

**AMENDMENT NO. 01 TO CONTRACT NUMBER CN-00053163**

**BETWEEN**

**THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS**

**AND**

**BLACKBOARD INC.**

This Amendment No. 01 to Contract UIC Reference Number CN-00053163 effectively dated July 01, 2021 (such contract the “Master Agreement”) is made and entered into by and between The Board of Trustees of the University of Illinois, a public body corporate and politic of the State of Illinois, herein referred to as “University” and Blackboard Inc. herein referred to as “Vendor”.

Whereas, University and Vendor entered into the Agreement for the initial term of September 30, 2021 through June 30, 2026

Now therefore, in consideration of mutual covenants contained herein, it is agreed by and between the parties to amend the Agreement as follows:

- I. The Agreement is amended to incorporate the attached Order Form and Illinois Sales Tax Exemption Certificate.
- II. Funding is added for years one, two, and three, as itemized on the Order Form and total \$37,500.00.
- III. All additional terms and conditions remain as stated in the Master Agreement.
- IV. In all other respects, the contract is hereby reaffirmed and ratified. In witness whereof, Vendor and University have caused this Amendment No. **01** to be executed on the date and year written below.

**The Board of Trustees of the  
University of Illinois**

By: \_\_\_\_\_  
Paul N. Ellinger, Interim Comptroller

Date: \_\_\_\_\_  
Kevin Fair, Associate Director of Purchasing  
2022.01.12 10:11:04 -06'00'

\_\_\_\_\_  
Name and Title of Interim Comptroller Delegate

**Blackboard Inc.**

By: \_\_\_\_\_  
Michael Pohorylo

Associate General Counsel  
Title

Date: October 26, 2021



This Blackboard Order Form ('Order Form') by and between **Blackboard Inc.** ("Blackboard" or "Vendor") an educational technology company with corporate headquarters in Reston, VA and **The Board of Trustees of the University of Illinois** (hereafter "Customer" or "University"), a public body, corporate and politic of the State of Illinois, on behalf of the University of Illinois at Chicago, Technology Solutions details the terms of Customer's use of the products and services set forth below ('Product and Pricing Summary'). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement effectively dated July 01, 2021, and incorporated by this reference, form the entire agreement between the parties in respect to 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 the Customer, any product or service provided by Blackboard to the 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 that they are 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**

Period Number	Total
Period 1	\$10,000.00
Period 2	\$12,500.00
Period 3	\$15,000.00
<b>Contract Total</b>	<b>\$37,500.00</b>

Period 1				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	SS-CB	BLACKBOARD CHATBOT	12 Month(s)	\$10,000.00
<b>Period 1 Total</b>				<b>\$10,000.00</b>

Period 2				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	SS-CB	BLACKBOARD CHATBOT	12 Month(s)	\$12,500.00
<b>Period 2 Total</b>				<b>\$12,500.00</b>

Period 3				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	SS-CB	BLACKBOARD CHATBOT	12 Month(s)	\$15,000.00
<b>Period 3 Total</b>				<b>\$15,000.00</b>

**B. Terms**

1. The Initial Term of this Order Form shall include all Periods included in the Software & Services Product and Pricing Summary above.
2. Following the Initial Term, this Order Form may be renewed for a period of one (1) year ("Renewal Term") by a mutually signed Amendment to this Agreement.

**3. Effective Date: Effective upon signature**

**C. Payment Terms**

1. All initial and subsequent payments shall be due NET30. Unless otherwise stated, all prices are in United States currency.
2. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form, which is attached hereto as Exhibit A, Illinois Sales Tax Exemption Certificate.

Sales Approved:

Initial:

Sales Approved:

Initial:

Customer: **THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ILLINOIS**

Signature:



Name: Paul N. Ellinger  
Title: Interim Comptroller  
Printed Name:  
Date:

**BLACKBOARD INC.**

Signature:



Name: Michael Pohorylo  
Title: Associate General Counsel  
Date: October 26, 2021

Blackboard does not require a PO for the purchase or payment of the products on this Order Form. If your organization requires a PO in addition to this signed contract, please provide all known information here. If a PO will be issued after signature, indicate 'Pending' in the PO Number field.

PO Number:

PO Amount:

Attach PO or send PO to Operations@blackboard.com(Optional):

Attach Tax Exemption (Optional):

Invoicing

Send Invoices via email to:

1. Name:

Email:

2. Name:

Email:

3. Name:

Email:

# Exhibit A: Illinois Sales Tax Exemption Certificate

## NOTE FROM THE UNIVERSITY:

This exemption letter and the University's tax exemption number may be used **only** for authorized University business purposes. Personal or other unauthorized use of the tax exemption number or letter by any person may constitute a crime and may result in disciplinary or legal action.

Vendors: Do not use the University address listed above for billing purposes. Please obtain the proper University billing address from the purchaser.



STAX-70 (R-05/16)

P-000506

# Blackboard<sup>®</sup>

This Blackboard Order Form ("Order Form") by and between **Blackboard Inc.** ("Blackboard"), a corporation organized under the law of Delaware with a principal place of business at 11720 Plaza America Dr. Floor 11, Reston VA 20190-6710 USA, and the **Board of Trustees of the University of Illinois, a body corporate and politic of the State of Illinois on behalf of its University of Illinois at Chicago Technology Solutions** ("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 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 Effective Dates	Initial Term Period #1 (USD)	Initial Term Period #2 01-Jul-2022 - 30-Jun-2023 (USD)	Initial Term Period #3 01-Jul-2023 - 30-Jun-2024 (USD)	Initial Term Period #4 01-Jul-2024 - 30-Jun-2025 (USD)	Initial Term Period #5 01-Jul-2025 - 30-Jun-2026 (USD)	
1	SAAS3-LC-HE-P	LEARNING CORE SAAS ADVANTAGE, 25,000-50,000 FTE, 1024 GB STORAGE	01-Jul-2021 - 30-Jun-2022						
1	AS-LRN-SAAS3	BLACKBOARD LEARN SAAS ADVANTAGE		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
21	AS-HST-STO1TB-SAAS	SAAS ADDITIONAL STORAGE 1TB							
1	SS-INFND-SVC	INNOVATION FUND STUDENT SERVICES		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
1	AS-DLS3-COMB	ETEACHER COMBINED - BD		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
1	BBWDECON-REG	BBWORLD + DEVCON REGISTRATION		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
3	BBWDECON-REG	BBWORLD + DEVCON REGISTRATION		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
			Total	\$704,074.00	\$704,024.00	\$704,024.00	\$704,024.00	\$704,024.00	

## B. Terms

- The Initial Term of this Order Form shall be as specified in the Product and Services Pricing Summary above.
- Upon conclusion of the Initial Term, this Order Form shall terminate.
- Effective Date: July 01, 2021**

## C. Payment Terms

- All initial and subsequent payments shall be due Net 30. Unless otherwise stated, all prices are in United States currency.
- 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 University is an instrumentality of the State of

Illinois, and as such it is exempt from federal Income Tax under Sections 115 and 501(c)(3) of the Internal Revenue Code and is exempt from State of Illinois Income Tax in accordance with the Illinois Income Tax Act (35 ILCS 5/205).

