

Blackboard

This Blackboard Order Form ("Order Form") by and between **Blackboard Inc.** ("Blackboard") and **The School Board of Broward County, Florida** ("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 attached hereto as Exhibit A 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. Software & Services Product and Pricing Summary

Qty	Product Code	Product or Service	Initial Term Period #1 Fees (USD) 01-Jul-2020 to 30-Jun-2021	Initial Term Period #2 Fees (USD) 01-Jul-2021 to 30-Jun-2022	Initial Term Period #3 Fees (USD) 01-Jul-2022 to 30-Jun-2023	OPTIONAL 2023 Renewal Term Fees (USD) 01-Jul-2023 to 30-Jun-2024	OPTIONAL 2024 Renewal Term Fees (USD) 01-Jul-2024 to 30-Jun-2025
268,328	BC-MN	BLACKBOARD MASS NOTIFICATIONS	\$482,990.40	\$482,990.40	\$482,990.40	\$482,990.40	\$482,990.40
220,883	MCA-APPI	BLACKBOARD MOBILE COMMUNICATIONS APP INTEGRATED	\$194,377.04	\$194,377.04	\$194,377.04	\$194,377.04	\$194,377.04
220,883	MCA-SMM-APP	BLACKBOARD SOCIAL MEDIA MANAGER	\$99,397.35	\$99,397.35	\$99,397.35	\$99,397.35	\$99,397.35
220,883	BC-MN-TC	BLACKBOARD TEACHER MESSAGING	\$28,714.79	\$28,714.79	\$28,714.79	\$28,714.79	\$28,714.79
		Total	\$805,479.58	\$805,479.58	\$805,479.58	\$805,479.58	\$805,479.58

B. Terms

1. The Initial Term of this Order Form shall be from July 1, 2020 and expire on June 30, 2023, unless otherwise agreed by the parties.
2. Unless otherwise specified in the Product or Service Description above, after the 2020 Renewal Term, Customer has the option to renew for successive one (1)-year periods (each, a "Renewal Term") provided that upon receipt of a renewal notice from Blackboard, Customer remits a purchase order and the License Fee within thirty (30) days from the date of the invoice from Blackboard. Either Party may provide notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as applicable.
3. Effective Date: July 01, 2020

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. Customer is approved for monthly invoicing for the Initial Term & the 2023 & 2024 Renewal Terms as provided in the Pricing Summary above. Customer is responsible for paying all annual fees prior to the end date of each annual term.
3. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

D. Special Provisions

1. Customer's Disclosure of Education Records.

(a) Customer will provide the education records listed in this section to facilitate the delivery of mass communications, based on student's provided data. When students access their own, or parent access their child's grades, attendance, etc, Blackboard queries Pinnacle through the District's integration system and then displays the result in Mobile Communications App. Authorized district staff can be provided access to the BB CommHQ app to view parent and student records.

(b) SBBC will provide the following education records to Blackboard via the District's integration system:

- 1) Student first and last name
- 2) Student identification number
- 3) Student home phone number
- 4) Parent home phone number
- 5) Parent cell phone number
- 6) Parent email address
- 7) Exception Student Education (ESE) status
- 8) Bus route and stop information
- 9) Cafeteria balance
- 10) School location
- 11) Class schedule

(c) Blackboard is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from Customer student education records for the purposes listed above. Pursuant to the Family Education Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age eighteen (18) or over is needed for any types or purposes of disclosures of education records beyond those listed above.

(d) The provisions in this section supersede any conflicting provisions of the Master Agreement, any attachments of the Master Agreement and any of Blackboard's policies.

2. Blackboard Confidentiality of Education Records.

(a) Notwithstanding any provision to the contrary within this Section, Blackboard shall:

1) fully comply with the applicable requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other applicable state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Section or as required or permitted by law or contract unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Section, and that access to education records is limited only to its employees and agents that require the information to carry out the responsibilities under this Section and this Order Form;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Section and Order Form; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party except as permitted by this Order Form or needed to perform the services set forth in this Order Form;

6) notify Customer promptly upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) Reasonably cooperate with appropriate Customer staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) subject to section 11 of the Blackboard Master Agreement, prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse Customer any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) subject to section 11 of the Blackboard Master Agreement, be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law solely in instances where Blackboard is responsible for breach notice requirements pursuant to federal and/or Florida law; and

11) upon client request or following an agreed upon period after contract termination, securely erase education records from hosting environment and from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using secure deletion methods aligned with NIST 800-99.

(b) All education records shall remain the property of Customer, and any party contracting with Customer serves solely as custodian of such information pursuant to this Section and claims no ownership or property rights thereto and, upon termination of this Section shall, at Customer's request, return to Customer or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide Customer with a written acknowledgment of said disposition.

(c) Subject to section 11 of the Blackboard Master Agreement, Blackboard shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless Customer and its officers and employees for any violation of this section, including, defending Customer and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon Customer, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon Customer arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Section.

3. Customer Disclosure of Employee Records.

(a) Customer will provide the employee records listed in this section to Blackboard, to define user roles and permissions within Blackboard's systems and deliver mass communications to employees based on the employee data provided. Authorized district staff can be provided access to the BBCommHQ app to view certain staff information. A staff directory, can be made available in the Mobile Communications App to enable public access to directory information regarding staff.

(b) Customer will provide the following employee records to Blackboard:

- 1) first and last name
- 2) identification number
- 3) work email address
- 4) school location
- 5) class schedule
- 6) home address
- 7) home telephone number
- 8) personal cell phone number
- 9) work cell phone number

(c) Blackboard shall not use the employee records listed in this section for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

(d) The provisions in this section supersede any conflicting provisions of the Master Agreement, any attachments of the Master Agreement and any of Blackboard's policies.

4. Blackboard Safeguarding Confidential Employee Records. Notwithstanding any provision to the contrary within this Section, Blackboard shall:

(a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;

(b) hold the employee records in strict confidence and not use or disclose same except as required by this Section or this Order Form or as required or permitted by law or contract;

(c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Section or the services set forth in the Order Form;

(d) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;

(e) notify Customer promptly upon discovery of a breach of confidentiality of employee records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com; and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

(f) subject to section 11 of the Blackboard Master Agreement, prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse Customer any direct costs incurred by Customer for doing so; and

(g) subject to section 11 of the Blackboard Master Agreement, be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law solely in instances where Blackboard is responsible for breach notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations under this Section.

5. Liability. This section shall survive the termination of all performance or obligations under this Section and shall be fully binding until such time as any proceeding brought on account of this Section is barred by any applicable statute of limitations.

(a) By Customer: Customer agrees to be fully responsible, for its acts of negligence, or its employees' or agents acts of negligence in connection with this Agreement. Customer's liability pursuant to this Section 5 shall be subject to Section 768.28, Florida Statutes, to the extent applicable, for any damages resulting from said negligence.

(b) By Blackboard: Blackboard agrees to indemnify, hold harmless and defend Customer, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which Customer, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising from the gross negligence of Blackboard or the gross negligence of Blackboard's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including Customer's property, and injury or death of any person whether employed by Blackboard, Customer or otherwise.

6. Insurance Requirements. Blackboard shall comply with the following insurance requirements throughout the term of this Agreement:

(a) General Liability. Blackboard shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Professional Liability/Errors & Omissions. Blackboard shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) Workers' Compensation. Blackboard shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Deleted

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance will be furnished by Blackboard to Customer's Risk Management Department by Certificate of Insurance upon request from Customer. To streamline this process, Customer has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by Customer's Risk Management Department before any work commences to permit Blackboard to remedy any deficiencies. Blackboard must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.

2) All liability policies are primary of all other valid and collectible coverage maintained by The School Board of Broward County, Florida.

3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. Blackboard agrees to provide Customer with notice in the event Blackboard cancels its insurance.

(i) Blackboard reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

7. Annual Appropriation. The performance and obligations of Customer under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If Customer does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by Customer at the end of the period for which funds have been allocated. Customer shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to Customer in the event this provision is exercised, and Customer shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

8. Onsite & Termination. This Agreement may be canceled with or without cause by Customer during the term hereof upon thirty (30) days written notice to Blackboard of its desire to terminate this Agreement. In the event Blackboard is on Customer's property to perform services under this Agreement, Customer shall have no liability for any property left on its property by Blackboard after the termination of this Agreement. The parties agree that the foregoing shall not apply to any Blackboard Property as defined in Section 4.2, "Blackboard Property" in the MSA. If termination is due to an un-cured material default by Blackboard, Blackboard will refund a pro-rata portion of the license and maintenance and support fees paid for the current term.

9. Public Records. The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Blackboard shall keep and maintain public records required by SBBC to perform the services required under this Agreement.

Upon request from SBBC's custodian of public records, Blackboard shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

Blackboard shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Blackboard does not transfer the public records to SBBC.

Upon completion of the Agreement, Blackboard shall transfer, at no cost, to SBBC all public records in possession of Blackboard or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Blackboard transfers all public records to SBBC upon completion of the Agreement, Blackboard shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Blackboard keeps and maintains public records upon completion of the Agreement, Blackboard shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.


IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

10. No Waiver of Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

Sales Approved:
Initial:

Customer: The School Board of Broward County, Florida
Signature:
Name:
Title:
Date:

Blackboard Inc.
Signature: 
Name: Bill Jones
Title: Deputy General Counsel
Date: June 5, 2020

Is a Purchase Order (PO) required for the purchase or payment of the products on this Order Form?	
No	
Yes - Please complete below and attach or send PO to Operations@blackboard.com	
PO Number:	PO Amount:
Attach PO (Optional):	Attach Tax Exemption (Optional):
Invoicing	
Send Invoices via email to:	
1. Name:	Email:
2. Name:	Email:
3. Name:	Email:

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

EXHIBIT A
BLACKBOARD® Master Agreement for All Products and Services

The terms contained herein (the “**Master Agreement**”) and any accompanying Blackboard ordering document (an “**Order Form**”), or the acceptance by Blackboard of an acknowledgement form or purchase order form referencing an Order Form incorporating these terms form the entire agreement (“**Agreement**”) between the entity listed in any Order Form (hereafter, “**Customer**” or “**you**”) and the Blackboard entity listed in any Order Form (hereafter, “**we**”, “**us**” or “**Blackboard**”), with respect to the products and/or services listed in any Order Form (“**Products and Services**”).¹

1. APPLICABILITY OF THIS MASTER AGREEMENT

This Agreement governs: (a) your rights to access and use software licensed on a term or perpetual basis (“**Software**”); (b) your rights to access and use software made available under a software-as-a-service delivery model for a term (“**SaaS Services**”); (c) your rights to support and/or maintenance services which you purchase or are otherwise entitled to receive other than Student Support Services (“**Support**”); (d) any professional services (“**Professional Services**”); (e) any managed hosting services, cloud hosting services or other hosting services (“**Hosting Services**”); (f) any hardware and/or firmware (“**Equipment**”); and (g) any student support services (“**Student Support Services**”).

2. RIGHTS OF ACCESS AND USE.

2.1 License to Use SaaS Services or Hosting Services. With respect to SaaS Services or Hosting Services, for the Term (as defined in Section 10.1), we grant you a non-exclusive, non-transferable, non-sublicenseable license to access and use the SaaS Services (or, as applicable, Hosting Services) made available by Blackboard to you on a remote-access, subscription basis via the Internet solely in support of your operations.

