



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	Dec 20 2016 10:35AM - Regular School Board Meeting
AGENDA ITEM	OPEN ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

ITEM No.:
EE-20.

TITLE:
Direct Negotiation Recommendation of \$500,000 or Less - 57-039E - Blackboard Web Community Manager

REQUESTED ACTION:
Approve the direct negotiation agreement with the above contract. Contract Term: December 21, 2016, through December 20, 2019, 3 Years; User Department: Information & Technology; Award Amount: \$331,975; Awarded Vendor(s): Blackboard Inc.; Minority/Women Business Enterprise Vendor(s): None

SUMMARY EXPLANATION AND BACKGROUND:
Blackboard Web Community Manager provides K-12 schools and districts with reliably hosted and low maintenance content management systems. It helps the District to stand out with our community and prospective families. By creating a school-to-home communications hub through Blackboard Web Community manager, we can optimize family engagement and teachers will have the opportunity to build their own web pages that show parents the value of their lessons and provide a window into their classrooms.
The Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
The estimated financial impact to the District will be of \$331,975. The funding source will come from the Information & Technology operating budget. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

EXHIBITS: (List)
(1) Executive Summary (2) Agreement (3) Financial Analysis Worksheet

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Tony Hunter	Phone: 754-321-0400
Name: Mary C. Coker	Phone: 754-321-0501

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Approved In Open Board Meeting On: **DEC 20 2016**

Signature
Maurice Woods
12/13/2016, 10:52:16 AM

By: *Abby M. Freedman*
School Board Chair

Blackboard® Order Form

Quote #: 00015451

1111 19th Street NW, Washington, DC 20036
Phone: 1-800-424-9299 Fax: 866-891-8612

District/Entity ("CLIENT" or "Customer")

Name:

The School Board of Broward County, Florida
600 SE 3RD AVENUE, 10TH FL
FORT LAUDERDALE, FL 33301-3125

Student Enrollment: C (20,001+)

Bb Customer Account No: 146354

Client Accounts Payable Information

Is a PO Number Required> (Y/N) _____

PO Number: _____

Contact Name: _____

Contact Telephone Number: _____

* Blackboard Inc. ("Blackboard") will provide Client (or "Customer") with the licensed software, support and/or services ("Licenses and Services") to the extent identified in **Exhibit A** of this Master Agreement Order Form ("Order Form" or "Agreement") for the fees set forth in **Exhibit A**. The Licenses and Services are subject to the specifications and limitations set forth in **Exhibit B**, if applicable as well as the Incorporated Contract Documents (listed below and incorporated by reference). If any term of this Order Form conflicts with any Incorporated Contract Document, then this Order Form shall control.

Term

1. Initial Term: Unless terminated earlier pursuant to Paragraph 10 of this Agreement, the Initial Term of this Agreement shall commence upon December 21, 2016 for a period of three (3) years ending December 20, 2019.
2. At the sole discretion of the School Board, this Agreement may be renewed for two (2) additional one (1) year periods by written amendment, to this Agreement that is approved by Blackboard.3.
3. Effective Date: December 21, 2016.

Payment Terms

1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
2. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

The following Exhibits are attached and incorporated to this Agreement:

Exhibit A – Fees

Exhibit B – Additional Notes Regarding Licensed Software and Services

Exhibit C- Safeguarding the Confidentiality of Student Records and Information

Exhibit D- Blackboard Master Agreement for all Products and Services

Attachment 1- Support Packages

Special Provisions:

1. Subject to applicable law, Blackboard checks employment, education, and criminal record (including sex offender, in countries where such check is available) for all new hires (except that Blackboard checks only education and criminal record for interns). Blackboard shall not have direct unsupervised contact with students when performing any of the services listed in Exhibit A.