#### **D. Special Provisions**

1. For purposes of clarification, the parties understand that the Blackboard Learn SaaS service provided herein includes up to 22TB of storage. Additional units of 1 TB of storage may be purchased for US \$8,000.00.
2. The Master Agreement attached hereto as Exhibit A is incorporated herein.
3. The Blackboard Data Processing Addendum attached hereto as Exhibit B is incorporated herein.
4. The Certifications attached hereto as Exhibit C are incorporated herein.

Sales Approved:
Initial:

Customer: <b>UNIVERSITY OF ILLINOIS AT CHICAGO</b>	
Signature:	
Name:	
Title:	
Date:	Kevin Fair, Associate Director of Purchasing 2021.09.30 10:14:35 -05'00'
<b>BLACKBOARD INC.</b>	
Signature:	
Name:	Michael Pohorylo
Title:	Associate General Counsel
Date:	September 27, 2021

Blackboard does not require a PO for the purchase or payment of the products on this Order Form. If your organization requires a PO in addition to this signed contract, please provide all known information here. If a PO will be issued after signature, indicate "Pending" in the PO Number field.

PO Number: PO Amount:

Attach PO or send PO to [Operations@blackboard.com](mailto:Operations@blackboard.com) (Optional):  
Attach Tax Exemption (Optional):

Invoicing

Send Invoices via email to:

1. Name: University Payables
2. Name: Bryan Mainville
3. Name:

Email: obfsupay@uillinois.edu  
Email: mainville@uic.edu  
Email:

## **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**", University, or "**you**") and the Blackboard entity listed in any Order Form (hereafter, "**we**", "**us**" or "**Blackboard**", or "Vendor"), with respect to the products and/or services listed in any Order Form ("**Products and Services**").

#### **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 9.1), we grant you a non-exclusive, non-transferable, non-sublicensable 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-sublicensable, 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-sublicensable 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 limitations 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, SERVICE LEVEL AGREEMENTS, AND OVERAGES**

If you license or are otherwise eligible to receive Support, or are eligible for service level agreements, or you exceed contract limits, such Support (or service level or overage rate, as applicable) will be provided as described in the Blackboard Customer PROPRIETARY/CONFIDENTIAL

Support Services Guide ("Services Guide") service level agreement, overages and/or specifications document located at <https://blackboard.secure.force.com/publickbarticleview?id=kA570000000PB0o> for the relevant Products and Services. As stated in these service level agreements or other Customer Support documents, overages may be charged for additional Customer usage beyond the applicable limitations, and for additional storage and/or bandwidth needed to support excess Customer usage. Our failure to satisfy a service level shall not be a breach of this Agreement and, your sole and exclusive remedy (if any) in such event 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. We reserve the right to discontinue any Product or Service during the Term for any reason, but in such even we will 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 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, and to the fullest extent permitted by law, 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, for the sole purpose of listing Customer as a user of the applicable Products and Services in our promotional materials listed with other like institutions and provided, however, that such client list will not unduly emphasize University nor expressly or implicitly state that the University is endorsing Blackboard or the Products, Services or Software, 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 Compliance with Laws.** Both parties agree to uphold their responsibilities under Applicable Data Privacy Laws, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. We agree to treat Personal Information as confidential, as described in the Data Processing Addendum ("DPA") attached hereto as Exhibit B. The DPA applies whenever Personal Information is Processed (as defined in the DPA) under the Agreement.

**5.2. Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (FERPA).** Unless authorized by law, this Agreement, or by written permission of each affected student, Blackboard shall not disclose to any third party "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). Blackboard shall protect

all educational records containing student information in accordance with FERPA, and its implementing regulations. In addition to other remedies, University may terminate this Agreement immediately upon information that Blackboard may have violated this provision.

**5.3. Illinois Personal Information Protection Act, 815 Ill. Comp. Stat. 530 (PIPA).** If applicable, Blackboard will, within commercial reason, cooperate in good faith with University to maintain security and integrity of personal information in compliance with PIPA.

## **6. DATA SECURITY**

We will implement commercially reasonable technical and organizational measures to ensure an appropriate level of security to protect Customer Property, including Personal Information. The security measures applied to Customer Property are described in Annex B of the DPA.

## **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.

**8.2. Excess Use Fees.** Your use of the Products and Services is restricted to the use limitations set forth in the applicable Order Form or in the applicable support terms of the Agreement, and as further defined under each of the respective product terms below. Use in excess of these limitations is subject to additional fees and may be invoiced monthly by Blackboard. 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. Any interest or late fees assessed must comply with the Illinois Prompt Payment Act (30 ILCS 540). 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. Blackboard reserves the right to invoice for the value of the annual fees for any subsequent renewal period, even in the absence of an issued purchase order, where use of the Products and Services continue beyond the then-contracted term.

**8.6. Billing and Payment.** In order to be paid, Vendor must submit a proper invoice to University of Illinois, Invoice Processing Center, P.O. Box 820, Rantoul IL 61866. A proper bill must include itemized detail, invoice number, invoice date, invoice amount, remittance address and the University purchase order number. University will either approve the bill for payment, or deny a bill with defects, in accordance with the State Prompt Payment Act (30 ILCS 540) (the "Act"). University will assign a new date of receipt to a bill resubmitted in proper form. University will pay interest on approved bills that are not paid within the time period prescribed by the Act. The rate of interest shall be the rate established in the Act on the date that payment becomes late within the meaning of the Act. University will not pay interest of \$5.00 or less and may subtract any applicable discounts before payment.