2.2 License to Use Software Provided on a Perpetual or Term Basis. With respect to Software, for the Term, or where a license is specified as “perpetual”, on an ongoing basis unless and until terminated as provided herein, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to use the Software on a Designated Configuration solely in support of your operations. A “**Designated Configuration**” shall mean a configuration of hardware and software which is supported by us and on which the Software is operated by or for you, which may include a configuration on your premises or a configuration managed by us for you.

2.3 Evaluation License. If Customer is provided an Evaluation License, Blackboard grants you a limited, non-exclusive, non-transferable non-sublicenseable license to install and use one (1) Evaluation copy of the Software, SaaS Services or Hosting Services, as applicable, (“**Evaluation License**”) subject to the obligations herein and solely in connection with your internal evaluation of the Software, SaaS Service or Hosting Services and not for any production or commercial purpose.

2.4 API License. If you are purchasing an application programming interface (“**API**”) license, other than a Learn API as defined below, we grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access each API set forth in the Order Form. The API(s) are provided in the form of a web service that enables a “connection” into our servers. We will provide you with the information necessary to enable your secure use of the API(s). You may not use or install the API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our services.

2.5 Authorized Users. You agree to only grant access to the SaaS Services, Hosting Services, and/or Software to those individuals defined in the Terms Applicable to Specific Products and Services, below (“**Authorized Users**”).

2.6 License Restrictions. You may not use the Software, Hosting Services, or SaaS Services beyond the usage, storage or other applicable restrictions set forth in the Agreement. In addition, unless otherwise expressly permitted in the Agreement, without our prior written consent, you will not: (i) permit any third-party to install, configure, access, use or copy all or any portion of the Software, Hosting Services, or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the SaaS Services, Hosting Services, or Software except as expressly permitted by applicable law, rule or regulation (“**Law**”); (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the SaaS Services, Hosting Services, or Software; (iv) use the SaaS Services, Hosting Services, or Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the SaaS Services, Hosting Services, or Software; or (vi) use the SaaS Services, Hosting Services, or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the SaaS Services, Hosting Services, or Software are hosted (including where such use interferes with any other customer’s use thereof).

2.7 Delivery. Delivery shall be deemed complete when Blackboard notifies you that you have the ability to access the Software, Hosting Services, or SaaS Services.

3. SUPPORT AND SERVICE LEVEL AGREEMENTS

If you license or are otherwise eligible to receive Support, or are eligible for service level agreements, such Support (or service level, as applicable) will be provided as described in the Blackboard Customer Support Services Guide (“**Services Guide**”) located at <https://blackboard.secure.force.com/publicbarticleview?id=kA57000000PB0u> for the relevant Products and Services. In the event of our failure to satisfy a service level, other than your termination rights as set forth below, your sole and exclusive remedy shall be as expressly set forth in the applicable service level agreement. With respect to SaaS Services, you will receive, or we will make available for you to receive, all applicable updates, application packs, and releases that we make generally available during the Term. If we discontinue any Product or Service during the Term (removing from general availability), we shall notify you and, as Customer’s sole and exclusive remedy, Blackboard shall provide a pro rata refund for any unused portion of the Products and Services, as applicable.

4. PROPRIETARY RIGHTS

4.1. Customer Property. Customer Property is and shall remain your sole and exclusive property. “**Customer Property**” means all graphic user interface, text, content, images, video, music, designs, products, computer programs, drawings, documentation and other materials of any kind posted, submitted, provided or

¹ If you have previously purchased products and/or services with Blackboard, unless expressly stated in the Order Form of this Agreement, your prior agreement(s) governing such products and/or services shall continue in effect with regard to such products and/or services, and this Agreement shall govern the Products and Services reflected in the Order Form of this Agreement.

otherwise made available to us by you or an Authorized User in connection with the Products and Services. Customer Property may also contain Personal Information which is defined in Section 5.

4.2. Blackboard Property. Subject to the limited rights expressly granted hereunder, we and our licensors or suppliers own all right, title and interest in and to each of the Products and Services, along with all related documentation, materials, content, and specifications, and all modifications, enhancements, improvements, and all derivative works thereto. We also retain all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with our provision of any services or the performance of any obligations hereunder. Any intellectual property rights that we do not expressly grant to you are expressly reserved by us.

4.3. Blackboard Use of Customer Property. During the term of the Agreement, you grant to us, our affiliates, and our third-party service providers, solely to perform our obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use the Customer Property. You authorize, subject to the terms of the Agreement and to the extent permitted by Law, Customer Property to be accessed and processed by us, our affiliates, and/or our third-party service providers in countries other than the jurisdiction from which the Customer Property was originally collected.

4.4. Content Restrictions. You agree not to use any Product or Service to store, display, or transmit content that is deceptive, libelous, defamatory, obscene, racist, hateful, infringing or illegal, and to the extent Authorized Users exercise the rights granted to you under this Agreement, you represent and agree that you will ensure that such Authorized Users will also comply with the obligations applicable to such exercise set forth in this Agreement. We take no responsibility and assume no liability for any Customer Property that you, an Authorized User, or third party out of our control posts, submits, displays, or otherwise makes available via the Products or Services, and you agree that we are acting only as a passive conduit for the online distribution and publications of such Customer Property.

4.5. Removal of Content. If we determine in good faith that any Customer Property could (a) pose a material security risk, (b) be deceptive or perceived as libelous, defamatory, obscene, racist, hateful, or otherwise objectionable, or (c) give rise to (i) Blackboard liability, or (ii) a violation of Law or the terms or restrictions of the Agreement, then we may remove the offending Customer Property and shall notify you of such removal, suspend your and/or your Authorized Users' use of the Products and Services, and/or pursue other remedies and corrective actions.

4.6. Other Rights. You hereby grant to us the limited right to use your name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Products and Services in our promotional materials unless and until you provide us a written request to discontinue such use.

4.7. DMCA Notice and Takedown Policy. It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent: DMCA Notice, General Counsel, Blackboard Inc., 11720 Plaza America Dr., 11th Floor, Reston, Virginia 20190, Email: GeneralCounsel@blackboard.com, +1-202-463-4860.

5. PROTECTION OF PERSONAL INFORMATION

5.1. "Personal Information" is information collected from you or your Authorized Users under the Agreement that identifies a specific individual. Personal Information may include student data that is directly related to an identifiable student that is maintained by a school, school district, or related entity or organization, or by us. In the United States, student data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

5.2. Confidentiality. Blackboard agrees to treat Personal Information as confidential and not to share it with third parties other than as described in the terms of this Agreement.

5.3. Personal Information Access. To the extent necessary to provide you with the Products and Services, you authorize us, our affiliates and subsidiaries to collect, access, use, transmit and/or otherwise process (together, "Process") Personal Information and shall facilitate a reasonable method for us to obtain such information, for example via secure transfer from and/or authorized access to your student information systems. Unless otherwise expressly indicated, if you are subject to regulations in the United States, we Process Personal Information as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). When you authorize us to Process Personal Information on your behalf, you remain in control of and own that Personal Information.

5.4. Personal Information Consents and Authority. You represent and warrant that you have the authority to provide Personal Information to Blackboard for its use in accordance with the Agreement, and that you have obtained and provided all required consents and/or disclosures to Authorized Users regarding your sharing such Personal Information with Blackboard, including the collection of Personal Information directly from students under age 13, as permitted under the Children's Online Privacy and Protection Act ("COPPA"). Both parties agree to uphold their responsibilities under Laws governing Personal Information, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. You agree to Blackboard's fulfillment of any legally satisfactory request and consent by an Authorized User to download, export, save, maintain or transfer their own Personal Information.

5.5. Use of Personal Information. By submitting or providing us access to Personal Information, you agree that Blackboard, its affiliates, and subsidiaries, may Process the Personal Information solely for the purposes of (i) providing Products and Services to you, (ii) maintaining, supporting, evaluating, improving and/or developing our Products and Services and developing new Products and Services, (iii) enforcing our rights under the Agreement, and (iv) as permitted with the Authorized User's consent solely with respect to their own Personal Information. We shall not use Personal Information for targeted advertising.

5.6. Use of De-Identified Data. You agree that we may Process, both during and after the Term (defined below), data derived from Personal Information that has been de-identified and/or aggregated to reasonably avoid identification of a specific Authorized User or individual for research, development, analytics, and similar purposes.

5.7. Personal Information Deletion, Access, Correction, and Retrieval Requests. You may request that we delete, access, correct, or retrieve your Authorized User's Personal Information in our possession at any time by providing such a request in writing, and we shall comply with such request in a commercially reasonable time unless a shorter time is required by Law, and then in such shorter time. Any request received by Blackboard directly from an Authorized User to delete, access, correct, or retrieve their Personal Information shall be redirected to you, and such request shall only be accommodated at your direction. We will otherwise delete Personal Information within a commercially reasonable time following the end of the Term (defined below).

5.8. Blackboard's Third-Party Service Providers. You agree that Blackboard may provide access to Personal Information to certain third-party service providers, which have a legitimate need to access such information in order to provide their services to us as part of our provision of the Products and Services to you. You agree that Blackboard may only share Personal Information with third parties (i) in support of Blackboard's use of Personal Information as described in Section 5.5 above, (ii) to ensure legal and regulatory compliance, and (iii) to respond or participate in judicial process or to protect the safety of Blackboard or our users. All

third-party service providers involved in the Processing of Personal Information will be subject to contractual terms related to data use, disclosure, retention and data security, that are materially similar to the relevant terms of the Agreement.

5.9. Customer-Requested Third-Party Access. If authorized by you or your Authorized User who is eligible to provide such consent under applicable law, you consent to allow us to provide access to Personal Information to Customer-requested third parties through the provision of our Products and Services under the Agreement. You agree that we are not responsible for the data practices of third parties with whom you or your Authorized User elects to share Personal Information, and that you are solely responsible for meeting any applicable requirements and the consequences of providing or transmitting Personal Information to such third parties, or authorizing those third parties to access Personal Information through the Products and Services.

5.10. Data Localization. You acknowledge and agree that your Personal Information may be stored or Processed in countries other than the country in which it was collected unless and except to the extent required by Law. Blackboard shall only transfer Personal Information outside the country in which you are located by means of legally recognized data transfer mechanisms or safeguards.

5.11. EU Data Protection. If you are subject to the European Union Data Protection Directive 95/46/EC, the European Union General Data Protection Regulation or similar statute, in relation to Personal Information we process on your behalf, the Agreement expressly incorporates by reference the data processing addendum ("DPA") available at <http://agreements.blackboard.com/bbinc/data-processing-addendum.aspx>. You agree that you are the controller of such information and that Blackboard is the processor of such information. If any term in the Agreement expressly conflicts with any term in the DPA, the conflicting term in the DPA shall control.

6. DATA SECURITY

6.1. Data Security. We will implement commercially reasonable administrative, physical and technical safeguards designed to secure Personal Information from unauthorized access, disclosure, or use, which may include where commercially reasonable or to the extent required by Law, data encryption, firewalls, and physical access controls to buildings and files.