EXHIBIT A

Fees

Product Code	Product Name	QTY	Product or Service Description	Year 1	Year 2 *	Year 3 *
SCH-CREATIVE	Creative: Sapphire Custom Template (Responsive)	2 Project	One-Time Fees	\$ 39,000.00	-	-
SCH-CREATIVE	Creative: Template Development - Minibase App	1	One-Time Fees	\$ 2,000.00	-	-
SCH-CREATIVE	Creative: Template Development – Interactive Element	2	One-Time Fees	\$ 3,000.00	-	-
SCH-SVC-TECH	Technical Services: SAML	1	One-Time Fees	\$ 750.00	-	-
SCH-TRAIN-OL	Training: Content Migration (500 pages)	1	One-Time Fees	\$ 5,000.00	-	-
SCH-CREATIVE	Creative: Diamond Custom Template (Responsive)	1 Project	One-Time Fees	\$ 23,500.00	-	-
SCH-SVC-OS	Consulting: Web Community Manager Site Launch (Client Site:	1	One-Time Fees	\$ 5,400.00	-	-
SCH-SVC-TRAVEL	Training: Onsite Travel Expenses (4-5 days)	1	One-Time Fees	\$ 1,700.00	-	-
SCH-TRAIN-OS	Training: On-Site Session	2 Session	One-Time Fees	\$ 4,400.00	-	-
SCH-SVC-TRAVEL	Training: Onsite Travel Expenses (1-3 days)	1	One-Time Fees	\$ 1,300.00	-	-
SCH-SVC-PREM	Creative: Template Regulatory Maintenance	3	Annual Fees	\$ 2,925.00	\$ 2,925.00	\$ 2,925.00
SCH-C2E	Blackboard Web Community Manager Essential	270 Sites	Annual Fees	\$ 81,000.00	\$ 81,000.00	\$ 81,000.00
			Total	\$ 169,975.00	\$ 83,925.00	\$ 83,925.00

* While the Subscription Fees for each of the annual or other periods reflected in the table above are stated as fixed Subscription Fees, the fees due for each annual period following the initial period (which is either Year 3 or a partial year period) may be increased by a percentage amount no greater than the applicable increase in the U.S. Department of Labor’s Consumer Price Index for all Urban Consumers, U.S. City Average (“CPI-U”). In each instance, the CPI-U will be measured over a twelve (12) month period which ends on the month which is six (6) months immediately prior to the first month of the contract year for which the increase would apply. Blackboard would notify Client of any such increase in the invoice submitted prior to the contract year at issue. For increases that may apply to renewal or other periods following the term of years reflected in the table above, please refer to the applicable provisions of the Agreement.

EXHIBIT B

Additional Notes Regarding Licensed Software and Services

Schoolwires Centricity2 Essential

Support Package	Premium Hosted
By	Schoolwires FlexSites
(also known as Sections)	250 per Site Storage
	4 GB per Site
Bandwidth	10 GB per month per Site

Template Library

Client is granted the right, during the Term, to access and use the web-based library of templates made generally available by Schoolwires as part of the Template Library subscription which is specified in the Master Agreement. Client's rights to use these templates shall be subject to the terms and conditions of the Master Agreement which govern the use of Licensed Software.

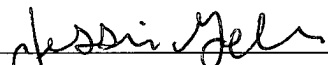
EXHIBIT C
Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.022, 1002.221 and 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to information and records created and/or maintained by public schools. The student personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

- 1) Ensure that all employees, appointees or agents of each party to this Agreement who are granted access to shared student records under this Agreement will have successfully completed a Blackboard issued privacy training which shall include FERPA standards.
- 2) Each party to this Agreement agrees to notify the other party promptly, but in no event more than three (3) business days, upon discovery of an actual acquisition or unauthorized disclosure of education records and personally identifiable information ("Breach") and to take all necessary notification steps as may be required by federal and Florida law. A Breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement upon written notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a Breach of the requirements stated herein above.
- 3) The provisions of this **Exhibit C** shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such student records are returned to The School Board of Broward County, Florida ("SBBC") or disposed of in compliance with the applicable Florida Retention Schedules, upon SBBC's written request, Blackboard shall provide a written acknowledgment of said disposition.

By signing below, each of Blackboard and Client represent that a) this Agreement has received all necessary approvals and that each party is authorized to enter into this contract and b) Client has reviewed and accepted all of the contract documents incorporated into or attached to this Agreement.


THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

Blackboard Inc.

Signature
Jessica Geller, Counsel
Name & Title (printed)
12/7/2016
Date

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Abby M. Freedman, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 12-8-16
Office of the General Counsel

Blackboard Internal Use Only:

Service Agency:	
Account Manager:	Judson Aungst

EXHIBIT D
BLACKBOARD® Master Agreement for All Products and Services

The terms contained herein (the Blackboard “**Master Agreement**”) and any accompanying Blackboard ordering document, executed as a standalone order form or agreed to by clicking “I agree” as part of an online order process on Blackboard’s website (in either case, an “**Order Form**”), form the entire agreement (“**Agreement**”) between you (the entity listed in any Order Form; hereafter, “**Customer**” or “**you**”) and Blackboard (the Blackboard entity listed in any Order Form; hereafter, “**we**”, “**us**” or “**Blackboard**”) (each individually, a “**Party**” and collectively, the “**Parties**”), with respect to the products and/or services listed in any Order Form (“**Products and Services**”).¹

1. APPLICABILITY OF THIS MASTER AGREEMENT

With respect to Products and Services you purchase, the terms of this Master Agreement govern: (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 pursuant to the terms hereof (“**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 that you purchase (“**Equipment**”); and (g) any student support services (“**Student Support Services**”). The terms of this Master Agreement are divided into two parts, with the terms immediately below applying to *all* Products and Services, and the section further below entitled “Terms Applicable to Specific Products and Services” containing additional provisions applicable to *only certain* Products and Services listed therein.