## 9. TERM AND TERMINATION.

**9.1. Term.** The term ("Term") is defined in the applicable Order Form referencing the Agreement. This Blackboard Master Agreement will be effective as of the date of last signature below (the "Effective Date") and shall expire ten (10) years from the Effective Date. No Order Form executed under the terms of this Agreement may exceed the effective period of this Agreement. If this Blackboard Master Agreement expires or is terminated, University will not enforce any Order Form which purports to extend beyond the expiration or termination of this Blackboard Master Agreement unless such extension is memorialized by a written amendment that is signed by both parties. This clause does not obligate University to purchase or renew the Products or Services beyond the terms of the mutual agreed upon Order Forms. This Blackboard Master Agreement and any future Order Forms or purchase orders is subject to the Illinois Procurement Code (30 Illinois Compiled Statutes 500) and the Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education (Illinois Administrative Code, Title 44, Part 4). The term of this Agreement, including potential renewals, shall not exceed 10 years.

**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, 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. Reserved Rights.** 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 any situation or event (including without limitation, a Force Majeure Event (as defined in Section 14.7 below) whereby the performance or operation of our Products or Services becomes overburdened, impaired, impracticable, or their economic viability is otherwise affected.

**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, 9.5, 10.4, 11, 12, 13, 17.5, 22.7, and 24.2 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.** Reserved

**10.3. By Customer.** You affirm 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, AND DAMAGES RESULTING FROM A PARTY'S GROSS NEGLIGENCE, INTENTIONAL ACTS OR WILLFUL MISCONDUCT, 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 HIGHEST OF \$1,000,000 OR 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.** Reserved

#### **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 provide reasonable notice to 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, provided that such settlement shall not require the University to admit fault or liability in any settlement, 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 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 ("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 be responsible at your own expense for such damages. Blackboard shall have no liability (including indemnification obligations) to you for any claim to the extent arising out of (a) – (d) above. Notwithstanding anything contained in the Agreement or third party provider Agreements, any clause that requires the University to indemnify, defend or hold harmless Blackboard or any third party shall be subject to limitations required under applicable Illinois law in substance and amount, which may include the University's statutory self-insurance plan and laws intended to limit the exposure and liability of University as an instrumentality of the State of Illinois (e.g., State Lawsuit Immunity Act [745 Ill. Comp. Stat. 5]; U.S. Const. amend. XI; and Illinois Court of Claims Act [705 Ill. Comp. Stat. 505]). Any clause that requires the University to indemnify, defend or hold harmless Blackboard or any third party shall be subject to the assertion of contributory negligence, fault of claimant and all other defenses. In no event shall University's liability to defend and indemnify exceed what might have been its liability to a claimant if sued directly by the claimant and all appropriate defenses had been raised by University. In the event University assumes the full indemnity and defense of a claim against Blackboard under this section, University may select counsel reasonably appropriate for the defense.

**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.** 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, regulation or court order, including, but not limited to, a subpoena, or a valid public records request, and the receiving party shall promptly, if allowed by law, first notify the disclosing Party of the demand in order for the disclosing Party to exercise any rights it may have to protect its Confidential Information under the same law, regulation or court order. Receiving Party shall disclose only such Confidential Information as the demand or request requires, and in no event shall receiving Party be in breach of this Agreement for its good faith compliance with the law or (b) to make such court filings as may be required to establish a party's rights under the Agreement.

**13.4. Freedom of Information Act.** The parties acknowledge that University is a public body and subject to the Illinois Freedom of Information Act (5 ILCS § 140/1 et seq.).

### **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. Conflict Resolution.** If any claim arising out of or relating to the Agreement, or a breach thereof, the parties will consult with each other to seek a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by either party to the other, such claim will be referred to arbitration for full and final settlement by a panel of three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). The cost of arbitration will be borne equally by the parties. The applicable governing Law and place of arbitration shall be Illinois.

**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. Notwithstanding the foregoing, if required under applicable law, any assignment must comply with 44 Illinois Administrative Code 4.2005(n).

**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](mailto:GeneralCounsel@blackboard.com). Blackboard shall direct all general notices or matters of contract interpretation to University's Contract Representative (Richard Osborne, UIC Purchasing, email: [richardo@uic.edu](mailto:richardo@uic.edu) mail: 809 S Marshfield M/C 560 Chicago, IL 60612) and notices involving technical or scheduling issues to University's Technical Representative (Bryan Mainville: mainville@uic.edu. Vendor must include University's contract number or relevant purchase order number in any notice. Vendor shall direct all formal legal notices to the Board of Trustees attn: Secretary of the Board 352 Henry Administration Building MC-350 506 S. Wright St Urbana, IL. **Due to ongoing disruptions of the COVID-19 Pandemic, Blackboard reserves the right to provide email Notice, with electronic delivery confirmation, to the current principal Customer contact. Actual receipt constitutes effective Notice as of the time of 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, or hostilities, terrorist acts, epidemics, pandemics, a substantial change in market conditions, 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 reasonably charge for any and all excessive usage and or usage beyond reasonable historical norms (yours or similarly situated clients not experiencing a Force Majeure Event or similar) and to the extent this is in excess of our actual costs we will give you notice.

**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.

**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. Use Limitations.** Your usage is limited by the number of Authorized Users, FTE, Bandwidth and Storage set forth in the Order Form or the support terms of the Agreement. An "Authorized User" (or User or Active User) means any individual user of the platform, including but not limited to, students, teachers, parents of students, or employees of yours (including invited third-parties thereof) authorized to use the platform per the terms of this Agreement. Your usage in terms of the number of Authorized Users is determined by first taking the sum of unique authenticated users on a monthly basis (the "Monthly Active Users"). For each annual contract period, the Authorized Users is equal to the average of the Monthly Active Users. This calculated average is then compared to the Authorized Users limitation set forth in the Order Form or support terms of the Agreement. "FTE" means the number of full-time students plus half of the part-time students enrolled at your institution. "Storage" means the highest amount of storage utilization during the respective annual term of a client's uploaded and hosted files, including but not limited to content files, media files and recordings, typically measured in gigabytes (GB) or terabytes (TB). Storage is only sold in 1 TB allotments. By way of example only, if you are contracted for 1TB of storage, and your storage reaches 2TB in month two of your contract, you will be charged for 2TB of storage for that annual term of the contract. Additional Authorized Users, FTE, or Storage used in excess of the limitations set forth in the Order Form or support terms of the Agreement is subject to additional fees and purchase. Authorized Users, FTE, or Storage below the limitations set forth in the Order Form or support terms of the Agreement, if any, are not eligible for rollover or carryover to subsequent Terms, or refund. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fee.

**15.5. Your Operations.** For clarity, if your primary operations involve in-classroom instruction in a physical location, the SaaS Services or Hosting Services you purchase pursuant to your Order Form will be designed to augment in-classroom instruction in a physical location. If, on the other hand, your primary operations involve virtual instruction via the Internet, the SaaS Services or Hosting Services you purchase will be designed to support those fully virtual operations rather than in-classroom instruction in a physical place. If, during the Term, your primary mode of operations changes from in-classroom instruction in a physical location to fully virtual instruction via the Internet, or vice-versa, you must notify Blackboard immediately as your license will not support such a transition in operations, and you will need to purchase the SaaS Services or Hosting Services applicable to your new operations.

