SERVICE AGREEMENT

This Agreement, dated effective as of ________________, DATE, is made by and between:

The University of Cincinnati (U.C.) on behalf of the Office of Information Technologies (“UCit”), with offices at University Hall, Suite 400, 51 Goodman Road, Cincinnati, Ohio 45221-0658

AND

CUSTOMER NAME AND ADDRESS HERE

The University of Cincinnati agrees to provide hosting services for the Blackboard Learning System and if the Customer chooses, the Blackboard Community Portal, in accordance with the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the University and the Customer agree as follows:

1. REPONSIBILITIES OF THE UNIVERSITY OF CINCINNATI

1.1. U.C. will be responsible for the installation and maintenance of the necessary hardware, Blackboard software, and any required database software. U.C. will establish either a virtual installation or a separate install of the Blackboard software for the Customer on U.C.’s hardware. U.C. will provide redundant application and database servers to support usage of this product.

1.2. U.C. will be responsible for backing up the servers on a daily basis in order to guard against catastrophic failure. To further minimize the risk of data loss in the event of a catastrophic failure, a rotation of tapes to an offsite storage location will be established. U.C. will also be responsible for maintaining the security of these backup tapes. In the event that the Customer requests U.C. to restore data from the backups, either due to an error on the part of a user, or minor bugs in the operation of the system, U.C. may, but is not required to, perform such a restoration. Because the Blackboard software includes tools that allow instructors and students to maintain backup copies of their data, it is expected that the Customer will instruct their users on the use of these tools, and will discourage their users from making requests to have data restored by U.C.

1.3. U.C. will work with each Customer to select an appropriate time for server maintenance and hardware/software upgrades. Where possible, such planned downtime will be scheduled at night on a weekend during class breaks, or during holiday breaks. Except in the case of emergency
maintenance, U.C. shall give Customer at least two weeks notice in the event such maintenance requires the entire system to be unavailable. In the case of emergency maintenance, U.C. will give Customers as much notice as possible, and will strive to limit the duration of the downtime.

1.4. In conjunction with the Customer, U.C. will conduct periodic capacity planning sessions. Based on these planning sessions, U.C. will maintain sufficient hardware, software, and bandwidth to ensure a reasonable response time to the Customer. The Customer will be responsible for providing sufficient bandwidth to its users (estimated to be the equivalent of one T1 line per 500 concurrent users) if the majority of users connect from within the Customer’s network infrastructure. If the majority of the Customer’s users connect from outside of campus, this requirement is not applicable.

1.5. Excluding planned system maintenance and upgrades, U.C. guarantees a system availability rate of 99.7% over the course of a year, with no more than 10 hours of downtime in any one term (either semester or quarter). In the event that downtime exceeds the specified guarantee, U.C. will rebate the Customer $100 for each hour, or part of an hour, of this abnormal downtime.

2. RESPONSIBILITIES OF THE CUSTOMER

2.1. It will be the Customer’s responsibility to extract data from their student information system (SIS) and to create data feeds to U.C. U.C. will then be responsible for importing this data into the Customer’s Blackboard installation. U.C. will provide standards and guidelines to the Customer, or should the Customer so choose, to their implementation partner, about what data needs to be sent to U.C., the form in which data should be sent, and the methods for securing the transfer of the data. In order to ensure reliable operations and minimize user support issues, it is expected that, where possible, the Customer will provide daily data feeds to U.C. Because of their considerable experience with successful integrations, it is recommended that the Customer choose Blackboard, Inc. as their implementation partner.

2.2. Customer agrees to abide by the attached Blackboard Terms of Use (attachment #1).

3. CUSTOMIZATIONS

The Customer’s installation will be branded using graphics and logos provided by the Customer. The Customer will retain the right to configure their Blackboard installation to suit the needs of the Customer’s institution, provided that doing so does not negatively affect U.C., or any other Customer hosted by U.C. Should the Customer wish to install any third-party software or hardware on their Blackboard installation, or any software or hardware which is not part of the standard Blackboard license, including but not limited to Blackboard Building Blocks,
U.C. in consultation with the Advisory Board will evaluate said software to determine whether installing the software will violate Customer’s agreement with Blackboard or negatively impact system performance, reliability, or any other Customer being hosted by U.C. If it is determined that such software or hardware can be safely installed, U.C. will install the hardware or software, otherwise the hardware and/or software will not be installed.