2. RIGHTS OF ACCESS AND USE.

- 2.1 License to Use SaaS Services.** With respect to SaaS Services, 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 SaaS 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 Term Basis.** With respect to Software, for the term specified in the applicable Order Form, 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 API License.** If you are purchasing an application programming interface (“**API**”) license, 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.
- 2.4 Authorized Users.** You agree to only grant access to the SaaS Services and/or Software (as applicable) to those individuals for whom such SaaS Services and/or Software are intended (“**Authorized Users**”). Your Authorized Users are defined in the Terms Applicable to Specific Products and Services, below.
- 2.5 License Restrictions.** You may not use the Software 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 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 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 or Software; (iv) use the SaaS 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

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.

notices or markings on the SaaS Services or Software; or (vi) use the SaaS 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 or Software are hosted (including where such use interferes with any other party's use thereof).

2.6 Delivery. Unless otherwise specified in an Order Form, Blackboard will make the Software or SaaS Services available to you as soon as commercially practicable after you take the required steps to enable or access the Software or SaaS Services as instructed by Blackboard. Delivery shall be deemed complete when Blackboard notifies you that you have the ability to access the Software or SaaS Services.

2.7 Reservation of Rights. Any intellectual property rights that we do not expressly grant to you are expressly reserved by us.

3. SUPPORT AND SERVICE LEVEL AGREEMENTS

3.1. In General. If you purchase or are otherwise eligible to receive Support from us as reflected on an Order Form, we will provide you with the Support described in the Blackboard Customer Support Services Guide ("**Services Guide**") located on our website at <https://blackboard.secure.force.com/public/articleview?id=kA570000000PB0o> for the relevant Products and Services. For purposes of clarification, please see **Attachment 1** for Support Packages associated with Blackboard Web Community Manager.

3.2. SaaS Services. In addition to any Support provided in an applicable Services Guide, with respect to SaaS Services, you will receive, or we will make available for you to receive, all applicable Corrections, Updates and Upgrades (all as defined below) that we make generally available during the term of the SaaS Services. Unless you have purchased additional SaaS Services, you will use the version of the underlying software, including any applicable Corrections, Updates, and Upgrades, which is then generally hosted by us for our customers.

3.3. Corrections, Updates and Upgrades. "**Corrections**" means a change (e.g. fixes, workarounds and other modifications) made by or for us which corrects Software Errors, provided in temporary form such as a patch, and later issued in the permanent form of an Update. "**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 Corrections, application packs, Updates, and Upgrades) 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. "**Updates**" means the object code versions of the Software or SaaS Services that have been developed by us to correct any Software Error and/or provide additional functionality and that have been commercially released. "**Upgrades**" means the object code versions of the Software or SaaS Services that have been enhanced or otherwise modified by or on our behalf, acting in our sole discretion, to include additional functionality and that have been commercially released and not marketed as a separate product or solution.

4. PROPRIETARY RIGHTS

4.1. Customer Property. As between you and us, 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 otherwise made available to us by you or an Authorized User in connection with the Products and Services.

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, including any content provided by us or on our behalf in or through the Product and Services.

4.3. Blackboard Use of Customer Property. During the term of the Agreement, you grant to us and our affiliates and 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 also acknowledge that, subject to the terms of this Agreement and to the extent permitted by Law, Customer Property may be accessed and processed by our, our affiliates' or our third party service providers' support or (if applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Customer Property was collected, and you hereby authorize such access and processing.

- 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, suspend the offending 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. We agree to discontinue such use within fourteen (14) days of Customer's written request.
- 4.7. DMCA Notice and Takedown Policy.** Because we respect content owner rights, it is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"). 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. 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:

Attn: DMCA Notice
General Counsel
Blackboard Inc.
1111 19th Street NW, 9th Floor
Washington, D.C. 20036
Email: GeneralCounsel@blackboard.com
+1-202-303-9372

In accordance with the DMCA and other Law, Blackboard has adopted a policy of terminating, in appropriate circumstances, users of the Products and Services who are deemed to be repeat infringers. Blackboard may also at its sole discretion limit access to the Products and Services and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