### **16. BLACKBOARD COLLABORATE**

**16.1. Use Limitations.** Your usage is limited by the number of Authorized Users, Minutes, FTE, and Storage set forth in the Order Form or support terms of the Agreement. An "Authorized User" (or User or Active User) means any individual user of the platform, including but not limited to, students, teachers, parents of students, or employees of yours (including invited third-parties thereof) authorized to use the platform per the terms of this Agreement. Your usage in terms of the number of Authorized Users is determined by first taking the sum of unique authenticated users (via an LMS integration or authenticated into Collaborate via an invitation link) plus the peak of unauthenticated (guest) users on a monthly basis (the "Monthly Users"). For each annual contract period, the Authorized Users is equal to the average of the Monthly Users. This calculated average is then compared to the Authorized Users set forth in the Order Form or support terms of the Agreement. A "Minute" means 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; and if 3 of those 5 people watched the full 30-minute recording, you would incur an additional 90 minutes; for a total of 240 minutes total. "FTE" means the number of full-time students plus half of the part-time students enrolled at your institution. Minutes are sold in increments of 1 million minutes. "Storage" means the highest amount of storage utilization during the respective annual term of a client's uploaded and hosted files, including but not limited to content files, media files and recordings, typically measured in gigabytes (GB) or terabytes (TB). By way of example only, if you are contracted for 1TB of storage, and your storage reaches 2TB in month two of your contract, you will be charged for 2TB of storage for that annual term of the contract. Storage is only sold in 1 TB allotments. Additional Authorized Users, Minutes, FTE, or Storage used in excess of the limitations set forth in the Order Form or support terms of the Agreement is subject to additional fees and purchase. Authorized Users, FTE, or unused Minutes or Storage below the limitations set forth in the Order Form or support terms of the Agreement, if any, are not eligible for rollover or carryover to subsequent Terms, or refund. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

**16.2. Your Operations.** For clarity, if your primary operations involve in-classroom instruction in a physical location, the SaaS Services or Hosting Services you purchase pursuant to your Order Form will be designed to augment in-classroom instruction in a physical location. If, on the other hand, your primary operations involve virtual instruction via the Internet, the SaaS Services or Hosting Services you purchase will be designed to support those fully virtual operations rather than in-classroom instruction in a physical place. If, during the Term, your primary mode of operations changes from in-classroom instruction in a physical location to fully virtual instruction via the Internet, or vice-versa, you must notify Blackboard immediately as your license will not support such a transition in operations, and you will need to purchase the SaaS Services or Hosting Services applicable to your new operations.

## **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 affirm 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. 2010-23) ("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.

**17.10. Excessive Usage.** During times of prolonged, excessive usage of the Products and Services, we reserve the right to charge you additional fees not exceeding our estimated incremental costs, including applicable fees and taxes, for such Excess Usage. The term "**Excess Usage**" shall mean the amount of SMS texting segments and/or phone voice minutes per FTE initiated through the Connect and/or Mass Notification services during a calendar month over 20 such segments or minutes per FTE in any two or more consecutive calendar months above such level. We shall use best commercial efforts to notify you through our client portal, our representatives, and/or via email prior to assessing any such additional charges, which shall not exceed \$.0065 per segment or minute. 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. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

## **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. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

**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. 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.

## **21. SMARTVIEW™**

**21.1. 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.

**21.2. 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.

**21.3. 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.

**21.4. 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. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

## **22. STUDENT SUPPORT SERVICES**

**22.1. 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.

**22.1.1. 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.

**22.1.2. 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).

**22.2. 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**").

**22.3. 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.

**22.4. 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.

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

**22.5.1. 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.

**22.5.2. 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.

**22.5.3. 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.

**22.6. 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.

**22.7. Representations and Indemnity.** If you request that we contact any Authorized User or other person on your behalf ("**Recipient**"), you represent 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.

**22.8. 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.

**22.9. Added Definitions.**

**22.9.1. "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.

**22.9.2. "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.

**22.9.3. "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.

**22.9.4. "Service Desk"** means our personnel that provide Student Support Services to Authorized Users under this Section

**22.9.5. "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.

**22.9.6. "Self-Service Incident"** means students getting the information that they need using self-service technologies.

**22.10. 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.

**22.11.** Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

**23. BLACKBOARD ALLY**

**23.1. 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-sublicensable, license to access and use the Blackboard Ally service made available by Blackboard.

**23.2. 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.

**24. MARKETING, ENROLLMENT, AND RECRUITMENT SERVICES**

**24.1. 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.

**24.2. 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 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.

## **25. BLACKBOARD REACH**

**25.1 License Grant and Use.** For the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicensable, license to access and use the Blackboard Reach service made available by us. The Blackboard Reach service provides your teachers and staff with the capability to initiate direct messages to household units, including students and their parents and caregivers, and allows students and their parents to respond to these messages through a two-way messaging ("Two-Way Messaging") functionality. In order to utilize the Two-Way Messaging functionality, Authorized Users will need to install a mobile application or navigate to a website. An internet connection is required.

**25.2 Authorized Users.** Unless otherwise specified on the Order Form, your Authorized Users are your employees, including administrators, faculty, and staff, and their message recipients, including parents or caregivers of enrolled students and enrolled students. You will only use the Blackboard Reach service to send messages to the number and type of Authorized Users specified in the Order Form, and to the extent not so specified, as defined herein. You will provide all contact data for Authorized Users. Unless otherwise indicated on an Order Form, messages may only be sent to recipients located within the 48 contiguous United States, Alaska and Hawaii, and Canada.

**25.3 Your Representations.** If you utilize the Blackboard Reach service to contact any Authorized User, you represent that you will comply with all applicable laws and contracts in connection with use of contact information for such Authorized User and with respect to the content and transmission of messages sent using the Two-Way Messaging functionality. You represent, warrant and covenant that you will not use the Blackboard Reach service for the purpose of sending commercial messages, including, without limitation, offers to purchase, sell, barter or lease commercial products, goods, or services.