6.2. Notification. If we have a reasonable, good faith belief that an unauthorized party has acquired, accessed, or been disclosed Personal Information that you have provided us or that we have collected on your behalf under the Agreement, in a manner which compromises the security or privacy of such Personal Information ("Security Incident"), we will promptly, or if required by Law in such other time required by such Law, notify you and will use reasonable efforts to cooperate with your investigation of such Security Incident. You shall be responsible for the timing, content, and delivery of any legally required notification to your Authorized Users who are impacted by such Security Incident and to any regulator or third party in accordance with applicable law. If, due to a Security Incident which is caused by Blackboard or our agents' acts or omissions, any third-party notification is required under Law, we shall be responsible for the cost of such notifications. With respect to any Security Incident which is not due to the acts or omissions of Blackboard or our agents, any third-party notifications, if any, shall be at your expense.

7. PROFESSIONAL SERVICES

7.1. If you purchase Professional Services, they shall be provided as described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form and must be used within one (1) year of the annual Term in which they were purchased. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace employees and subcontractors in our sole discretion with other suitably qualified employees or subcontractors.

7.2. Security. While on Customer's premises, our employees and subcontractors will comply with all reasonable security practices prescribed by Customer to the extent that we have been notified in advance of such practices in writing. To the extent any employee or subcontractor is required to sign any waivers, releases or other documents as part of these security practices the terms thereof shall be invalid and have no effect against Blackboard, its employees or subcontractors.

8. FEES AND TAXES

8.1. Fees. In consideration for our performance under the Agreement, you agree to pay all fees required by the Order Form. We expressly reserve the right to change the fees payable under any Order Form with respect to any renewal of Products or Services by providing you with 30 days' advance notice of such change prior to the expiration of the then-current term or your right to decline to renew, whichever is earlier.

8.2. Overage Fees. Your storage capacity and bandwidth ("Storage Capacity") and your number of Authorized Users and Active Users licenses may be limited as specified in the applicable Order Form or the support terms of the Agreement and you agree that any additional Storage Capacity Authorized End User and Active Users in excess of what is contemplated in the applicable Order Form or the support terms of the Agreement may be subject to additional fees. Any failure by Blackboard to timely invoice for any overages due under this paragraph shall not constitute a waiver of your obligation to pay such fees.

8.3. Late Fees. Interest may be charged on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. You acknowledge that any delay in payment may result in termination or interruption of the provision of the Products and Services at our sole discretion.

8.4. Taxes. Unless expressly provided in an Order Form, the fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any Products and Services by us to you. You shall be responsible for payment of all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes, you will be invoiced an additional amount in respect of the Taxes and you will pay within thirty (30) days after the date of the invoice unless you have provided a valid tax exemption certificate authorized by the appropriate taxing authority. If you are required by Law to withhold any amounts, then you shall timely pay the amount to the relevant tax authority and provide acceptable documentation evidencing your payment. We will be responsible for taxes based on our net income or taxes (such as payroll taxes) due from us on behalf of our employees.

8.5. Purchase Orders. You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due, you will timely issue such purchase order (the terms of which shall not control) and inform us of the number and amount thereof. You agree that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of your obligations under the Agreement, including payment of amounts owed under the applicable Order Form.

9. TERM AND TERMINATION.

- 9.1. Term.** The term ("Term") is defined in the applicable Order Form referencing the Agreement.
- 9.2. Termination for Breach.** If either party materially breaches any obligation under the Agreement, the non-breaching party may terminate the Agreement in its entirety, or, at the non-breaching party's option, it may terminate solely the relevant Product or Service pursuant to which such breach relates, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Notwithstanding the foregoing, Blackboard may terminate the Agreement immediately upon written notice to you if you materially breach the provisions of the license usage restrictions set forth in the Agreement. Except for termination rights in this section and the Order Form to which this Agreement is attached, the parties have no other right of early termination.
- 9.3. Effect of Termination.** Upon termination of the Agreement or termination or expiration of any individual license, you and your Authorized Users will immediately cease access to the applicable Products and Services, and, unless such termination is due to Blackboard's uncured material breach, you will immediately pay us all amounts due and payable for such Products and Services. Upon termination or expiration, unless expressly stated otherwise herein, each party shall promptly cease any use of and permanently delete, or upon the other parties' request, return the other party's Confidential Information and any copies to the extent commercially reasonable.
- 9.4. Force Majeure Events.** Without limiting the foregoing, we reserve the right to allocate, limit or delay delivery of, or suspend access to our Products and Services, in whole or in part, where necessary or commercially appropriate, upon the occurrence of Force Majeure Events or other events which overburden or impair the performance or operation our Products or Services or effect their economic viability.
- 9.5. Survival.** The termination or expiration of the Agreement shall not relieve either party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting the foregoing, the provisions of Sections 4, 5, 8, 9.3, 9.4, 10.4, 11, 12, 13, 17.5, 23.7, and 26.2 shall survive the termination of the Agreement for any reason.

10. GENERAL WARRANTIES.

10.1. By Blackboard. We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined below) for one year from delivery of the Software or for the term of the SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly notify us of in writing, we will exert commercially reasonable efforts to repair or otherwise remedy the non-conformity so that the warranty is materially complied with. With regard to breaches of subsections (a) or (b) above, our remedy may include a code fix, a work around, or other modification. If we are unable to remedy the non-conformity after a reasonable period of time, then YOUR SOLE AND EXCLUSIVE REMEDY shall be: (i) for Professional Services or Hosting Services, to seek a refund of the fees paid for the un-remedied services; and (ii) for licensed Software or SaaS Services, to seek recovery of direct damages caused by the breach, subject to the limitation of liability below. These warranties by us shall not apply if you materially breach the Agreement. "Software Error" means a failure of any Software or SaaS Services to materially conform to its applicable standard end user documentation provided by us ("Documentation"), provided that such failure can be reproduced and verified by us using the most recent version (including all available updates, application packs, and releases) of such Software or SaaS Service made available to you, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by your material breach of the Agreement, or your unauthorized modification or misuse of the Software or SaaS Services.

10.2. Australian Consumer Law. To the extent you are located in Australia: The supply of the Products or Services under this Agreement may be subject to the Australian Consumer Law, Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) ("Australian Consumer Law"). Where this is the case, the following statement applies in respect of any failure to comply with the consumer guarantees under the Australian Consumer Law: Our Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Laws apply, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, subject to the limitation of liability below. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.3. By Customer. You warrant that: (a) you own or have sufficient rights in and to the Customer Property in order for you and your Authorized Users to use, and permit use of, the Products and Services, including the representations and warranties made above in connection with Proprietary Rights and Personal Information, (b) you will comply with all Laws related to your use of our Products and Services; and (c) the person executing the Agreement or any Order Form has authority to accept such Order Form and the Agreement on behalf of the Customer.

10.4. Disclaimer of Other Warranties. EXCEPT FOR WARRANTIES EXPRESSLY MADE HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

11. MUTUAL LIMITATIONS OF LIABILITY.

11.1. Consequential Damages Limitation. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, AND YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT WILL EITHER PARTY OR SUCH PARTY'S LICENSORS' BE LIABLE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY, FOR: (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).

11.2. Mutual Limitations of Liability. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND YOUR PAYMENT OBLIGATIONS, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT SHALL EITHER PARTY'S OR SUCH PARTY'S LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE AFFECTED PRODUCTS AND SERVICES DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST CLAIM ASSERTED HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

11.3. Essential Basis. The Parties agree that the warranty disclaimers, liability exclusions, indemnities, fees and limitations of the Agreement form an essential basis of the Agreement.

11.4. Australia Consumer Law. To the extent you are located in Australia: THE LIMITATIONS AND EXCLUSIONS IN SECTION 12 APPLY ONLY TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY CONSUMER GUARANTEE, RIGHT OR REMEDY CONFERRED

ON A PARTY BY THE AUSTRALIAN CONSUMER LAW OR ANY OTHER APPLICABLE LAW THAT CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR LIABILITY FOR ANY BREACH OF A NON-EXCLUDABLE GUARANTEE REFERRED TO ABOVE IS LIMITED, AT THE OUR OPTION, TO: (I) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (1) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OR EQUIVALENT GOODS; (2) THE REPAIR OF THE GOODS; (3) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (4) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR (II) IN THE CASE OF SERVICES: (1) THE SUPPLYING OF THE APPLICABLE SERVICES AGAIN; OR (2) THE PAYMENT OF THE COST OF HAVING THE APPLICABLE SERVICES PERFORMED AGAIN.

12. INDEMNITIES.

12.1. Our Indemnity Obligations. If a third party brings a claim, suit, or proceeding against you, your affiliates, or your respective employees, contractors, agents, or assigns (a "Customer Indemnitee") resulting from our gross negligence or willful misconduct, or alleging that any Products and Services infringe a U.S. or European patent or a copyright under Law of any jurisdiction in which you are using the applicable Products and Services, you must promptly notify us in writing and make no admission in relation to such claims. Provided that you have fulfilled all of the foregoing obligations, we shall at our own expense indemnify, defend, and hold harmless such Customer Indemnitee, and in the above case of alleged infringement, at our own expense and option (a) procure for you the right to use the Products and Services, (b) modify or replace the Products and Services to avoid infringement without materially decreasing the overall functionality of the Products and Services; or (c) refund the applicable fee paid for the applicable Products and Services for the current term and you shall cease using such Products and Services. We shall have the sole and exclusive authority to defend and/or settle any such claim or action and you will provide assistance as we may reasonably request, at our expense, provided that we will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

12.2. Exceptions. Where infringement of a patent is caused by the combination of the Products and Services with other hardware, software, communications equipment, or other materials not provided by us (or, in the case of a method claim, additional steps in addition to those performed by the Products and Services), we shall only be obligated to indemnify you if the Products and Services constitute a "material part of the invention" of the asserted patent claim and "not a staple article or commodity of commerce suitable for substantial non-infringing use" as those phrases are used in 35 U.S.C. § 271(c).

12.3. Your Indemnity Obligations. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, if a third party brings a claim, suit, or proceeding against us, our affiliates, or our respective employees, contractors, agents, or assigns (a "Blackboard Indemnitee") resulting from (a) any use of the Products and Services beyond the scope of the license restrictions set forth in the Agreement, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; or (d) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us, you shall at your own expense indemnify, defend, and hold harmless such Blackboard Indemnitee. Blackboard shall have no liability (including indemnification obligations) to you for any claim to the extent arising out of (a) – (d) above.

12.4. Exclusive Remedy. EXCEPT FOR ANY OTHER INDEMNIFICATION OBLIGATIONS PROVIDED IN THE AGREEMENT, THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY, WITH RESPECT TO CLAIMS BY ANY THIRD PARTY.

13. CONFIDENTIALITY.

13.1. Confidential Information. "**Confidential Information**" means any non-public information disclosed by either party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, the terms of the Agreement, account and login credentials, information about a party's business, operations, vendors or customers, and all Blackboard Property and all Customer Property.

13.2. Nondisclosure and Nonuse. Subject to Florida Public Records Statute, Chapter 119, Florida Statutes, each party shall treat Confidential Information as strictly confidential and use the same care a reasonable person would under similar circumstances. The parties agree not to use such Confidential Information except for the purposes set forth in the Agreement and shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. The receiving party will promptly notify the disclosing party if the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

13.3. Exceptions to Confidential Treatment. Confidential Information shall not include information that: (a) is publicly available at the time disclosed, (b) is or becomes publicly available through no fault of the receiving party, or its employees, contractors or agents, (c) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations, (d) is already in the receiving party's possession free of any confidentiality obligations at the time of disclosure, or (e) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the limited extent necessary: (a) to comply with Law or the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure will first have given notice to the other party, unless the party is prohibited by Law or such court or body from providing such notification, (b) to make such court filings as may be required to establish a party's rights under the Agreement, or (c) to comply with Florida Public Records Statute, Chapter 119, Florida Statutes.