5. PERSONAL INFORMATION AND STUDENT DATA

- 5.1. "Personal Information" and/or "PI"** is information that can identify a specific individual. Blackboard will only use and disclose Personal Information in accordance with this Agreement. "**Student Data**" is Personal Information that is directly related to an identifiable current or former student that is maintained by a school, school district, or related entity or organization, or by us. Student Data shall include "education records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).
- 5.2. Confidentiality.** Notwithstanding anything to the contrary, 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 to access or collect Personal Information, including Student Data, and shall facilitate a reasonable method for us to obtain such information, for example via secure transfer from your student information systems. In the US, we access, collect and process Student Data as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). You agree that, as between the parties, you are solely responsible for all Student Data, whether provided by you, students, or any other third-party.
- 5.4. Use of Personal Information.** By submitting or providing us access to Personal Information, you agree that Blackboard may use the Personal Information solely for the purposes of (i) providing Products and Services to you as contemplated in this Agreement, (ii) improving and developing our Products and Services, (iii) enforcing our rights under the Agreement, and (iv) as permitted with the Authorized User's, or end user's consent. Improving and developing our Products

and Services includes de-identifying, analyzing, and storing Personal Information so long as we do not share, publish, sell, distribute or display Personal Information to any third party for this purpose. Notwithstanding anything to the contrary, we shall not use Student Data to engage in targeted advertising.

5.5 Use of Anonymized Student Data. You agree that we may collect and, both during and after the term of this Agreement, use data derived from Student Data for our own purposes, provided that such data will be de-identified and/or aggregated to reasonably avoid identification of a specific Authorized User or individual.

5.6 Blackboard's Third-Party Service Providers. You acknowledge and agree that Blackboard may provide access to Personal Information to our employees, affiliates, and 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. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Personal Information will be required to maintain the confidentiality of such data. You also acknowledge that, subject to the terms of this Agreement and to the extent permitted by Law, Personal Information may be accessed and processed by our affiliates' or our third party service providers' personnel in foreign countries, including countries other than the jurisdiction from which the Personal Information was collected, and you hereby authorize such access and processing.

5.7 Customer-Requested Third-Party Access. Blackboard provides Customers and Students with the ability to use third-party services with Blackboard products. If an Authorized User, utilizing our Products and Services under this Agreement, posts Student Data and allows access to a third party, you allow us to provide to such third party access to that same Student Data. You acknowledge that we are not responsible for the data practices of third parties with whom you, your Authorized User, or an end user elect to share Student Data, and that, as between us, you are solely responsible for the consequences of providing or transmitting Student Data to such third parties, or authorizing those third parties to access Student Data through the Products and Services.

5.8 Personal Information and Student Data Consents and Authority. You represent and warrant that you have the authority to provide Personal Information, including Student Data, to Blackboard for the purpose of performing its duties under the Agreement, and that you have provided appropriate disclosures to Authorized Users or any other end users regarding your sharing such Personal Information with Blackboard. Both parties agree to uphold their responsibilities under Laws governing Personal Information and Student Data, including in the U.S. the Family Educational Rights and Privacy Act ("FERPA"), the Protection of Pupil Rights Amendment (PPRA), and the Children's Online Privacy and Protection Act ("COPPA"). We rely on each school to obtain and provide appropriate consent and disclosures, if necessary, for Blackboard to collect any Student Data, including the collection of Student Data directly from students under 13, as permitted under COPPA. You agree to Blackboard's fulfillment of any legally satisfactory request and consent by an Authorized User for transfer of Personal Information, and Blackboard shall retain records of such consents which shall be available to Customer upon request.

5.9 Student Data Retention and Deletion Requests. You may request that we delete or retrieve your Student Data 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. We will otherwise delete Student Data within the time-periods required by Law, and at a minimum other than ordinary course backups within a commercially reasonable time following the end of the term of the Agreement.

5.10 Data Localization. You acknowledge and agree that Blackboard will store and process PI in various data centers around the world, including in the U.S., and that your PI may not be stored or processed only within the country in which it was collected unless and except to the extent required by Law. You warrant and agree that you have obtained all necessary consents from your Authorized Users for Blackboard to process such PI in the U.S. and elsewhere in the world.

5.11 EU Data Protection. INTENTIONALLY OMITTED.

6. DATA SECURITY

6.1 Data Security and Breach Notification. We will implement commercially reasonable administrative, physical and technical safeguards designed to secure Customer Property and PI, including Student Data, 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. In the event we have a reasonable, good faith belief that an unauthorized party has accessed to or been disclosed PI, including Student Data, 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 PI ("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 the incident. If, due to a Security Incident which is caused by our own acts or omissions, any third party notification is required under law, you shall be responsible for the timing and content of such notification and we shall be responsible for the cost of any legally-required notifications. With respect to any Security Incident which is not due to the acts or omissions of Blackboard or our agents, we shall reasonably cooperate in your investigation and third party notifications, if any, at your direction and expense.