**25.4 Translation Service.** Through the Blackboard Reach service, messages may be authored in one supported language and translated into another supported language (the "Translation Service"). We do not guarantee that messages translated through the Translation Service will be free of errors or mistakes. Moreover, the Translation Service may not be generally available at the time you purchase the Blackboard Reach service. You agree that if the Translation Service is not available to you during the Term, then (1) Blackboard is not in breach of this Agreement and (2) you are not owed any refund of fees paid by you to Blackboard. You shall not be permitted to use the Translation Service to translate more than 800 characters per calendar month per FTE (the "Translation Limit"). In the event that you exceed the Translation Limit, we reserve the right to charge you additional fees not exceeding our estimated incremental costs, including applicable fees and taxes, for each character translated beyond the Translation Limit. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

## EXHIBIT B

### **Blackboard Inc. Data Processing Addendum**

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").

The following provisions shall apply whenever Personal Information is Processed under the Agreement:

#### **1. Definitions**

Capitalized terms not defined in this Section have the meaning given in the Agreement.

**Applicable Data Privacy Laws** means laws and regulations that apply to our and your Processing of Personal Information under this Agreement. In the United States, this may include the Family Education Rights Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), and the Children's Online Privacy Protection Act (COPPA), as well as applicable State student and consumer privacy laws (such as the California Consumer Privacy Act (CCPA), once in effect). In the European Union (and outside the EU, if extraterritorially applicable), this will include General Data Protection Regulation ("GDPR") and the national laws implementing GDPR, as applicable. In Australia, this may include the Privacy Act 1998 and amendments. In South Africa, this may include the Protection of Personal Information Act of 2013 (POPIA).

**De-Identified Data** means information that has all identifying Personal Information obscured or removed such that the remaining information does not reasonably identify an individual nor allow a reasonable person to identify an individual with reasonable certainty.

**Individual Right Request** means a request from your Authorized Users or other individuals concerning the exercise of their rights available under Applicable Data Privacy Law in relation to Personal Information, including the right of access, right to correct, right to restrict Processing, right to erasure ("right to be forgotten"), right to data portability, right to object to the Processing and right not to be subject to an automated individual decision making.

**Personal Information** means information Processed by Blackboard on your behalf in connection with the provision of Products and Services pursuant to the Agreement that relates to, describes or is linked to an identified or identifiable individual or, where it is included in the definition of "personal information" or "personal data" under Applicable Data Privacy Laws, a juristic person. For clarity and without limitation, Personal Information may include: (i) in the United States, personal information that is contained in "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g); and (ii) "personal information" or "personal data" as such terms are defined by the Applicable Data Privacy Laws in your jurisdiction.

**Processing** means any operation or set of operations which is performed on Personal Information such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. For the avoidance of doubt Processing shall include all means, operations and activities performed on Personal Information that are defined as processing under GDPR.

**Security Incident** means a breach of security that results in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information.

**Service Providers (Sub-processors)** means Blackboard affiliates and subsidiaries or third party vendors which we engage in connection with the Agreement and which Process Personal Information on behalf of us and under our instructions.

**2. Roles and responsibilities of the parties**

- 2.1 You are the controller of Personal Information. We are the processor (as defined in the GDPR) or service provider (as defined under CCPA) and Process Personal Information on your behalf and subject to your instructions. Unless otherwise expressly indicated, if you are subject to regulations in the United States, we Process Personal Information relating to students as a School Official performing an outsourced institutional function, pursuant to FERPA 34 CFR Part 99.31(a)(1). When we Process Personal Information on your behalf, you retain all right, title and interest to such Personal Information and Blackboard does not own, control, or license such information except as described in the Agreement.
- 2.2 To the extent Applicable Privacy Laws such as the GDPR require a description of the subject matter, scope and purpose of the processing of Personal Information, including the type of Personal Information and categories of data subjects, the descriptions set out in the Agreement and Annex A of this DPA apply. We and you have entered into the Agreement to benefit from our expertise in Processing Personal Information solely for the purposes set out herein and in the Agreement. We shall be allowed to exercise our own discretion in the selection and use of means as we consider necessary to pursue those purposes, subject to the requirements of this DPA and Applicable Data Privacy Laws.

**3. Blackboard's obligations**

- 3.1 Blackboard (together with its employees, affiliates, and subsidiaries), may Process the Personal Information as a service provider and, in doing so, may retain, use, disclose and otherwise Process Personal Information solely in accordance with your instructions and for the following purposes: (i) providing Products and Services to you including any functionalities activated by your system administrators; (ii) maintaining and supporting our Products and Services; (iii) as otherwise permitted or required by applicable Law.
- 3.2 The Agreement and the DPA along with your configuration of the Products and Services are your instructions to us in relation to the processing of Personal Information. We agree to follow such instructions with regard to the Processing of Personal Information. Our obligations under Sections 3.1 and this 3.2 shall be subject to Section 4.2.
- 3.3 Provided that we Process only the minimum amount of Personal Information necessary, and the output of the Processing is aggregated or De-identified Data (to which we implement appropriate technical safeguards and businesses processes to prevent the re-identification of individuals), you agree that we may Process Personal Information for additional lawful purposes, including: (i) evaluating, improving and/or developing our Products and Services; (ii) developing new Products and Services; and (iii) analytics and research. We may also Process Personal Information as necessary to enforce our rights under the Agreement. We may suggest supplemental educational tools or services to Authorized Users to the extent consistent with applicable Law; however, we will not use Personal Information for targeted advertising, without the consent of you or your Authorized Users.
- 3.4 You acknowledge that where we Process personal information: (i) in the context of a direct relationship we have with an Authorized User in the course of providing or offering services to them; or (ii) with the consent of an Authorized User solely with respect to their own personal information, our Processing activities are outside the scope of this DPA. You agree to Blackboard's fulfilment of any legally satisfactory request and consent by an Authorized User to download, export, save, maintain or transfer their own personal information.
- 3.5 In the unlikely event that applicable law requires us to Process Personal Information other than as instructed, we will notify you unless prohibited from so doing by applicable Law.
- 3.6 We agree to uphold our responsibilities under Applicable Data Privacy Laws and to supervise and train our employees accordingly. We will ensure that such persons with access to Personal Information have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 3.7 We will promptly notify you about any legally binding request for disclosure of Personal Information by a law enforcement authority or other organization or body, unless legally prohibited. Where legally

permissible, we will refer the requesting authority to you and will otherwise provide you with reasonable assistance in relation to such requests. This will include (i) ensuring that the request is legally binding and valid, (ii) conducting a legal assessment of the extent to which we are required by law to comply with the request and the requirements under Applicable Data Privacy Laws that may restrict such disclosure, and (iii) not providing more Personal Information than strictly necessary to comply with the request.