14. MISCELLANEOUS MATTERS.

14.1. Severability. If a court holds any provision of the Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and the Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

14.2. Governing Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

14.3. Modification and Waiver. No modification or supplement to the Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. A waiver of any breach of the Agreement is not a waiver of any other breach. Any waiver must be in writing to be effective.

14.4. Assignment. Neither party shall be entitled to assign the Agreement or its rights or obligations under the Agreement, whether voluntarily or by operation of law, except with the written consent of the other party; provided, however, that either party may assign the Agreement without the consent of the other party to any affiliate, or 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. The Agreement shall bind each party and its successors and permitted assigns.

14.5. Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to us, sent to Blackboard Inc., Attn: General Counsel, 11720 Plaza America Dr., 11th Floor, Reston, Virginia 20190 or to such other address as shall be given in accordance with this section with a copy to GeneralCounsel@blackboard.com, and, in the case of you, to the address listed on your invoice, and shall in each case be effective upon receipt.

14.6. Export Control. You shall not export or allow the export or re-export the Products and Services, any components thereof or any Confidential Information of ours without our express, prior, written consent and except in compliance with all export Laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, and, if applicable, relevant foreign Laws and regulations.

14.7. Force Majeure. Notwithstanding anything to the contrary in the Agreement, neither party will be responsible for any failure to fulfill its obligations, in whole or in part, due to causes beyond its reasonable control ("Force Majeure Event"), including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, internet or other telecommunication delays, fires, floods, labor disturbances or work stoppages, riots, wars, terrorist acts, epidemics, pandemics or other global or local health emergencies, Center for Disease Control advisories or inability to obtain any export or import license or other authorization of any government authority. We reserve the right to charge for usage beyond reasonable historical norms due to a Force Majeure Event only to the extent of Blackboard's actual costs incurred for such usage.

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

14.9. Entire Agreement. The Agreement, including any Order Forms, constitutes the entire, full and complete agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and the Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. If a conflict arises between the terms of this Master Agreement and the provisions of the Order Form, Services Guide, or statement of work, the terms of this Master Agreement will govern unless an Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of the Agreement.

14.10. Audit. Upon reasonable notice, we shall have the right to audit, at our expense, your use of the Products and Services not more than once per calendar year solely to ensure past and ongoing compliance with the Agreement.

Terms Applicable to Specific Products and Services

In addition to the terms and conditions above, the following terms and conditions apply only to the extent that you purchase the below-referenced Products and Services as specified in an Order Form.

15. BLACKBOARD LEARN™

15.1. Grant of License and Test Copies for Self-Hosted Software. Subject to your obligations under the Agreement, Blackboard grants you a non-exclusive, non-transferable, non-sublicensable license to install and use one (1) production copy and one (1) Test Copy (as defined below) of the Software for one installation at Customer's Designated Server Site (as defined below) solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Property, including content, to your Authorized Users and to use the Documentation in support of your authorized use of the Software. You agree not to install or use any Software on any computer, network, system or equipment other than on a Designated Configuration at the physical location where the Software will be installed, as identified in the Order Form (the "**Designated Server Site**"), except with our prior written consent. The Software may access, use or integrate Java Software. Such Java Software is licensed to you under the terms of Oracle's Standard Binary Code License Agreement currently found at: <http://www.oracle.com/technetwork/java/javase/terms/license/index.html>.

15.2. Test Copies of Software or SaaS Services. Self-hosted Software and SaaS Services licensees are provided one (1) Test Copy of the Software or SaaS Services. If you purchase the Blackboard Managed Hosting Non-Production Test Environment, we will host the Test Copy of the Software for you. A "**Test Copy**" is a copy of the Software or a sandbox environment for the SaaS Services used solely for non-production testing purposes and is not supported or warranted.

15.3. Grant of Learn API License. We grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access our public Learn-related API's ("Learn API"). The Learn API(s) are provided in the form of one of the following: a Building Block API, a REST API or a web service, that enables a "connection" into our servers. We will provide you with the information necessary to enable your use of the Learn API(s). You may not use or install the Learn API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Learn API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our Services.

15.4. FTE Definition for Pricing. Unless otherwise specified in the Order Form, "FTE" is defined as the number of full-time students plus half of the part-time students enrolled at your institution.

15.5. Higher Education Authorized Users. If you are a higher education institution, an Authorized User means any individual who is a student resident in a degree- or certificate-granting program of yours, prospective student, consortia student registered to take one of your regularly offered courses of instruction, employee (solely to the extent any such employees use the Product and Service for your internal training purposes), trustee, or collaborating researcher of yours or one of such employees. Authorized Users shall also include non-traditional students, including without limitation, faculty, staff, alumni, continuing education

students or participants in community outreach or non-degree bearing courses, not exceeding ten percent (10%) of the number of total FTEs specified in the Order Form; provided, however, that Authorized Users shall not include any third party commercial providers without our prior written approval.

15.6. K-12 Authorized Users. If you are a K-12 educational institution, an Authorized User means any individual who is a student, teacher, parent or legal guardian of student, or employee of yours (solely to the extent any such employee uses the Software for your internal training purposes).

15.7. Corporate/Government Authorized Users. If you are a corporate or governmental entity, Authorized User means any individual who is your employee or enrolled in a course of yours or your corporate affiliate (solely to the extent any such individual and employees use the Product and Service for your internal training purposes).

16. BLACKBOARD COLLABORATE

16.1. Higher Education Authorized Users. If you are a higher education institution, an Authorized User means any individual who is a student resident in a degree- or certificate-granting program of yours, prospective student, consortia student registered to take one of your regularly offered courses of instruction, employees, trustee, or collaborating researcher of yours or one of such employees (including invited third-parties thereof). Authorized Users shall also include non-traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses, not exceeding ten percent (10%) of the number of total FTEs specified in the Order Form; provided, however, that Authorized Users shall not include any third party commercial providers without our prior written approval.

16.2. K-12 Authorized Users. If you are a K-12 educational institution, an Authorized User means any individual who is a student, teacher, parent of student, or employee of yours (including invited third-parties thereof).

16.3. Corporate/Government Authorized Users. If you are a corporate or governmental entity, Authorized User means any individual who is your employee or enrolled in a course of yours or your corporate affiliate.

16.4. Use Limitations. Your license is solely for the purposes of creating, presenting, hosting, analyzing, viewing and delivering Events (as defined below) to Authorized Users, subject to any limitation of Seats (as defined below) specified in the Order Form. "Event" means a single live broadcast event transmitted over the SaaS Service created and/or sponsored in whole or substantial part by Customer or Customer's employees that is branded under Customer's name. The term "Events" shall include both live and archived Events. "Seat" means each Authorized User served by a stream of digitally encoded data that delivers an Event to such Authorized User in the SaaS Service and shall include an Authorized User's access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of unique Authorized Users of the Service. Your usage is limited by minutes as specified in the Order Form or support terms of the Agreement. A "Minute" for these purposes is each sixty-second interval in which an Authorized User is attending a session, Event, or playing back a recording of a session or Event. For purposes of illustration only, 5 people in a 30-minute Collaborate session = 150 minutes in total. Minutes used in excess of the contracted Minutes is subject to additional fees and purchase. Unused Minutes at the end of any annual Term, if any, are not eligible for rollover or carryover to subsequent Terms, or refund.

16.5. Storage. Your storage capacity ("**Storage Capacity**") may be limited as specified in the Order Form or support terms of the Agreement. Storage in excess of the Storage Capacity is subject to additional fees and purchase.

17. BLACKBOARD CONNECT; MASS NOTIFICATION SERVICES

17.1. Authorized Users; Recipients. Your Authorized Users are your employees. You will only use the Product and Service to send messages to the number and type of Recipient(s) specified in the Order Form, and to the extent not so specified, as defined below. You will provide all contact data for Recipients (the "**Recipient Data**"). You represent, warrant and covenant that you will not use the Product and Service for the purpose of sending commercial messages, including, without limitation, offers to purchase, sell, barter or lease commercial products, goods, or services. Unless otherwise indicated on an Order Form, telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii, and Canada. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees, shall be payable by you or Recipient. Unless otherwise specified on the Order Form, a "**Recipient**" shall be the following with respect to each type of customer entity listed:

- **K-12 Institution:** Parents of enrolled students, administrators, students, faculty, staff, and board members of the institution.
- **Higher Education Institution:** Enrolled students, faculty, and staff of the institution.
- **Government:** Households, businesses, and other related individuals within the government entity's jurisdiction.
- **Corporate:** Employees, consultants, contractors, and board members of the corporation.

17.2. Connect with Teacher. Blackboard Connect with Teacher will enable your teachers to send pre-recorded telephone comments to parents of students in a designated language. We will provide support to a designated administrator ("**Teacher Champion**") at your institution or entity. The Teacher Champion will in turn support the teachers using the Blackboard Connect with Teacher Product and Service.

17.3. Web Portal. If you elect to link to and use the web interface provided by us (the "**Web Portal**"), you agree that the Web Portal is for the sole purpose of enabling Recipients to update and add their contact information. If you elect to use the Web Portal, we grant for the period of the Term (as defined below) to you a limited non-exclusive, worldwide, royalty-free license to place a digital image of the applicable sign-up Logo, which will be presented to you (the "**Image**"), on an appropriate page of your Internet site, with a hyperlink to our Web Portal site (the "**Link**") currently at <https://portal.blackboardconnected.com/>. You may not use any other trademark or service mark in connection with the Image without our prior written approval. The Link may not be used in any manner to provide an Authorized User with access to the Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by you or anyone other than us. You may not allow the Image to be linked to any other web site. You may not use the Image in any manner not permitted hereunder, modify the Image, or copy, or create a derivative work from, the "look and feel" of the Image. We will have the right to review all uses of the Image for quality control purposes and proper compliance. We reserve the right to modify permission to use the Image and/or the Link at any time.