Subject to the limitation of liability in this Section 6.1, if there is a Security Incident due to the acts or omissions of Blackboard, Blackboard shall defend, indemnify and hold the Customer harmless, including, without limitation, defending Customer and its officers

and employees against any third party complaint, administrative or judicial proceeding, payment of any penalty imposed upon Customer, or payment of costs, damages, judgments or losses incurred by or imposed upon Customer arising out of such Security Incident caused by Blackboard. BLACKBOARD'S CUMULATIVE LIABILITY FOR INDEMNIFICATION OF CUSTOMER FOR A SECURITY INCIDENT THAT IS DUE TO THE ACTS OR OMISSIONS OF BLACKBOARD SHALL NOT EXCEED \$300,000.00.

7. PROFESSIONAL SERVICES

7.1. If you purchase Professional Services under an Order Form, we will provide you with the Professional Services described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace or change 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 and procedures generally prescribed by Customer to the extent that we have been notified in advance of such practices and procedures in writing. Our employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and have no effect.

8. MANAGED HOSTING SERVICES

If you purchase managed hosting services as reflected on an Order Form, the Agreement shall include the terms located on our website at <https://blackboard.secure.force.com/publicbarticleview?id=kA570000000PB0o>, with such terms governing the managed hosting services. For purposes of clarification, Client is not purchasing managed hosting services per the Order Form.

9. FEES, EXPENSES AND PAYMENT TERMS

9.1 Fees; Payments. In consideration for our performance under the Agreement, you agree to pay all fees referenced in Exhibit A and in no event later than thirty (30) days after the date of an invoice issued to you. Should this Agreement be renewed pursuant to the Order Form, then Blackboard reserves the right to change its fees. Such fees shall be included in any written amendment to this Agreement.

9.1.1 Availability of Funds. After the first year of this Agreement, it is expressly understood and agreed that the obligation of the Customer to proceed is conditioned upon the appropriation of funds to the Customer and the receipt of state and/or federal funds. If the funds anticipated for continuing fulfillment are, at any time, not forthcoming or insufficient, through the failure of the State of Florida to appropriate funds, the Customer shall have the right to immediately terminate the offerings herein without damage, penalty, cost or expense to the Customer of any kind whatsoever.

- 9.2 Late Fees.** Interest may be charged on any overdue amounts at the rate allowed by State of Florida law. 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.
- 9.3 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 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.
- 9.4 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.

10. TERM AND TERMINATION.

- 10.1. Term and Renewal.** The Agreement commences as of the date on which an Order Form has been signed by both parties, accepted by you online, or as otherwise indicated on an Order Form (the “**Effective Date**”) and shall continue in effect until the expiration or termination of the term indicated in the Order Form. Certain Products and Services (for example, SaaS Services) have license terms subject to renewal beyond their initial term as indicated on the Order Form, and the Agreement shall continue in effect during any such renewal terms. Except for termination rights described herein, the parties have no other right of early termination and are bound and committed to meet their payment and other contractual obligations throughout the entirety of the initial term and any renewal term of the Agreement.
- 10.2. Termination for Breach.** In the event that either Party materially breaches any obligation, representation or warranty 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 in the event you materially breach the provisions of the license usage restrictions set forth in the Agreement.
- 10.3. Effect of Termination.** Upon termination of the Agreement or termination or expiration of any individual license or authorization to use any Products or Services, you and your Authorized Users will immediately cease access to the applicable Products and Services (or all of them in the case of termination of the Agreement), and you will immediately pay us all amounts due and payable for such Products and Services. Also, in the event of any termination prior to the end of any term for a Product or Service due to your breach, you shall immediately pay us all fees which are then due or would become due had no termination occurred. With respect to any such Agreement termination or expiration, each party: (a) will immediately cease any use of the other Party’s Confidential Information, (b) will delete any of the other Party’s Confidential Information from its computer storage or any other media to the extent commercially practicable; and (iii) will return to the other Party or, at the other Party’s option, destroy, all copies of the other Party’s Confidential Information.
- 10.4. 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, 9, 10.3, 10.4, 11.3, 12, 13, 14, 18.5, and 24.7 of this Master Agreement shall survive the termination of the Agreement for any reason.