#### **4. Your obligations**

- 4.1 You affirm your collection and sharing of Personal Information with us shall comply with Applicable Data Privacy Laws.
- 4.2 You affirm that you will give only lawful instructions. If we hold the view that any instruction of yours contravenes applicable law and/or the DPA, we will notify you, and we are entitled to suspend execution of the instruction, 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.
- 4.3 You represent and affirm that:
  - (a) you have the authority to provide Personal Information to Blackboard, or to permit Blackboard to collect directly, for its use in accordance with the Agreement; and
  - (b) you have obtained and provided all required consents and/or disclosures to Authorized Users regarding Blackboard's collection, access and Processing of Personal Information under this Agreement, including to the extent applicable, to permit Blackboard to collect Personal Information directly from students under age thirteen (13) as permitted under the Children's Online Privacy and Protection Act ("COPPA").
- 4.4 To the extent necessary to provide you with the Products and Services, you authorize us, our affiliates and subsidiaries to Process Personal Information and you will 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.
- 4.5 Where Blackboard discloses our employees' or contractors' Personal Information to you or a Blackboard employee/contractor provides their Personal Information directly to you, which you Process to manage your use of the Products and Services, you will Process that Personal Information in accordance with your data privacy policies and Applicable Data Privacy Laws. We will only make such disclosures where lawful for the purposes of managing your use of the Products and Services.

#### **5. Cooperation**

- 5.1 We will, to the extent legally permitted, promptly notify you if we receive an Individual Right Request. Our response to an individual Right Request will be limited to explaining to the individual that the Individual Right Request needs to be addressed to you.
- 5.2 If you do not have the ability to address an Individual Right Request directly through our Products and Services, we will upon your request assist you in responding to the Individual Right Request for the fulfilment of your obligation under Applicable Data Privacy Laws.
- 5.3 Unless legally prohibited, we will make available to you any information you request and otherwise reasonably assist you as necessary to demonstrate compliance with your obligations under Applicable Data Privacy Laws in relation to Personal Information (including obligations under Art. 35 and 36 GDPR).

#### **6. Third Party Access (Sub-processors)**

- 6.1 We shall not sell, disclose, release or otherwise transfer Personal Information to any third party without consent from you or an Authorized User, except where such disclosure is permitted (i) to a Sub-processor that Processes Personal Information on our behalf in support of Blackboard's Processing of Personal Information in accordance with Section 3.1 or 3.2, (ii) to a third party as reasonably necessary to comply with any applicable law, regulation, or public authority, (iii) to respond

or participate in judicial process or to protect the safety of Blackboard or our users, or (iv) as otherwise permitted by Applicable Privacy Laws.

- 6.2 The list of Blackboard's current Sub-processors is available at [REDACTED] Subject to Section 6.3, you hereby give us a general authorisation to engage the Sub-processors listed here.

- 6.3 We shall:
- (a) inform you of any intended changes concerning the addition or replacement of Sub-processors at the link in Section 6.2 above (in combination with our email notification mechanism available at the link) thirty (30) days prior to any changes; and
  - (b) give you the opportunity to raise reasonable objections to such changes within twenty (20) calendar days of such notification. We may add or replace a Sub-processor immediately if it is necessary to ensure business continuity and recovery in case of emergency, except as prohibited by Applicable Data Privacy Laws.

- 6.4 With regard to our Sub-processors we will:
- (a) conduct due diligence on the data privacy and security measures of new Sub-processors before providing access to Personal Information;
  - (b) enter into a written agreement which requires at least the same level of protection for Personal Information and individuals as set out in this DPA before providing access to Personal Information;
  - (c) restrict the Sub-processor's access to Personal Information only to what is necessary to fulfil our contractual obligations or as otherwise permitted under the Agreement or under Applicable Data Privacy Laws; and,
  - (d) remain liable for any processing of Personal Information carried out by Sub-processors to the same extent we would be liable if performing the Services ourselves.

## 7. Customer-Requested Third-Party Access

- 7.1 You acknowledge that in the provision of some of our Products and Services such as third party integrations, we, as authorized and instructed by you (or by your Authorized User who is eligible to provide such authorization under applicable law), may disclose Personal Information to and otherwise interact with a third party that acts on your behalf and under your instruction ("Third Party Data Processor"). You agree that if and to the extent such disclosures occur, between you and us, you are responsible for (i) meeting any requirements under Applicable Data Privacy Laws and the consequences of disclosing the Personal Information to the Third Party Data Processor, and (ii) for entering into separate contractual arrangements with such Third Party Data Processors binding them to comply with obligations in accordance with Applicable Data Privacy Laws. For the avoidance of doubt, such Third-Party Data Processors are not our Sub-processors.

## 8. Personal Information Hosting and Access

- 8.1 Generally, Blackboard has a regional hosting model. For example, in the United States, all Personal Information is hosted on servers in the United States. For the delivery of the Products and Services, support, development, maintenance and similar purposes, your Personal Information may be Processed outside of the country in which it was originally collected.
- 8.2 If your Products and Services are not hosted regionally, you acknowledge and agree that to deliver the Products and Services and for support, development, maintenance and similar purposes, Personal Information may be Processed in countries other than the country in which it was collected. However, we will not Process Personal Information outside of the country it was collected unless such access meets the requirements under Applicable Data Privacy Laws. For sake of clarity, regardless of where we Process Personal Information, all Processing will be carried out in accordance with this DPA.

**9. EEA Personal Information Transfers**

- 9.1 If you are located in the EEA, we will not transfer Personal Information to any country outside the EEA which has not been the subject of a European Commission adequacy decision unless we have ensured that such a transfer adequately protects Personal Information and is made pursuant to an appropriate legal transfer mechanism, such as the standard contractual clauses approved by the European Commission ("SCCs"), Binding Corporate Rules, 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), we will cooperate with you in good faith to implement an alternative legal transfer mechanism.
- 9.2 Notwithstanding the provisions of paragraph 9.1 above, you agree that Personal Information may need to be transferred to Blackboard group companies outside the EEA, in order for one or more of those entities to assist with our provision of Products and Services to you. In respect of such transfers, the SCCs which are attached in Annex C to this DPA shall apply and are hereby incorporated.
- 9.3 For the avoidance of doubt, in the event that the EU Commission approves a successor set of controller to processor standard contractual clauses ("New SCCs"), the New SCCs shall be incorporated by reference in this DPA in place of the SCCs attached in Annex C. In such cases, the information set out in Annexes A and B of the SCCs attached in Annex C to this DPA shall be deemed to be incorporated into the appropriate sections of the New SCCs. To the extent that the New SCCs require the inclusion of additional information not covered by Annexes A and B of the SCCs currently at Annex C to this DPA, or additional optional selections to be made, we may incorporate that additional information into the New SCCs by way of a written notice to you.
- 9.4 To the extent that the SCCs set out in Annex C to this DPA, or the New SCCs, are declared invalid (by, for example, a competent court or authority), you agree that you will cooperate with us in good faith to implement an alternative legal transfer mechanism.