17.4. Weather Alerts. If you are licensing our weather alerts Service, you agree that we are delivering weather information created and provided by a third-party public service, and not by us. Weather forecasting is an inexact science. We shall have no responsibility or liability whatsoever to you or any other person or entity, parties and non-parties alike, for any inconsistency, inaccuracy, or omission for weather or events predicted or depicted, reported, occurring or occurred. **IN NO EVENT WILL WE BE RESPONSIBLE FOR ACTIONS OR LACK OF ACTION TAKEN TO PRESERVE LIFE OR PROPERTY.**

17.5. Representations, Obligations, and Indemnity. You represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of Recipient Data, the Product and Service, and with respect to the content and transmission of calls, texts, and other messages ("**Messages**") sent using the Product

and Service, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"), and where applicable, the legislation commonly referred to as Canada's Anti-Spam Legislation (S.C. 2010, c. 23) ("CASL"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained consents that may be required by the Telemarketing Laws, CASL and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; (e) you will have in place reasonable safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical, and public health, collectively, "First Responder Services") which do not utilize the Product and Service; (f) you will not take actions that will subject Blackboard to any Laws due to the import of Recipient Data; (g) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not send Messages to Recipients who have opted out of receiving Messages from you; (h) if you purchase data from us, you will only use such data purchased from us to contact individuals pursuant to the use of the Product and Service and are prohibited from downloading or making copies of such data purchased from us if such activity would violate a Law or contract; and (i) where you are providing a Recipient count or other data for the purposes of our Product and Service pricing quotations, such information shall be true and correct. You will designate qualified personnel to act as liaisons between you and us respecting technical, administrative and content matters, and providing accurate and current contact information. We shall have the right to require you to provide a legal compliance plan in connection with your use of our mass notification services, and audit your compliance with such plan as well as with subsections (a), (b), (c), (d), and (g) above. Failure to comply with any provision of this Section 17.5 is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

17.6. Emergency & Outreach Messaging. If you are purchasing Messaging restricted by use-case, the following definitions shall apply. An "Emergency" is a serious and unexpected incident, situation, or natural phenomenon that may require action but is not immediately threatening to life, health, property or the environment or has a high probability of escalating to cause immediate danger to life, health, property or environment. An "Emergency Message" is a Message sent to all Recipients in connection with an Emergency. An "Outreach Message" is a Message sent to one or more Recipients for general outreach and informational purposes that is not an Emergency Message.

17.7. Remedies and Disclaimers. Due to the nature of mass notification services, in the event of the Product and Service's failure to comply with the Agreement, your sole and exclusive remedy shall be to terminate the Service. You agree that the Product and Service is not intended, nor designed, for use in high-risk activities, or in any situation where failure of the Product and Service could lead to death, personal injury, or damage to property, or where other damages could result if an error or outage occurred. The parties further agree that, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, to the extent not prohibited by Law, WE SHALL NOT BE LIABLE FOR ANY DEATH, PERSONAL INJURY, OR DAMAGES ARISING OUT OF OR RELATED TO USE OF THE PRODUCT AND SERVICE. You agree that your primary recourse in the event of any actual or potential threat to person or property should be to contact First Responder Services and that the Product and Service is not intended to replace such First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, such First Responder Services, which should have already been notified and deployed prior to using the Product and Service.

17.8. Training and Testing. Blackboard makes training on the Product and Service available to you, and recommendations for periodic testing of the configurations and operations of the Product and Service for Customer. You acknowledge that taking advantage of such training on a reasonable basis for appropriate personnel and performing such testing is your responsibility, and that failure to do so could result in the Product and Service not functioning as expected.

17.9. Marketing and Political Activities. The applicable Products and Services shall not be used for marketing or political activities.

18. SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS

Third-Party Services. You acknowledge that the Products and Services may assist you to access or themselves automatically access, interact with, and/or purchase services from third parties via third-party social media and similar websites or applications (collectively, the "Third-Party Services"). You authorize any such access. Any use of Third-Party Services is governed solely by the terms and conditions of such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, services provided, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Blackboard. Blackboard makes no representation and shall have no liability or obligation whatsoever in relation to the content provided to or available at, use of, or correspondence with, any such Third-Party Services or any transactions completed and any contract entered into by you with any such third party.

19. SCHOOLWIRES, EDLINE & WEBSITE COMMUNITY MANAGEMENT PRODUCTS

19.1. License Grant. You shall have a right to use those website community management SaaS Services purchased under an Order Form. Certain SaaS Services may include use of a website or other web-based learning environment which is hosted by us (a "Site"). A Site which is built upon the designated website community management system is generally used as a client's primary internet website and additional Sites are typically used as one or more related sub-sites (such as an individual school's website or other secondary website). Where your licensing rights are limited by a specified number of Sites, such limit shall be determined by adding up all of your Sites, including both those that are used as primary websites and those used as secondary websites. In this regard, as used in the Order Form to establish licensing limitations, the following definitions shall apply:

"Channels." A group of one or more closely related FlexSites located within a Site. For example, an "Athletics" Channel may contain FlexSites for various teams such as Varsity Football, Varsity Soccer and Varsity Baseball.

“FlexSites.” (Also referred to at times as **“Sections”**). A connected group of web pages devoted to a single topic or several closely related topics located within a Channel. For example, FlexSites can be used to provide online content for an individual class, club, athletic team and/or district policies. A client’s rights of use in the SaaS Services are generally limited by a specified number of FlexSites as specified in the Agreement.

19.2. Usage Limitations. Depending on the website community management SaaS Services purchased, your use of the SaaS Services may be limited by bandwidth, storage or other limitations.

19.2.1. Authorized Users. Authorized Users of the website community management SaaS Services may only be comprised of students, teachers, administrators, parents, staff and community constituents directly enrolled or otherwise affiliated with your district or institution who you authorize to access and use the SaaS Services in support of your educational operations. However, where you have purchased rights of use in a Site which is designed to display public-facing content, third party visitors may access the screen displays on the Site on a remote, web-enabled basis in order to view the Site content which you have chosen to display to the public.

19.2.2. Purposes. You may only use the website community management SaaS Services in accordance with the uses contemplated in the pertinent Documentation.

19.2.3. Authorized User accounts. If you purchase rights of use in website community management SaaS Services which are designed to enable collaborative learning and social networking within a school district, your right to use these SaaS Services shall be limited by a specified number of Authorized User accounts. The “Authorized User account” limitation shall be specified in the applicable Order form and you shall not be permitted to allow use of the SaaS Services to anyone other than those individual account holders who are specified by name on a list maintained by you, where the total account holders shall not exceed the specified limitation.

19.2.4. Participants and Classrooms. If you purchase rights of use in website community management SaaS Services which facilitate a virtual international classroom exchange program, then your rights of use will be limited to a number of classrooms and associated participants as specified in the applicable Order Form.

19.2.5. Passkey Manager. If your license includes rights of use in the Passkey Manager, then our obligations to provide Support therefor shall extend only to the pre-built single sign-on configurations in the forms delivered by us as part of the general release version of this Service. We have no obligation to support the Passkey Manager if any third party changes their methodology or technology for authenticating their application or website resulting in a disruption of the pre-built configurations provided by us.

19.3. Monitoring the Site. You acknowledge that persons other than our employees, particularly students, may post inappropriate material on, or otherwise interfere with (e.g., by “hacking”), the Site. It may be difficult to determine precisely who took such actions or when they were taken. However, you agree that you are solely responsible and liable for monitoring the Site on a regular basis to ensure that it does not contain inappropriate material and is functioning properly. In the event that you discover any materials that should be removed from the Site, you will do so promptly or, if you cannot do so, will notify us immediately. In no event shall we be liable in any manner or form, or under any theory or cause of action, for inappropriate content or materials posted on your Site unless we post such content or materials.

19.4. Your Responsibilities. You acknowledge and agree that your use of the website community management SaaS Services does not and will not violate any applicable laws or third party rights. You acknowledge and agree to comply with all applicable privacy laws, including without limitation FERPA, COPPA and state laws relating to student data privacy, regarding your use of the services to provide content to and collect information from your Authorized Users and visitors, including, without limitation, by posting your privacy policy on your Site and for making all required disclosures and obtaining all required consents, if necessary, from such Authorized Users and visitors with respect to your collection, use, and disclosure of personal information.

19.5. Authorized User Requirements. You shall ensure that the computing systems utilized by you and your Authorized Users meet the required browser and other configurations then specified by us (in the Order Form or on our website) as necessary for the operation of the SaaS Services and Site (other than equipment provided by us as part of our hosting obligations). We reserve the right to modify these requirements from time to time and will notify you of any material modifications by e-mail or otherwise.

19.6. Terms of Use and Privacy Policy. Where we provide access to our Terms of Use and Privacy Policy on the Site, you shall not remove, disable, impede access to or otherwise modify them.

19.7. Additional Ownership Rights. In addition to the ownership rights described in the Agreement, we shall own all right, title and interest in all website templates, the design and layout (including the “look and feel”) of the Site, the underlying architecture and framework of the Site, and other content or deliverables developed by us for the Site.

20. MOODLE CMS AND BLACKBOARD OPEN LMS

Moodle Open Source software (“Moodle CMS”) is licensed under a GNU General Public License “GPL” open source license. Your use and distribution of the Moodle CMS is governed by the terms of the GPL license and, notwithstanding any provision to the contrary herein, Blackboard makes no representations or warranties regarding its use other than as provided in Section 3 related to hosting and support services for Moodle CMS, if applicable.

20.1. Authorized Users. Your Authorized Users may not exceed the “Active User” limit specified in the Order Form. For this purpose, “Active User” means an Authorized User who has an account in the platform and is also enrolled in a visible course regardless of whether the course is then currently in use by Customer. Suspended users (a user account that is deactivated so that the user can no longer access the system until the account is activated again by the site administrator) or users with all enrollments suspended shall not be included in the Active User count. Authorized Users’ use of the SaaS Service may not exceed the scope of these use provisions without the express written agreement of Blackboard and Customer’s payment of an additional fee as reasonably determined by Blackboard.

21. MOBILE APPLICATIONS

Blackboard provides software (“**Mobile Software**”) to access many of the Products and Services via a mobile device. The use of Mobile Software is governed by the terms and conditions referenced in the application store (e.g., Apple, Inc. or Google, Inc. app stores) relevant to the Mobile Software except with regard to the collection, use, and deletion of Personal Information on your behalf, which is governed by the Agreement. Blackboard makes no representation regarding the availability of third-party application stores or the Mobile Software’s compatibility with mobile devices.

22. SMARTVIEW™

22.1. Authorized Users. Your Authorized Users are your employees. You will only use the Product and Service to provide help-desk guidance (including but not limited to guidance on financial aid, student accounts, registration and records) to current faculty and staff. In addition, if specified on the applicable Order Form, your current and prospective students may access the Self-Help portal of the Product and Service.

22.2. Representations and Obligations. You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Personal Information, in connection with your use of SmartView; (b) you will not store any Personal Information within SmartView; (c) you are responsible for communicating any necessary modifications to the Product and Service that arise due to changes in your internal policies or the Law; (d) in order to facilitate a reasonable method for us to obtain timely and automated access to institutional data, upon the Effective Date, your student information system (SIS) shall be integrated with Smartview, and depending on the scope of services, your learning management system (LMS) system and customer relationship management (CRM) system, may be integrated with Smartview; and (e) following the initial configuration of the Product and Service, you are responsible for any modifications or errors within the workflow routines in the Product and Service. The costs and timelines to complete any requested modifications to the Product and Service must be addressed in a mutually agreed Statement of Work.

22.3. Remedies and Disclaimers. You acknowledge that: (a) you are solely responsible for the accuracy of Personal Information or content in the Product and Service; (b) the KnowledgeBase in SmartView is for informational purposes only and it is your responsibility to update the content in the KnowledgeBase every twelve (12) months. Blackboard will not be held to any penalties associated with missed One Stop or Help Desk Service Level Agreements during any period where the KnowledgeBase has not been updated in the past twelve (12) months; (c) your Authorized Users will not provide any financial guidance or advice solely based on the Product and Service; (d) you agree that you are responsible for the actions or inactions of your Authorized Users; and (e) Blackboard shall have no liability associated with the guidance or advice provided to Students by such Authorized Users. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to defend, indemnify and hold us harmless against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys' fees) in connection with any claim or action that arises from the guidance or advice provided to Students using the Product and Service.