4. ACCESS LEVELS

U.C. will work with the Customer to establish policies governing the level of access that each of the Customer’s users will have to the Customer’s Blackboard installation. No other party, including another college or University, will be given access to the Customer’s Blackboard installation or data without prior written permission of the Customer. As future versions of the Blackboard software are released, it will be the sole judgment of U.C. as to what level of access the Customer is provided. However, U.C. will make every effort to ensure that the Customer is able to customize their Blackboard installation based on their institutions needs and desires. Nothing in this section should be construed to mean the Customer would have direct access to the Blackboard database, or the servers in the Blackboard installation.

5. TECHNICAL SUPPORT

It is not required that Customers purchase U.C.’s technical support solution. If the Customer chooses not to, this section will not apply to them.

5.1. Hours
Initially, technical support will be available from both U.C. and Presidium, Blackboard’s support service. U.C. will provide Blackboard technical support to the Customer from 7 am to 7 pm EST, Monday through Friday, and 12pm to 5 pm EST on Sunday, with the exception of certain State and Federal holidays (New Year’s Day (or the Monday or Friday closest to it, if it falls on a weekend), Martin Luther King Day, Memorial Day, July 4th, Labor Day, Thanksgiving and the day after Thanksgiving, and Christmas Day and either the day before or the day after, depending on the calendar). The Customer will be provided with U.C.’s holiday schedule one year in advance. Additional support days and hours may be added near the start or completion of terms (semesters or quarters). When Blackboard support is not available from U.C., support calls will be answered by Presidium. U.C. will make every effort to track issues specific to each Customer, in order to better advise Customers of significant issues unique to their institution.

5.2. Methods
A toll-free number will be established for support requests, and email questions are also accepted. U.C. will evaluate the efficacy of providing
support via chat services or instant messaging and may offer these services in the future.

5.3. Response time
U.C. will respond to all requests for support within one business day.

5.4. Site Coordinator(s)
The Customer will designate at least one site coordinator who will be available Monday thru Friday to handle requests for support that require a local presence. Examples of such support requests include, but are not limited to, password resets or problems with a user’s machine that cannot be resolved over the phone or through email. The complete list of issues handled by the site coordinator and hours of availability will be negotiated and reviewed periodically by the Customer and U.C. The site coordinator will also have access to U.C. system administrators for system support, if such problems develop. The site coordinators will be able to access U.C. system administrators to assist in handling issues which the local help desk may have trouble resolving.

NOTE: The next three sections under support will apply to all users, whether or not they purchase the support option.

5.5. Training
U.C. will provide six days training per year at the Customer’s institution for faculty (three days) and the site coordinator (three days), and will make available support materials developed at U.C. which are specific for Blackboard, including multimedia tutorials, and quick guides for students and faculty. If Presidium support has been agreed to, the Presidium support materials will also be available to the Customer. Customers will also have the option to purchase additional training sessions from U.C. support personnel throughout the course of the hosting agreement.

5.6. Mass Communication
In order to maximize the effectiveness of the Blackboard technical support that U.C. offers to the Customer, the Customer agrees to allow U.C. to mass communicate with its students, faculty, staff, and other users of the Blackboard services provided by U.C. Methods for communicating with the Customer’s users include, but are not limited to, posting announcements on Blackboard, sending email to the address the user provides in their Blackboard profile, direct mail, etc. Such communications will only be for the purposes of announcements concerning Blackboard software, or maximizing the effectiveness of the Blackboard technical support provided by U.C. Except in the case of urgent bulletins, the site coordinator, or their designate, will be provided with these communications in advance.
5.7. Supported platforms
Where applicable, U.C. will provide to the Customer a list of supported platforms and technologies (browser versions, settings, plug-ins, etc.). When U.C. receives requests for support where the user’s hardware, software, etc. does not conform to the published standards, U.C. may, but is not required to make a “best effort” attempt to assist the user. U.C. will not be responsible for errors created by third party software, flaws in the Blackboard code, or errors in the course content created the Customer’s users (e.g. mistakes in faculty generated quizzes and tests).

5.8. Escalation procedure
U.C.’s Blackboard system administrator and the Customer’s site coordinator(s) shall initially assess problems that cannot be resolved by U.C.’s Blackboard support team. Problems with the connectivity between the Blackboard servers and the Customer SIS will be jointly investigated and resolved by U.C. and the Customer. If U.C.’s Blackboard system administrator and the Customer’s site coordinator(s) are unable to resolve a problem or dispute to either party’s satisfaction, the problem can be escalated to the Dean of Instructional and Research at U.C. and the equivalent or designated position at the Customer’s institution. If those individuals are also unable to resolve the problem or dispute, the CIO at U.C. and their equivalent at the Customer’s institution will be responsible for achieving a resolution, with advice from the advisory board to be created.