**10. Security**

- 10.1 Annex B describes our technical and organizational security measures. The security measures are subject to technological advancements and further development. We are permitted to implement suitable alternative measures, as long as the alternative measures do not materially decrease the level of security applied to the Personal Information and meet the requirements of Applicable Data Privacy Laws.
- 10.2 We will regularly audit and assess our compliance with the technical and organizational security measures.
- 10.3 You are responsible for the appropriate use of the security features and other features of our Products and Services by you and your Authorized Users, including the granting of access entitlements. You are responsible for determining whether our Products and Services (including any test and staging environments) and the related security measures are sufficient for the intended Processing of Personal Information before using these Products and Services. We will provide you with any information that is reasonably required to make this determination.

**11. Security Incident**

- 11.1 Blackboard maintains a documented security incident response plan which is regularly tested.
- 11.2 Upon becoming aware of a Security Incident, we will (i) promptly investigate such Security Incident in accordance with our security incident response plan, (ii) take all measures and actions as are reasonably necessary to remedy or mitigate the effects of such Security Incident, and (iii) notify you promptly and without undue delay (and in any event within the time period required by applicable law) in writing upon confirmation of a Security Incident where an unauthorized party has acquired, accessed, or been disclosed Personal Information or as otherwise required by Applicable Data Privacy Laws ("Confirmed Security Incident").

- 11.3 In the event of a Confirmed Security Incident, we will:
- (a) provide timely cooperation and assistance as you may require to fulfil your Security Incident reporting obligations under Applicable Data Privacy Laws.
  - (b) assist you in relation to any Security Incident notifications you may be required to make under applicable law. To the extent such information is available and required by law, the notification under Section 11.2 shall include the following:
    - (i) a general description of the Security Incident, including the nature and date of the Security Incident;
    - (ii) the categories and approximate number of individuals concerned;
    - (iii) the categories and approximate number of Personal Information records concerned;
    - (iv) the likely consequences of the Security Incident;
    - (v) the measures used to protect the Personal Information;
    - (vi) the measures we have taken or propose to take to address the Security Incident, including, where appropriate, measures to mitigate its possible adverse effects; and
    - (vii) the name and contact details of our relevant point of contact with regard to the Security Incident.
  - (c) Upon request, provide reasonably requested information about the status of any Blackboard remediation and restoration activities and keep you informed about all material developments in connection with the Security Incident.
- 11.4 In the event of a Confirmed Security Incident, you will be responsible for the timing, content, and delivery of any legally required notification to your Authorized Users who are impacted by such Confirmed Security Incident and to any regulator or third party in accordance with applicable law. If, due to a Confirmed Security Incident which results from a breach of the data security obligations set forth in Annex B by Blackboard, its agents, or Sub-processors acting on its behalf, any third-party notification is required under applicable law, Blackboard shall, subject to the limitations of liability in the Agreement, reimburse you for all reasonable "Notification Related Costs." Notification Related Costs are limited to internal and external costs associated with addressing and responding to the Confirmed Security Incident, including but not limited to: (a) preparation and mailing or other transmission of notifications required by applicable law; (b) establishment of an adequate call center and other communications procedures in response to the Confirmed Security Incident; (c) costs for remediation measures such as credit monitoring or reporting services for affected individuals for at least twelve (12) months in relation to a Security Incident that involves social security numbers, or to the extent required by law. With respect to any Security Incident which does not result from a breach of the data security obligations set forth in Annex B by Blackboard, its agents, or Sub-processors acting on its behalf, any third-party notifications, if any, shall be at your expense.
- 11.5 Blackboard's obligation to report or respond to a Confirmed Security Incident under this Section 11 is not and will not be construed as an acknowledgement by Blackboard of any fault or liability of Blackboard with respect to the Confirmed Security Incident.
- 11.6 Unless prohibited by law, you will notify us before communicating the Confirmed Security Incident to a third party (whether to any regulators, Authorized Users, clients, or the public) and provide us with copies of any written documentation to be filed with the regulators and of any other notification you propose to make which references us, our security measures and/or role in the Confirmed Security Incident, whether or not by name. Subject to your obligations to comply with any mandatory notification deadlines under Applicable Data Privacy Laws, you will consult with us in good faith and take account of any clarifications or corrections we reasonably request to such notifications or communications and which are consistent with Applicable Data Privacy Laws.

**12. Audit**

- 12.1 We will, by way of regular self-audits, verify that the Processing of Personal Information complies with Applicable Data Privacy Laws.
- 12.2 Subject to Section 12.3, we will allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you regarding our compliance with the DPA and Applicable Data Privacy Laws.
- 12.3 To fulfil our obligations under 12.2, we will provide you, upon request, an overview of our privacy and security program, governance and controls including:
- (a) overview of our privacy program and governance;
  - (b) overview of our security program and governance;
  - (c) overview of security controls regarding a specific Product or Service (where available);
  - (d) summaries of any relevant self-audits;
  - (e) summaries of any relevant third party assessments or reports (where available);
  - (f) relevant security reports and/or certifications of our data centers (where available);
  - (g) description of our processes for assistance with Individual Rights Requests; and
  - (h) certified statement on the compliance with this DPA.
- 12.4 If, after review of the documentation provided in accordance with Section 12.3, you require further information to meet your obligations under Applicable Data Privacy Laws, you may:
- (a) request further information with an explanation regarding what further information is required and why it is required; and
  - (b) no more once per year, request an on-site audit where Applicable Data Privacy Laws grant you the right to conduct an on-site audit.
- 12.5 You will reimburse us for reasonable expenses for any time expended for any such on-site audit. Requests need to be made at least fourteen (14) days in advance in writing, and we will mutually agree upon the scope, timing, and duration of the on-site audit.
- 12.6 Any information made available in accordance with this section 12 shall be deemed Confidential Information. You will promptly notify us regarding any possible non-compliance discovered during the course of an audit, and we will use commercially reasonable efforts to address any confirmed non-compliance as soon as practicable.