22.4. Additional Fees. In the event you do not integrate your system with Smartview as outlined in Section 22.2(d) above, Blackboard shall invoice you at the following specifications: for One Stop Services and Help Desk, you will be billed at the Premium Solution rate for the period of time that Smartview is not integrated with your systems; for Help Desk Services: (1) for per minute-based pricing models, we may charge you an additional 25% per minute; and (2) for per incident-based pricing models, we may charge you an additional 25% per incident.

23. STUDENT SUPPORT SERVICES

23.1. Types and Estimates of Student Support Services. The Order Form will specify whether you have purchased inbound, live outbound, and/or automated outbound Student Support Services. The estimated number of annual Inbound Interactions, monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. If these estimates exceed the actual parameters experienced in the relevant period, we shall be excused from any failure to meet any service levels for such period as outlined in the Statement of Work. The parties shall review the estimates at the end of any term and agree on updated estimates for any renewal term (including the payment of additional fees based on such updates), and update the Order Form accordingly.

23.1.1. Inbound Interactions. You represent that the estimated monthly Inbound Interactions is a reasonable estimate, and at the end of a term we shall be entitled to invoice you in accordance with the terms set forth herein. You acknowledge and agree that, if during any annual term, the actual number of Inbound Interactions exceeds your total Estimated Inbound Interactions ("Excess Inbound Interactions"), then at the end of the then-current annual term, we shall be entitled to charge you for all such Excess Inbound Interactions at a Per Incident Rate, plus a premium, as outlined in the Statement of Work. You may upwardly adjust estimated monthly Inbound Interactions for any future month upon delivery of 60 days' prior written notice to us.

23.1.2. Live Outbound Interactions. If the actual live Outbound Interactions exceeds the quarterly estimate by 15% or more, we will meet to determine whether the estimate for future quarters needs to be upwardly adjusted (and, if so, shall update the Order Form accordingly, including the payment of additional fees).

23.2. Provision of Service Desk Infrastructure. We shall provide the enabling technology, software system, or other designated support procedures/processes and related third party technologies that will provide back-end ticketing, a customer-facing knowledge base and related support modules, including access to self-help resources and live support via phone, chat, and web-based submissions, where applicable ("**Service Desk Infrastructure**") to Authorized Users designated by you who will become familiar with the Service Desk Infrastructure and work with the Blackboard Service Desk on your behalf to provide the Student Support Services ("**Authorized Customer Support Users**") to students, faculty or staff members of yours located at or receiving or providing services through your institution ("**Authorized Users**").

23.3. Implementation. We shall provide an implementation project manager, implementation resources, and requisite tools to develop and implement your Student Support Services. Implementation services, development, and associated go-live dates are assumed to be standard unless otherwise specified in a custom scope. If, during implementation, it is discovered that your business processes necessitate a custom scope after contract signing, go-live dates could be impacted. We will also provide you with a customer service manager. During the implementation phase, the parties shall co-author the call script to be used by our representatives.

23.4. Availability. We shall use commercially reasonable efforts to make the Service Desk Infrastructure available. From time to time, it may be necessary for us to perform scheduled maintenance on and/or deliver upgrades to various components of the Service Desk Infrastructure, as set forth in more detail in the Order Form.

23.5. Your Responsibilities. These responsibilities are essential to our achievement of service levels for you.

23.5.1. Access. You agree to provide us with any reasonable information and training required by us to establish the Service Desk Infrastructure. You will provide reasonable access to your personnel and arrange for us to have suitable access to your facilities (including suitable office space and resources for our personnel working on-site) and systems within your control necessary to perform the Student Support Services.

23.5.2. Cooperation. You agree to assign an executive sponsor and day-to-day project manager with final sign-off authority to review and approve processes, work-flow, knowledge base and escalation procedures regarding the Student Support Services. Your personnel will actively participate in review and planning meetings, trainings, and the communication of processes and documentation reasonably required to provide the Student Support Services.

- 23.5.3. Usage Limitations.** You shall use best efforts to ensure that only Authorized Customer Support Users are provided access to the Service Desk Infrastructure and Student Support Services, including not causing or permitting third parties to access such infrastructure or services.
- 23.6. Authorized Users.** You acknowledge that we will rely on information provided by you. You agree to provide such information that is reasonably requested by us from time to time, including (i) a comprehensive list of all current and (to the extent then known) potential Authorized Users, (ii) the email addresses and/or phone numbers of Authorized Users, (iii) student demographic information, and (iv) headcount data.
- 23.7. Representations and Indemnity.** If you request that we contact any Authorized User or other person on your behalf (“Recipient”), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Student Support Services, and with respect to the content and transmission of calls, texts, and other messages (“Messages”) sent using the Student Support Services, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC’s implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the “Telemarketing Laws”); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient’s contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys’ fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.
- 23.8. Changes and Oral Instructions.** You shall, to the extent reasonably possible, provide us with no less than 60 days’ prior notice of events that you anticipate will increase volume of the Student Support Services. We may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if we receive an oral instruction to proceed from your project manager or another authorized representative and we send a written confirmation of the oral instruction to you.
- 23.9. Added Definitions.**
- 23.9.1. “Average Handle Time”** means, with respect to any period, the average time (including talk time, time on hold, and wrap-up time) taken to handle an Inbound Interaction.
- 23.9.2. “Inbound Interaction”** means a single inbound Support Request from an Authorized User to the Service Desk or the Service Desk Infrastructure. An Inbound Interaction does not include (i) live or automated outbound Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.
- 23.9.3. “Outbound Interaction”** means an outbound interaction between the Service Desk and an Authorized User (for example, during a live outbound campaign in support of enrollment or financial aid objectives). An Outbound Interaction may be either a live interaction between a Blackboard Service Desk member and an Authorized User or automated (e.g., outbound text messages). An Outbound Interaction does not include (i) inbound Student Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.
- 23.9.4. “Service Desk”** means our personnel that provide Student Support Services to Authorized Users under this Section 24.
- 23.9.5. “Support Request”** means a request for assistance received by Blackboard’s Service Desk and/or Service Desk Infrastructure from an Authorized User, such as any answered phone call, answered email, or answered chat.
- 23.9.6. “Self-Service Incident”** means students getting the information that they need using self-service technologies.
- 23.10. Travel.** You will reimburse us for all reasonable travel expenses incurred by our employees in connection with the delivery of our services, unless stated otherwise. In the event that you choose to cancel a scheduled on-site visit within two (2) weeks of the scheduled event, Blackboard may invoice you for associated travel change fees.
- 24. BLACKBOARD ALLY**
- 24.1. Grant of License.** With respect to the Blackboard Ally service, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to access and use the Blackboard Ally service made available by Blackboard.
- 24.2. No advice.** We do not guarantee that the use of the Blackboard Ally service will ensure the accessibility of your web content or that your web content will comply with any specific web accessibility standard or law. Any information or guidance accessed through the Blackboard Ally service, including without limitation the results of any website tests conducted or other guidance with respect to compliance with various accessibility standards, including without limitation the web content accessibility guidelines 2.0 (WCAG 2.1), or laws, rules or regulations, including without limitation those commonly known as the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008, applicable sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 251(a), the Rehabilitation Act, the Individuals with Disabilities Education Act, or their international counterparts, any or all as amended from time to time, or related rules or regulations is provided solely as a courtesy and is not legal advice or counsel. Other laws may apply to you or your customers depending on the nature of their goods and services. We expressly disclaim any implied or express warranties and any liability with respect to any information or guidance provided.
- 25. PROFESSIONAL SERVICES**
- 25.1. Online Training Services.** Online Training classes are restricted to a maximum of 20 Authorized Users.

25.2. Onsite Training Services. Onsite Training classes are restricted to a maximum of 15 Authorized Users. You must provide all necessary equipment to facilitate the Onsite Training. If you cancel a scheduled Onsite Training workshop, you shall be charged a cancellation fee as follows: Prior to 21 days before the event: 20%, 15-21 days before the event: 60%, 8-14 days before the event: 100%, 1-7 days before the event: Fee as referenced in the Order Form.

25.3. On-site Workshops or On-Site Consulting Visits. In the event the Customer chooses to cancel a scheduled on-site training workshop or consulting visit within two (2) weeks of the scheduled event, Blackboard Consulting may invoice the Customer for the following for on-site consulting visits, the cost of all consultant hours scheduled for the site visit plus incurred travel change fees.

25.4. Professional Services Expenses. You shall reimburse us for all reasonable travel expenses incurred by our employees and subcontractors in connection with the performance of Onsite Training Services unless stated otherwise.

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

25.6. Deliverables sign-off. Customer will complete a review of all submitted draft deliverables, or set of artifacts, in five business days unless otherwise agreed to in writing.

26. MARKETING, ENROLLMENT, AND RECRUITMENT SERVICES

26.1. Marketing Services: Ownership of Marketing Deliverables. Marketing creative deliverables that are created or developed by Blackboard specifically for you pursuant to a Blackboard marketing services Statement of Work ("Marketing SOW"), including all marketing and media plans, and creative content such as slogans, artwork, media content, image files, videos, drawing, photographs, graphic material, film, music and web sites ("Customer Marketing Deliverables") shall be owned by you. You hereby license the Customer Marketing Deliverables to Blackboard during the Term of the Agreement solely to permit Blackboard to carry out its obligations under this Agreement and any associated Marketing SOW's. To the extent that any deliverable created under a Marketing SOW includes Blackboard intellectual property, Blackboard hereby licenses such Blackboard intellectual property to Customer for use solely as part of such deliverable. Such license shall survive expiration of the relevant Marketing SOW. Customer agrees that Blackboard shall have no obligation to host any of the deliverables under a Marketing SOW following the termination of such Marketing SOW.

26.2. Enrollment Services: Representations and Indemnity. If you request that we contact any prospective student, Authorized User, or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Enrollment Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

Data Processing Addendum

If you are subject to the European Union Data Protection Directive 95/46/EC, General Data Protection Regulation (2016/EC/679) or "GDPR", or similar statute ("Data Protection Laws"), the terms of this Data Processing Addendum ("**DPA**") are incorporated by reference to the Master Agreement between you and Blackboard ("we", "us" and "our") (the "**Agreement**").