11. GENERAL WARRANTIES.

- 11.1. By Blackboard.** We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined above) for one year from its delivery or for the term of the relevant 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 of 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 deficient, unremedied 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 in the event you materially breach this Agreement.
- 11.2. 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 PI, including Student Data, (b) you will comply with all Laws related to your use of our Products and Services; and (c) the person executing this Agreement has sufficient authority to execute or accept the Order Form and this Agreement on behalf of the Customer.
- 11.3. Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THE AGREEMENT: (A) THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) NEITHER WE NOR OUR LICENSORS WARRANT THAT THE PRODUCTS AND SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION; AND (C) WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, AND ASSUME NO LIABILITY, FOR ANY THIRD PARTY SOFTWARE OR SERVICES OR FOR THE CONTENT OR OPERATION OF ANY THIRD PARTY WEBSITE (INCLUDING A WEBSITE TO WHICH A LINK IS PROVIDED FROM OUR PRODUCTS AND SERVICES).

12. MUTUAL LIMITATIONS OF LIABILITY.

- 12.1. Consequential Damages Exclusion.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND EXCEPT AS TO A WILLFUL BREACH OF YOUR LICENSE RESTRICTIONS WHEN YOU, YOUR EMPLOYEES, AGENTS, OR SERVANTS ARE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT, A BREACH OF YOUR CONTENT RESTRICTIONS, AND EACH PARTY'S INDEMNITIES SET FORTH IN THE AGREEMENT, 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).
- 12.1.1.** For sake of clarity, the Customer shall not be liable for consequential damages with respect to a breach of your License Restrictions.
- 12.2. Mutual Limitations of Liability.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND EXCEPT AS TO A WILLFUL BREACH OF YOUR LICENSE RESTRICTIONS WHEN YOU, YOUR EMPLOYEES, AGENTS, OR SERVANTS ARE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT, A BREACH OF YOUR CONTENT RESTRICTIONS, YOUR PAYMENT OBLIGATIONS, AND EACH PARTY'S INDEMNITIES SET FORTH IN THE AGREEMENT UNLESS OTHERWISE STATED HEREIN, 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 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.
- 12.2.1.** In no event shall the Customer's cumulative liability with respect to a breach of its License Restrictions exceed \$300,000.00.

12.3. 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.

13. MUTUAL INDEMNITIES

13.1. 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**”) 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, or resulting from our gross negligence or willful misconduct, 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 (against any losses, damages or expenses including, without limitation reasonable attorneys’ fees and costs) 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 such 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. For sake of clarity, Blackboard’s liability for indemnification of Customer as listed in this Section 13.1 shall be unlimited.

13.2. 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

13.3. 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). We shall also have no liability (including indemnification obligations) to you for any claim or action to the extent based upon: (a) any use of the Products and Services in a manner other than as provided in the Documentation or specified by Blackboard, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; (d) any other party’s access or use of the Products or Services with your unique username, password, or other appropriate security code; or (e) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us (any of the foregoing, separately and collectively, “**Customer Matters**”).

13.4. Your Indemnity Obligations. Except to the extent prohibited by Florida Law, including Laws providing for the sovereign immunity of government entities, and provided that Blackboard has fulfilled all of the foregoing obligations, you shall, at your own expense, indemnify, defend and hold Blackboard harmless against any losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against Blackboard arising out of Customer Matter (any of the foregoing indemnifiable matters “**Blackboard Claim**”). IN NO EVENT SHALL CUSTOMER’S CUMULATIVE LIABILITY FOR INDEMNIFICATION OF BLACKBOARD CLAIMS ARISING FROM OR RELATING TO CUSTOMER MATTERS (a), (b) AND (d) LISTED IN SECTION 13.2 ABOVE, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED \$300,000.00. For sake of clarity, Customer’s liability for indemnification of Blackboard Claims arising from or relating to Customer Matters (c) and (e) listed in Section 13.2 above shall be unlimited. You shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that you will keep us informed of, and will consult with any independent legal advisors appointed by us at our own expense regarding the progress of such defense. We agree (a) to provide you with prompt written notice of any Blackboard Claim and will make no admission in relation to any such alleged infringement, and (b) to provide such assistance as you may reasonably request, at your expense, in order to settle or defend any such Blackboard Claim.

13.5. Exclusive Remedy. EXCEPT FOR SUCH OTHER INDEMNIFICATIONS 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.

14. CONFIDENTIALITY.

14.1. 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, information about a Party’s business, operations, vendors or customers, and all Blackboard Property and all Customer Property. Confidential Information excludes any information that is considered a public record pursuant to Chapter 119, Florida Statutes.

