As such, Blackboard respectfully requests that the State of West Virginia understand the critical nature of preserving the confidentiality of its financial data and will not allow the public to have access any financial data included in its proposal.

Section 41, Licensing: Blackboard is a registered vendor with the West Virginia Purchasing Division. Our vendor number is *B14094152.

Section 43, Vendor Certifications: Blackboard respectfully takes exception to this section and, if selected for award, agrees to negotiate mutually agreeable terms and conditions that are in accordance with Blackboard's Sample Agreement. Blackboard respectfully requests the opportunity to present comments, exceptions and deviations to terms of the RFQ. If any of the comments will result in a bid disqualification, Blackboard respectfully requests the opportunity to present our reasoning and negotiate with the State of West Virginia prior to a final determination.

Section 46, Indemnification: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 48, Additional Agency and Local Government Use: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 51, Background Check: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Specifications

Section 7, Payment: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 8, Travel: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

Section 10, Vendor Default, 10.1.1: If selected for award, Blackboard agrees to negotiate mutually agreeable terms and conditions in accordance with our Sample Agreement, and such final agreement shall be the governing document.

ATTACHMENT 1

Sample Order Form

CONFIDENTIAL



Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and SAMPLE ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement located at <http://agreements.blackboard.com/bbinc/blackboardmaster.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:

A. Product and Pricing Summary

QTY	Product Name	Product or Service Description	Initial Term Fees (USD)
S	TBD	<u>SAMPLE</u>	\$ TBD
TOTAL:			S TBD

DESIGNATED SERVER SITE: _____

B. Term

1. **Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be XXX following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. **Effective Date:** Upon execution of this Order Form.

C. Payment Terms

1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
3. **Sales Tax:** If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

D. Special Provisions

The following terms and conditions set forth below shall be incorporated herein.

1. **Learn Software License:** <http://agreements.blackboard.com/bbinc/licenseschedule.aspx>
Expansion of Licensed Use. Blackboard Software is priced annually based upon Customer's Number of Authorized End Users. Customer represents and warrants that the Number of Authorized End Users provided to Blackboard and set forth on the Pricing Summary is correct and accurate to the best of its knowledge and agrees that it will inform Blackboard of any increase in its Number of Authorized End Users prior to the beginning of any Renewal Term (as defined below) Blackboard will assess additional license fees for the Software for increases in Customer's Number of Authorized End Users.

Authorized End User means any individual who is a Customer employee or enrolled in a Customer course or affiliate during an Initial or Renewal Term. To the extent that Customer desires non-traditional Authorized End Users to utilize the Blackboard Software, the total number of such other users shall be communicated to Blackboard to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total Authorized End Users number reported by Customer.

2. **Managed Hosting:** <http://agreements.blackboard.com/bbinc/managedhostingschedule.aspx>
+ Blackboard Gold Engagement Plan :
 Set Up Fee for each solution includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
 - Initial Term Annual Fee for each solution includes service for up to TBD Active Users and X GB of storage and X Mbps of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
 - Additional storage and bandwidth for each solution are separately charged
 - Additional Service Units, which include additional Active Users*, additional bandwidth, and additional storage are separately charged.

“95th Percentile calculation” 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.

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

Additional Storage and Bandwidth Annual Fees are separately charged.

Customer: <u>SAMPLE</u>
Signature
Name (printed)
Title (printed)
Date

Blackboard (“Blackboard”)
Signature TESS FRAZIER
Name VICE PRESIDENT
Title
Date

BbSRep_____

SAMPLE