Data Processing Clauses

The following provisions shall apply whenever Customer Data are processed on your behalf:

1. Blackboard's obligations
 - 1.1 We shall process data and information provided by you or your Authorized End Users ("**Customer Data**") within the scope of the Agreement, for the purpose of service provision during the term of the Agreement, and pursuant to your documented instructions (unless required to process Customer Data other than instructed by applicable law, in which case we will, before processing Customer Personal Data in accordance with that law, inform you unless that law prohibits us from doing so). You warrant your collection and sharing of Customer Data with us and our processing of Customer Data solely in accordance with the Agreement shall comply with applicable law. We shall not compile copies or duplicates without your approval, except for copies made for backup or disaster recovery purposes.
 - 1.2 Annex A of this DPA contains a list of the categories of Customer Data, the data subjects concerned, the nature and purpose of processing.
2. Authority to issue instructions
 - 2.1 We agree, without limitation, to strictly follow any instructions given by you under the Agreement as well as those issued on an individual basis with regard to the collection, processing and/or usage of Customer Data. This includes but is not limited to instructions on the blocking, correction or deletion of Customer Data. Our obligations under this Section 2.1 shall be subject to Section 2.3.
 - 2.2 Instructions may only be issued by your management board, data protection officers or the manager of your legal department, if applicable (hereinafter "**persons authorized to issue instructions**"). The persons authorized to issue instructions shall have the right, at all times, to make written appointments of additional persons authorized to issue instructions.
 - 2.3 You warrant that you shall give only lawful instructions. If we hold the view that any instruction of yours contravenes statutory regulations and/or the Agreement, we will notify you, and we are entitled to suspend execution of the instruction concerned, until you confirm such instruction in writing. We have the right to deny the execution of an instruction – even if issued in writing – in case we conclude that we would be liable under applicable law if we execute the instructions you have provided.
 - 2.4 We shall, by way of regular self-audits, ensure that the processing of Customer Data on your behalf conforms to this DPA.
3. Data secrecy
 - 3.1 We undertake to maintain data secrecy, pursuant to applicable Data Protection Laws, and keep Customer Data confidential. In particular, we will ensure that such persons with access to Customer Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

3.2 We confirm that we are aware of the applicable Data Protection Laws. We agree that we make our applicable employees familiar with the relevant provisions of data protection regulations. We shall supervise compliance of such employees with applicable Data Protection Laws.

4. Sub-Processing

4.1 In accordance with the provisions of this DPA and the Agreement, you acknowledge and agree that Blackboard, Blackboard affiliates ("**Blackboard Affiliates**") or the third parties providers engaged to provide the Services provided here: https://blackboard.secure.force.com/btbb_articleview?id=kA53900000001LM (which are hereby designated as sub-processors for the purpose of processing Customer Data) may store or process Customer Data in various data centers around the world and that Customer Data might not be hosted within the country in which you are located provided that (a) notwithstanding any notice requirement in the Agreement, we shall publish notification of any changes to the sub-processors processing Customer Data at the link provided above thirty (30) days prior to any changes to the sub-processors processing Customer Data and give you an opportunity to review such changes and raise reasonable objection to such changes; and (b) the sub-processors processing Customer Data are subject to the same data protection obligations or the same level of protection as are contained in the DPA. Customer agrees to raise any reasonable objections in writing within ten (10) calendar days such notification. You confirm that Section 4.1. constitutes general written authorisation for the purposes of GDPR. We shall remain liable for any processing of Customer Data carried out by sub-processors engaged under the Agreement. Upon your request, we will tell you where Customer Data is located. Notwithstanding anything to the contrary in this Section, if we and you have agreed that Customer Data will be stored in any particular location, we will store such Customer Data in the agreed location.

4.2 You acknowledge and agree that Blackboard may transfer Customer Data to any country outside the European Economic Area ("**EEA**") or to any country which has not been the subject of a European Commission adequacy decision provided such a transfer is made pursuant to an appropriate legal transfer mechanism, such as a valid certification under the EU-US Privacy Shield Framework, EU Commission Model Clauses or any other legal transfer mechanism. To the extent that the legal transfer mechanism relied on is declared invalid (by, for example, a competent court or authority), Blackboard shall cooperate with Customer in good faith to find an alternative legal transfer mechanism.

5. Audit

5.1 Upon request, we will provide you an overview of our data processing operations, to include the following information:

- (a) owners, managing boards, managing directors or other lawfully or constitutionally appointed managers and the persons placed in charge of the Customer Data processing;
- (b) our address;
- (c) purposes of collecting, processing or using the Customer Data;
- (d) a description of the groups of data subjects and the Customer Data or categories of Customer Data;
- (e) recipients or categories of recipients to whom the Customer Data may be transferred;
- (f) standard periods for the retention of Customer Data;
- (g) any planned data transfer to third countries; and

- (h) a general description enabling a preliminary assessment as to whether the technical and organizational measures to guarantee the safety of processing are adequate.

The Parties agree and acknowledge that for the purposes of this Section 5.1 it shall be sufficient that we present all documentation, including a certified statement on the compliance with this Agreement, in such format as reasonably required by you or any independent auditor appointed by you at your expense. We shall make available to you any other information you request where necessary to demonstrate compliance with your obligations under Article 28 of the GDPR unless in our opinion such a request infringes Data Protection Laws or European Union or Member State law, in which case we shall inform you of our opinion.

- 5.2 You have the right to audit our compliance with the statutory regulations on data protection and the stipulations entered into between the Parties (including the technical and organizational measures), by requesting information about and inspecting storage of the Customer Data, and implemented policies and security incident reports, subject to reasonable prior notice of at least 14 days in advance and, to the extent reasonably possible, without interfering with our regular business operations.
- 5.3 Customer agrees that, taking into account the nature of the processing of Customer Data under the Agreement, by providing the assistance and information contained in this Agreement, we have assisted you in ensuring compliance with your obligations in respect of data protection impact assessments and prior consultation under Articles 35 and 36 of the GDPR.

6. Data security measures

- 6.1 We use the following appropriate technical and organizational measures to protect Customer Data ("Security Measures"), which have to meet, at a minimum, the level required by applicable law:

(a) Admission control:

- We employ appropriate physical safeguards to prevent unauthorized persons from gaining access to the premises where Customer Data is collected, processed and used. Such premises may only be entered by us and/or our agents.
- We use appropriate measures to secure buildings.
- We use appropriate measures to ensure that Customer Data held in hardcopy are kept securely e.g. in locked rooms or filing cabinet. Generally, steps are taken to ensure that access to hardcopy Customer Data is limited in the same way it would be on an electronic IT system i.e. access is limited to those individuals where it is necessary for them to have access in order for them to perform their job role.

(b) Entry control:

- We shall endeavour to prevent unauthorized parties from accessing or using our data processing systems.
- We shall require authentication and authorisation to gain access to IT systems (i.e. require users to enter a user id and password before they are permitted access to IT systems).
- We have procedures in place to permit only authorized persons to access Customer Data internally or externally by using authentication procedures (e.g. by means of appropriate passwords), except as otherwise enabled by you.

(c) Access control:

- We employ appropriate measures to prevent individuals accessing Customer Data unless they hold a specific access authorization.
 - We employ appropriate measures to only permit user access to Customer Data which the user needs to access for his/her job role or the purpose they are given access to our IT systems for (i.e. we implement measures to ensure least privilege access to IT systems).
 - We shall have in place appropriate procedures for controlling the allocation and revocation of Customer Data access rights. For example, having in place appropriate procedures for revoking employee access to IT systems when they leave their job or change role.
 - Our systems that are used to collect, process and use Customer Data are protected by user identifiers, passwords and graded access rights. Special access rights are produced for the purposes of technical maintenance which do not allow access to Customer Data.
 - We take appropriate administrative safeguards to protect our services against external attacks, including, for example, deploying firewalls.
- (d) Transmission control:
- We shall employ appropriate measures to protect the confidentiality, integrity and availability of Customer Data during electronic transmission.
 - We shall encrypt the Customer Data items listed in Annex A while in transit over the internet.
- (e) Input control:
- We shall maintain logging and auditing systems to monitor activity related to the input of Customer Data.
- (f) Order control:
- We shall ensure that all requests from you with respect to Customer Data shall be processed strictly in compliance with your instructions through the use of clear and unambiguous contract terms; comprehensive Statements of Work; and/or monitoring of contract performance.
- (g) Availability control:
- We shall protect Customer Data in our possession against unintentional destruction or loss by implementing appropriate management, operations, and technical controls such as firewalls; monitoring; and back-up procedures.
 - Example measures that may also be taken include: mirroring of storage media, uninterruptible power supply (UPS); remote storage; firewall systems; and disaster recovery plans.

6.2 The technical and organizational measures described in Section 6.1 are subject to technological advancements and further development. We are permitted to implement suitable alternative measures, as long as the alternative measures do not reduce the level of security applied to the Customer Data.

- 6.3 We shall regularly audit and assess our compliance with the technical and organizational security measures.
7. Notification duties
- 7.1 Notification of infringements of data protection regulations
- (a) We shall notify you to the extent the technical and organizational measures taken by us are not in accordance with this DPA or your instructions. The same applies to malfunctions or indications for an infringement of data protection regulations, or in case of improper processing of Customer Data, including, but not limited to, data security breaches and data losses. We and you shall mutually agree on any further collection, processing and usage of Customer Data, and we shall initiate all reasonably necessary measures to exclude risks to the integrity and confidentiality of Customer Data.
- (b) In the event we have a reasonable, good faith belief that an unauthorized third party has gained access to or disclosed your Customer Data, we will promptly, or if required by Law in such other time required by such Law, notify you. We will provide you with reasonable cooperation and assistance in relation to your investigation of the incident. If such incident triggers any third-party notice requirements under Laws, you agree that unless otherwise required by Law, as the owner of the Customer Data, you will be responsible for the timing, content, cost and method of any such notice and compliance with such Laws.
- 7.2 You agree that, given the nature of the processing, Section 7.1 satisfies our obligation to assist you with your obligations under Articles 33 and 34 of the GDPR.
- 7.3 We shall notify you about:
- (a) any legally binding request for disclosure of the Customer Data by a law enforcement authority or other organization or body, unless prohibited by law;
- (b) any request received directly by us from a data subject.
- 7.4 We agree to provide you with reasonable cooperation and assistance in relation to any request under Section 7.3. You agree that, given the nature of the processing, Section 8.3 satisfies our obligation to assist you by appropriate technical and organisational measures, insofar as this is possible, for fulfilment of Customer's obligations to respond to requests for exercising rights laid down in Chapter III of the GDPR.
8. Deletion of data
- 8.1 Upon expiration or earlier termination of the processing services, or such earlier time as you request, we agree, at your request, to:
- (a) return to you or your designee; or
- (b) securely destroy or render unreadable or undecipherable,
- the relevant Customer Data in our possession, custody or control.
- 8.2 We shall ensure from an organizational perspective that Customer Data can be deleted within a reasonable time frame consistent with your request or deletion requirements established in the Agreement, except that we shall not be obliged to delete Customer Data from archival and back-up files except as in line with our company data deletion schedule (as permitted under Data

Protection Legislation). If you request deletion of Customer Data in archival and back-up-files, you shall bear the costs including costs for business interruptions associated with such request.

9. Final Provisions

9.1 Unless specifically stipulated to the contrary by the Parties, the duration of the commissioned data processing specified by this DPA shall be coterminous with the term of the Agreement.

9.2 Notwithstanding any notice requirements in the Agreement, we may update this DPA from time to time to better reflect changes to the law, new regulatory requirements or improvement to the Service. The updated Terms shall be posted here: <http://agreements.blackboard.com/bbinc/data-processing-addendum.aspx>. If any update to the DPA materially affects your use of the Service or your rights herein, we will provide 30 days' prior notice at the link above or in-product notification. Your continued use of the Service shall constitute acceptance to be bound by the updated DPA.

9.3 In the event of a conflict between this DPA and any other provision of the Agreement between you and us, this DPA will prevail; provided that if you and we have agreed in an Order Form to any terms that are different from this DPA, the terms in such Order Form will prevail.