14.2. Nondisclosure and Nonuse. Subject to the State of Florida Public Records statute, Chapter 119, Florida Statutes, each party receiving Confidential Information agrees not to use such Confidential Information except for the purposes set forth in the Agreement, and pursuant to such use shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances. Each party acknowledges that it has all requisite authority under Laws to provide the other party with access to Confidential Information.

14.3. Notice. The receiving party will promptly notify the disclosing party in the event the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party’s expense, in any litigation against any third parties to protect the disclosing party’s rights with respect to the Confidential Information.

14.4. Terms of Agreement. INTENTIONALLY OMITTED.

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

14.6. Contact Information. You hereby authorize us to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from us relating to Blackboard-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services you have purchased through us for the purpose of providing those products and services or support or maintenance for the products and services. You acknowledge that you have the right to provide such consent, and we acknowledge that we will not use or distribute the contact information except as explicitly set forth above.

14.7. Account Information; Access Rights. You shall maintain, and shall ensure that your Authorized Users maintain, the confidentiality of all account information (such as login information and passwords) that we provide to you, you provide to us, or you subsequently change to enable access to and use of the SaaS Services or Software or third-party services you access through our SaaS Services or Software. You shall be responsible for preventing any unauthorized disclosure or use of such account information, any ramifications thereof, and for promptly notifying us of any breach of this obligation. You are solely responsible for applying the appropriate level of access rights to Customer Property, including content, and to communications involving the use of the Products and Services. You and your Authorized Users may be required to provide additional information to register and/or use certain Products and Services. We may deny access to any user if we reasonably believe that the account information has been lost, stolen, or compromised.

15. MISCELLANEOUS MATTERS.

- 15.1. 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.
- 15.2. Governing Law.** The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. The applicable governing Law will be the State of Florida.
- 15.3. Modification and Waiver.** No modification, amendment, supplement, or other change 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.
- 15.4. Assignment.** No right or obligation of yours under the Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of Law or otherwise, without our express prior written consent, and any attempt to assign, delegate or otherwise transfer any of your rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, the Agreement shall bind each party and its successors and assigns.
- 15.5. 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, 1111 19th Street NW, Washington DC, 20036 or to such other address as shall be given in accordance with this section, and, in the case of you, to the address on the applicable Order Form, and shall in each case be effective upon receipt.
- 15.6. 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.
- 15.7. Force Majeure.** Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, internet or other telecommunication delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.
- 15.8. 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.
- 15.9. 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.
- 15.10. Order of Precedence.** In the event 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.
- 15.11. 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 this Agreement.
- 15.12. Insurance.** Blackboard shall comply with the following insurance requirements throughout the term of this Agreement.

PROFESSIONAL LIABILITY/ERRORS & OMISSIONS: Limit not less than \$1,000,000 per occurrence covering services provided under this contract. Deductible/SIR not to exceed \$500,000.

ACCEPTABILITY OF INSURANCE CARRIERS: The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

VERIFICATION OF COVERAGE: Proof of the required insurance must be furnished by an Awardee to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.** (**Please include the Contract # and Title on the Certificate of Insurance.) **Certificate Holder: School Board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.**

CANCELLATION OF INSURANCE: Blackboard is prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within thirty (30) days if required insurance is cancelled per policy terms and conditions.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this contract.

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.

16. BLACKBOARD LEARN™. INTENTIONALLY OMITTED.

17. BLACKBOARD COLLABORATE. INTENTIONALLY OMITTED

18. BLACKBOARD CONNECT; MASS NOTIFICATION SERVICES. INTENTIONALLY OMITTED

19. SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS. INTENTIONALLY OMITTED

20. BLACKBOARD WEBCOMMUNITY MANAGER PRODUCTS

20.1. 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 Master Agreement.

20.2. 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.

20.2.1. 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.

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

- 20.2.3. 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 user accounts. The “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.
- 20.2.4. 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.
- 20.2.5. 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 for the Passkey Manager in the event that 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.
- 20.3. 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.
- 20.4. 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.
- 20.5. 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.
- 20.6. 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.

21. MOODLE-RELATED PRODUCTS AND SERVICES. INTENTIONALLY OMITTED

22. MOBILE APPLICATIONS. INTENTIONALLY OMITTED.

23. SMARTVIEW™. INTENTIONALLY OMITTED.

24. STUDENT SUPPORT SERVICES. INTENTIONALLY OMITTED.

25. 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.

26. **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 related to the Agreement or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Blackboard transfer 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 HTML, text, or 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, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

ATTACHMENT 1

Support Packages

Effective: October 10, 2014

General Client Support

Share| Community & Support Network

Online documentation and resources available 24/7 to all contacts with editorial privilege.