6. ADVISORY BOARD
An Advisory Board will be established and meet quarterly. It will consist of one representative from each Customer, a U.C. Technical Representative, the Dean of Instructional & Research Computing at U.C. or their designate, and a representative from Ohio Learning Network. They will be responsible for advising U.C. on the Blackboard services. While the Advisory Board will provide guidance, the decision whether or not to implement any service or product will be up to U.C. Meetings will be in person at a central location or via web conferencing.

7. PERIOD OF PERFORMANCE
The term of this Agreement shall commence on the date first written above and shall continue for two (2) years unless terminated earlier as provided herein. After the expiration of the initial term, this Agreement may be extended by mutual written agreement of the parties.

8. FEES
U.C. will charge an annual fee of INSERT AMOUNT HERE per school and payment shall be due in full within 30 days of the invoice date. After 30 days, Customer will be subject to late charges of 1.5% (18% per year).
9. ASSIGNMENT
This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party.

10. GOVERNING LAW
The laws of the State of Ohio and the United States shall govern the validity and interpretation of this Agreement and the legal relation of the parties to it.

11. FORCE MAJEURE
U.C. shall not be responsible to the Customer for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by negligence of the Customer, fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, acts of terrorism, war, strikes, labor disturbance, transportation difficulties, labor shortage, or any cause beyond the reasonable control of the University.

12. LIMITATIONS ON LIABILITY
U.C. will not be responsible for damages, malfunctions or failures caused by:

   (a) Customer’s failure to follow any operation or maintenance instructions provided by U.C. to Customer,
   (b) Defects or errors in the Blackboard software

To the maximum extent permitted by law, in no event will U.C. be liable to Customer for any of the following types of loss or damage: (A) any loss of business, contracts, profits, anticipated savings, goodwill or revenue, (B) any loss or corruption of data or (C) any incidental, indirect or consequential losses or damages whatsoever (including, without limitation, special, punitive, or exemplary damages).

13. WARRANTY DISCLAIMER
Except as expressly set forth in this Agreement, U.C. MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE PRODUCT WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER RIGHTS.
14. TERMINATION
Either party may terminate this Agreement if the other party is in material breach of this Agreement and such breach remains uncured for a period of 30 days after notice of such breach has been given in writing to the breaching party by the other party. Should U.C. choose to stop hosting Blackboard, they will provide no less than 12 months written notice to the Customer. In the event that a Customer is no longer being hosted under this agreement, U.C. will remove the Customer’s data from the system within 30 days of termination. Because it is cost prohibitive and time consuming to delete data from backups, the Customer understands that copies of the Customer’s data may remain on the backup tapes until the tapes are reused as part of the normal rotation. U.C. will still be responsible for maintaining the security of such data after the termination of this agreement. Similarly, if a Customer wants to leave the hosting arrangement, 12 months written notice will be given to U.C. and OLN. The same conditions as previously indicated concerning the Customer’s data would apply if the Customer terminates the agreement.

15. CANCELLATION RIGHTS and LIABILITIES
If Customer cancels this Agreement prior to the end of the Service Term, such cancellation shall constitute a material breach of this Agreement and Customer shall repay to the U.C. all the amounts owed for services already preformed under this Agreement.

16. NOTICES
Any notices permitted or required by this Agreement shall be in writing and shall be deemed effective when received. Notices may be given by hand delivery, by mail, by courier service or by facsimile transmission. Notices shall be addressed to the parties at the addresses set forth above, to the contacts shown hereunder:

Customer:

University of Cincinnati:  Paul Foster
University of Cincinnati
410 Zimmer Hall
P.O. Box 210388
Cincinnati OH 45221-0388
17. ENTIRE AGREEMENT
Unless otherwise specified, this Agreement embodies the entire understanding between The University, the Customer, and the Customers, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement shall be effective unless made in writing and signed by authorized representatives of the parties.

The University of Cincinnati, Customer:
on behalf of UCit

By:_______________________________ By:_______________________________

Print Name: ______________________ Print Name:_________________________

Title: ______________________________ Title: ______________________________