Annex A – Details of the Data Processing

Categories of Data

Name or unique identifiers
Personal contact information
Date of birth, Gender, Nationality, Parent/Student Relationships
Grade Level, Teachers, Classes/Sections/Courses, Grades, Assignments, Tests, Books, Attendance, Homework, Degree Type
Financial details
Username, passwords
Service or browsing history, Location data, information provided by social networks, User or Customer Correspondence
Disciplinary and conduct records
Any information contained in the submitted paper, assignment, or other user-generated content

Special Categories of Data (if any)

Information relating to disability and health
Information relating to racial or ethnic origin

Categories of Data Subject:

Customer and Customer's Users authorized by Customer to use the Blackboard Services (Students, Teachers and Administrators)

Nature of Processing:

We shall process data and information provided by you or your Authorized End Users within the scope of the Agreement, for the purpose of service provision during the term of the Agreement, and pursuant to your documented instructions (unless required to process Customer Data other than instructed by applicable law, in which case we will, before processing Customer Personal Data in accordance with that law, inform you unless that law prohibits us from doing so).

Publication Date: April 2016

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Introduction

The purpose of this document is to provide information on the client services Blackboard Inc. provides as well as policies and procedures for administering client support. Included are definitions of the life cycle of supported products and support classifications. Options for the types of support available to clients are defined as well as the terms under which support may be provided.

Supported Products

Blackboard Inc., together with its subsidiaries (the “*Company*”), currently makes Support Services available for certain of its products. Support Services are based on the support category to which each version of the product has been assigned by the Company. Support Services are subject to the terms of the applicable software license agreement between the Company and the applicable licensee (the “*Agreement*”). The Company products that are currently covered (individually, the “*Product*”; collectively, the “*Products*”) are as follows:

- **Blackboard Mobile Communications App**
- **Blackboard Mass Notifications**
- **Blackboard Social Media Manager**
- **Blackboard Connect**

Release Terminology

Blackboard refers to releases using the following terminology for all products except SaaS Deployments for Blackboard Mobile Communications App, Blackboard Mass Notifications and Blackboard Social Media Manager.

New Term	Description
• Release	<ul style="list-style-type: none">• Major Releases consist of new functionality and bug fixes.
• Patch	<ul style="list-style-type: none">• Patches are made between Releases for critical issues• When possible Patches are rolled into Releases

Enterprise Support for System Administrators

Enterprise Support provides broader and deeper support coverage for institutions running in mission-critical and complex Enterprise environments. Enterprise Support is provided on a 24/7/365 basis, which provides customers with round-the-clock support services.

Enterprise Support also provides technical support for complex implementations of the Company's products and is highly recommended for installations which involve any of the following elements:

- Multiple servers
- Load balanced and/or clustered environments
- Blackboard Building Blocks®
- Authentication integration
- SIS integration
- Blackboard advanced reporting

Enterprise Support is included with the following Products:

- **Blackboard Mobile Communications App**
- **Blackboard Social Media Manager**
- **Blackboard Mass Notifications**
- **Blackboard Connect**

Enterprise Support Communication Methods

Telephone support – Licensee is eligible to receive support in English from the Company. The Company may make support available in other languages from time to time, subject to the language capabilities of its technical staff.

Telephone-based support is available twenty-four (24) hours a day, seven days (7) a week, three hundred and sixty-five (365) days a year.

Web-based Self Service – Licensee is eligible to access documentation, release notes and knowledge resources.

Case Communications by Email – After a case has been created, ongoing communication may take place by email, provided the licensee does so by replying to emails coming from support@parentlink.com and does not alter the subject line.

Enterprise Support Services Designated Personnel

Licensee may have all district and/or school admins for purposes of receiving Support. These designated personnel should be staff members who have access to the Blackboard administrator interface.

The Company requires a Primary System Administrator for each client who acts as the primary system administrative point of contact for Blackboard within the client's institution. Blackboard Support will contact this individual if there are questions related to support but outside the scope of a particular case such as license key renewals or replacements. This individual is typically very familiar with the institution's implementation and usage of their Blackboard product, and is able to answer questions and make decisions pertaining to how the product is supported.

All district level requests and changes need to be approved by the Primary System Administrator.

All system administrators for an institution, including the primary administrator, will be able to access knowledge and documentation from the help page, and edit system and personal contact information. System administrators will have access to patches, updates, and releases of the supported Product when they become generally available to licensees.

Reasonable efforts to respond to all support requests and to remedy any documented and reproducible errors and defects in the Product that are submitted using an approved means within the following targeted response and resolution times.

Enterprise Support Services Severity Codes and Target Response Times

All support requests are important. However, some requests take precedence over others. Support has created four categories for support requests. Requests for support are handled based of severity code assigned to each issue.

Severity codes also determine initial response time targets. The most severe cases have the swiftest targeted response times. Severity level definitions and their response times are described in the sections below.

The time a request is logged under Enterprise Support is the time the call or web-based self service request is recorded by the Company.

Web-based self-service and telephone are the only approved means for initial support request submission under Enterprise Support. The Enterprise Support staff is not responsible for responding to requests made by third parties or directly to Company support staff members, or by any means other than those described above.

Severity Code 1 Issues

Your Blackboard Product is down and not functioning, the system is disabled or non-responsive. Response time for Severity Code 1 is within one (1) hour. Updates will be available at status.blackboard.com

Some examples of Severity Code 1 Software errors are as follows:

- Software is down and will not restart.
- Software is not able to communicate with external systems.
- Software is generating a data corruption condition.

When a Severity 1 issue is reported, the Company will assign resources to remedy the error.

Severity Code 1 is not to be used for Test Environments.

Severity Code 2 Issues

Your Blackboard Product is functioning, but major components are unavailable or unusable. The application is running but you may be unable to use major portions of the Software. Response time for Severity Code 2 is within four (4) hours. Updates will be available at status.blackboard.com

Some examples of Severity Code 2 Software errors are as follows:

- An intermittent, critical Software error.
- A major functional component is unavailable.

When a Severity 2 issue is reported, the Company will assign resources to remedy the error.

Severity Code 3 Issues

Your Blackboard Product is operating close to normal; however minor components are functioning abnormally. Response time for Severity Code 3 is within one (1) business day.

Severity Code 3 errors include non-critical Software errors. Severity Code 3 errors may be fixed in future software releases or Patches.

Severity 1 and 2 Software errors take priority over Severity 3 issues.

Severity Code 4 Issues

Severity Code 4 implies that the Software is operating normally but you may be in need of instructional assistance or you are requesting functionality that is not currently included in the Software. Response time for Severity Code 4 is within one (1) business day.

Severity Code 1, 2, and 3 will take priority over Severity Code 4 cases.

Case Resolution

After the initial response to your support request, Support will respond to subsequent requests within one (1) business day of:

- Case creation.
- Email replies to support@parentlink.com emails concerning your case.
- Voicemails or messages left with licensee's service reps.

Support's targeted resolution times are:

- One (1) subsequent business day for issues with a solution that has been previously implemented and validated by the Company, provided that Company has previously resolved the solution within one (1) business day of its identification by the Company as a known issue ("Routine Issues").
- A commercially reasonable effort until resolution is reached for all non Routine Issues ("Complex Issues").
- Targeted resolution times are applicable for implementations operating in certified configurations.

Exclusions to Enterprise Support Policies

The Enterprise Support described in this document applies only when the Product is hosted by the Company on behalf of such licensee.

Enterprise Support coverage does not include environmental-related support requests that involve the following areas:

- Server migration issues*.
- Improper usage of the Product (such as allowing unauthorized users access to the Product, prohibited usage, and so on).
- Non-supported 3rd party tools used with Product (except those where a support partnership exists).
- Issues arising with Products hosted by a third party, unless agreed upon in writing in advance by the Company (where such permission has been granted, issues arising as a result of the third party which would not have occurred with a Company hosted instance of the Product are excluded).
- Issues arising on an unsupported configuration.
- Issues known by Company not to be related to the Product application itself.

Web Community Manager Support Packages

Effective: July 11, 2018

General Client Support

Blackboard Help Site

<https://help.blackboard.com> - Online documentation and resources available 24/7 to all users with editorial privilege.

Online Support Case Submission

<https://support.blackboard.com> - Available to authorized Support Contacts at any time

Emergency Support

Available to authorized support contacts, regardless of Support Package purchased. Emergency support is limited to investigation of technical issues, errors, or defects not caused by users or third party hardware/software that **materially limit the use of the Licensed Software** and/or the Site. These issues include an Application Server being down and the inability to access the Site, Site Manager, or other Licensed Software, and inability to send notifications designated by Client as an Emergency. To the extent described below, emergency support is available 24/7 by calling:

Phone: (855) 742-5952

A Blackboard representative will normally be available to take the Client's call, or retrieve Client's voicemail, and will subsequently contact the Blackboard technical support person on call. A Response will normally be provided within a targeted maximum of three hours. Resolution may take longer depending upon the nature of the issue.

Software Enhancements and Upgrades

Software Enhancements and Upgrades will be made available to Clients to the extent they are released by Blackboard at a time when the Master Agreement is in effect and so long as Client is not in breach of any payment obligation or other term hereof.

Warranty Services

Blackboard will provide services to address "defects" in the Licensed Software in order to meet its warranty obligations as specified in the "Warranties" section of the Standard Terms and Conditions.

Client Support Service Level Options

In addition to receiving General Client Support as described above, Clients have the option of selecting one of two Client support packages.

Premium Support

Included as part of Subscription License

Incidents

- Unlimited General Usage Incidents for the first month after activation
- 18 General Usage Incidents per Client annually
- Actual bug/defect reports are unlimited

Reported by Whom

- To be submitted by authorized support contacts

How

- Requests for support may be submitted in the following ways:
 - **Online Support Form:** <https://support.blackboard.com>
 - **Email:** wcmsupport@blackboard.com
 - **Phone:** (855) 742-5952

Normal Targeted Response Time

- Maximum of one business day (resolution may take longer depending on the nature of the request)

Additional Support Blocks

- Includes 12 additional General Usage Incidents per block.

Unlimited Support

Not included as part of any Subscription License Fees; additional fees required as specified in a Master Agreement or Addendum

Incidents

- Unlimited General Usage Incidents per client annually
- Actual bug/defect reports are unlimited

Reported by Whom

- To be submitted by Primary Contact (authorized alternative contact as a back-up)

How

- Requests for support may be submitted in the following ways:
 - **Online Support Form:** <https://behind.blackboard.com>
 - **Email:** wcmsupport@blackboard.com
 - **Phone:** (855) 742-5952

Normal Targeted Response Time

- Maximum of one business day (resolution may take longer depending on the nature of the request)

Special Support for Client-Hosted Sites

Support beyond the number of hours provided for under your annual server maintenance package, to resolve failures in the Client-Hosted environment, such as those caused by network, hardware and/or user errors, may be available at the Blackboard hourly rates in effect at the time the services are provided and would be considered an Additional Service Option.

* A “General Usage Incident” is defined as a support request that involves how to use a specific feature of the Licensed Software, or technical issues involving the operation of the Licensed Software which are experienced by users. Feature suggestions are submitted via a separate form. Blackboard appreciates the input of Clients, but has no obligation to include any Feature suggestions into any Software Enhancement or Upgrade. A “Response” shall mean an initial telephone call or email from a Blackboard support representative to a Client representative to attempt to understand the nature of the request and provide any initial feedback from the Blackboard support representative. A “Response” does not mean or imply a resolution, which could include a work-around and can take varying lengths of time depending on the nature of the problem. Blackboard shall in no event be responsible for problems or defects caused by any software or hardware other than the unmodified Licensed Software.