Online Support Case Submission

Available to Primary Contact (and any alternate contact(s) designated by Client and authorized or approved by Blackboard) via the Blackboard Community and Support Center at any time.

Emergency Support

Available to Primary Contact and authorized alternate 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: (814) 272-7300

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. After contact by phone, it is recommended that the Client (either through its Primary Contact or authorized alternative contact) open a support case by using the online support form at <http://support.schoolwires.com>.

Opening an emergency support case should be used to supply information but should NOT be used in place of a phone call.

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 Primary Contact (authorized alternative contact as a back-up) How
- Requests for support may be submitted in the following ways:
 - o Online Support Form: <http://support.schoolwires.com>
 - o Email: support@schoolwires.com
 - o Phone: (814) 272-7300

Normal Targeted Response Time

- Maximum of one businessday (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 by Blackboard 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:
 - o Online Support Form: <http://support.schoolwires.com>
 - o Email: support@schoolwires.com
 - o Phone: (814) 272-7300

Normal Targeted Response Time

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

Premium+Support

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

The Premium+ Support Plan is the Blackboard support plan tailored for K-12 school districts with 25+ schools. This support package is in addition to the Blackboard Premium Support Plan.

The Premium+ Support Plan includes the following:

- A Client Success Representative will be assigned to work with the Client for the lifetime of the Blackboard relationship.
- Option for a dedicated technical support representative to be assigned to your district
- Unlimited General Usage Incidents
- Priority scheduling for all Blackboard technical and professional services
- Access to the assigned Client Success Representative for additional assistance and consultation as required to help the Client work towards meeting their goals.

During the solution implementation phase(s), the Client Success Representative will serve as the implementation project manager and will:

- Identify and prioritize project-critical requirements
- Develop and communicate an overall project plan that meets the needs of the Client
- Conduct periodic calls to provide updates on the status of the implementation
- Coordinate between Blackboard and the Client's project team to ensure that project deadlines are being met
- Facilitate communication between the Client and Blackboard (all involved departments).
- Offer consultation on the development of the district and school websites.
- Coordinate the launch of the Client's website(s).
- Serve as a single point of contact for overall issues and concerns. (Client will continue to receive technical support through our normal channels).
- Deliverables will include the following:
 - Comprehensive Project Plan:
 - Meeting notes and agendas
 - Status Updates

During the post-implementation phase(s), Blackboard will conduct a yearly Blackboard solution review, including a website assessment to assist districts in achieving a high ROI for the solution. As a outcome of the review, clients will receive:

- Customized District Action Plan

This Action Plan will be created based on the district's Strategic, Technology and Communication goals. It will document district initiatives towards these goals and detail tasks that allow the district to use Blackboard licensed Software to achieve their set goals.

- Comprehensive Written Progress Reports

This report will identify areas of progress (successes and gaps) based on the initiatives and tasks documented in the Action Plan. It will offer additional suggestions to identify how the district can meet their targets and provide examples of other districts' successes.

- Regular Checkpoint and Status Meetings

The purpose of these meetings is to help keep the district on track with their Action Plan and support the Client throughout the process.

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.



PROCUREMENT & WAREHOUSING SERVICES

FINANCIAL ANALYSIS WORKSHEET

BID INFORMATION			
New Bid # (Ex: 10-004R):	57-039E	Preparation Date:	December 12, 2016
Previous Bid # (Ex: 10-004R):	55-069E	Buyer/PA:	Jodi Hart
New Bid Award Total:	\$331,975	Bid Title:	Blackboard Web Community Manager
Previous Award Total:	\$161,460		
Bid Type:	NEW BID		
Previous Bid Term (Start Date):	3/1/2015	New Bid Term (In Months):	36
Previous Bid Term (End Date):	2/28/2018	# of Months Into Bid:	22

SPEND REPORTING	
Purchase Order(s) Spend:	\$134,600
P Card Purchases:	\$0
Total Invoiced-to-Date Amount (PO + Pcard Purchases):	\$134,600
Average Monthly Expenditure:	\$6,118
Unused Authorized Spending:	\$26,860
Est. Forecasted Spend (For Entire Bid Term):	\$220,255

VENDOR INFORMATION		
Awarded Vendors:	M/WBE Status (If applicable):	Spend:
105201 SCHOOL WEBSITE SOLUTIONS		\$ 134,600
PO VENDOR SPEND:		\$ 134,600
P-CARD SPEND:		\$ -
TOTAL SPEND:		\$ 134,600

NOTES (Type Below):
 The purchase order amount included only represents web services for 171 schools. It does not include departments or other remaining schools.