**13. Deletion or return of Personal Information**

- 13.1 Upon expiration or termination of the Products or Services, or such earlier time upon request, we will delete the relevant Personal Information in our possession, custody or control within a reasonable time and procure the deletion of all copies of Personal Information processed or maintained by any Sub-processors. At your request and your expense, we will return such Personal Information to you before deleting it, provided that a request for the return of Personal Information is submitted to Blackboard in writing at least thirty (30) days prior to the date of termination. If no such request for the return of Personal Information is received, Blackboard may, but shall have no obligation to, maintain or return Personal Information more than 10 days after the termination of the Products or Services. We will certify the deletion of Personal Information upon request.
- 13.2 Notwithstanding the foregoing, we may retain Personal Information to the extent: (i) required by applicable laws; (ii) required as part of our automated backup and recovery processes so long as the backup and recovery storage system is inaccessible to the public and unable to be used in the ordinary course of business by Blackboard; (iii) an Authorized User has downloaded, saved,

transferred or otherwise maintained their own personal information in a personal account in accordance with Section 4.3; and/or (iv) it is aggregated or De-Identified Data and Blackboard has implemented technical safeguards and business processes to prohibit the reidentification of the information with an individual. If you request deletion of Personal Information in archival and back-up-files, you shall bear the costs including costs for business interruptions associated with such request.

**14. Final provisions**

- 14.1 Unless specifically stipulated to the contrary by the Parties, the duration of this DPA will be coterminous with the term of the Agreement. Our obligations under the DPA will continue to apply as long as we Process Personal Information.
- 14.2 This DPA is incorporated into and made a part of the Agreement by this reference and replaces any arrangements agreed earlier between the parties in respect of the Processing of Personal Information related to the Agreement. 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. Notwithstanding the foregoing, in the event of a conflict between: (a) the DPA; (b) any provision of the Agreement; or (c) the Order Form, and the SCCs, the SCCs shall prevail.
- 14.3 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 Products and Services. The updated Terms shall be posted here:  
<http://agreements.blackboard.com/bbinc/data-processing-addendum.aspx>. If any update to the DPA constitutes a material change to the ways in which we Process Personal Information, or materially affects your use of the Products and Services or your rights herein, we will provide you with reasonable notice prior to the changes taking effect. Your continued use of the Service thereafter shall constitute acceptance to be bound by the updated DPA.

## Annex A – Details of Processing

This Annex A describes the Processing of Personal Information as required under some Applicable Data Privacy Laws such as GDPR.

The details of the Processing depend on your use of our Products and Services but will generally be as follows:

### Categories of Personal Information

- Name or unique identifiers
- Personal contact information and information about role at institution
- Date of birth, gender, nationality, parent/student relationships
- Course and degree information such as grade level, teachers, classes/sections/courses, grades, assignments, tests, books, attendance, homework, degree type
- Access credentials usernames and passwords
- Information related to the devices accessing our Products and Services, service or browsing history, location data, information provided by social networks, Authorized User or Customer correspondence
- Disciplinary and conduct records
- Personal information contained in content generated and/or provided by an Authorized User such as submitted papers, assignments, blog and discussion posts, contributions to online collaboration such as chats and audio/video conferencing
- If the definition of Personal Information under Applicable Data Privacy Laws such as POPIA includes information about juristic persons: Company registration information, contact details of authorized representatives, registered address, applicable tax numbers, financial information, relevant registrations and other information which may be relevant to our engagement with you

### Special Categories of Personal Information (if any)

Our Products and Services are generally not intended to Process Special Categories of Personal Information. Any Processing of Special Categories of Personal Information is determined and controlled by you in compliance with Applicable Data Privacy Laws.

Special Categories of Personal Information may include: (a) Personal Information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; (b) genetic data and biometric data Processed for the purpose of uniquely identifying an individual; and (c) data concerning health or data concerning an individual's sex life or sexual orientation.

### Categories of Data Subject

Customer's representatives (such as employees, contractors, consultants and agents) and Customer's Authorized Users (such as students, prospective students, parents, teachers and administrators), guest users invited by Customer or its Authorized Users.

### Purpose and nature of Processing

As a provider of education technology solutions, we Process Personal Information provided by you or your Authorized End Users on your behalf and under your instructions within the scope of the Agreement. Processing operations may include storage and other Processing necessary to provide our Products and Services and otherwise perform our obligations as described in Section 3.

## **Annex B – Security measures**

We use the following appropriate technical and organizational measures to protect Personal Information which have to meet, at a minimum, the level required by applicable law:

### Management controls

- We maintain a comprehensive information security program with an appropriate governance structure (including a dedicated Information Security team) and written security policies to oversee and manage risks related to the confidentiality, availability and integrity of Personal Information.
- We align our information security program and measures with industry best practices, such as the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 27001, Open Web Application Security Project (OWASP), and National Institute of Standards and Technology (NIST) 800 frameworks. These controls are distilled and incorporated into an internal compliance framework that is applicable to all Products and Services.
- We use internal resources and third-party contractors to perform audits and vulnerability assessments and provide guidance on best practices for select systems containing Personal Information. System assessments and network audits are performed regularly. Issues identified during audits are prioritized and remediated as part of ongoing security monitoring using a risk management methodology.
- Our employees receive security and data privacy training when they start and regularly thereafter. Awareness campaigns are used to raise awareness about information security risks and our information security policies and procedures. Select staff, such as developers, receive additional security training tailored to their job role. Completion of training is tracked.
- New employees undergo background checks prior to onboarding, where permitted by applicable law, and sign a confidentiality agreement.
- Employees are required to comply with internal policies on the acceptable use of corporate IT assets. These policies address requirements on clean desk and secure workspaces, protecting system resources and electronic communications, protecting information, and general use of technology assets. Our employees are made aware that non-compliance with these policies can lead to disciplinary action, up to and including termination of employment/contract.
- We maintain a vendor risk management program to manage the security and integrity of our supply chain. Our procurement process for third party service providers that have access to confidential information (including Personal Information) includes a vendor security and privacy assessment review and a contract review by our Legal team.
- We have a documented security incident response process for responding to, documenting, and mitigating Security Incidents and notifying our clients, authorities or other parties as required. The process is tested regularly.

### Admission control

- We employ appropriate physical safeguards to prevent unauthorized persons from gaining access to the premises where Personal Information is collected, processed and used. Such premises may only be entered by us and/or our agents.
- We and our service providers implement physical security controls for the data centers used to store Personal Information. These controls are commensurate with industry best practices and local regulations, which include 24x7x365 video monitoring, guards, secured ingress/egress, badged access, sign-in/sign-out logs, restricted access, and other best practices.
- We use appropriate measures to secure buildings, such as using access cards or fobs for employee access.

- We use appropriate measures to ensure that Personal Information held in hardcopy are kept securely e.g. in locked rooms or filing cabinet. Generally, steps are taken to ensure that access to hardcopy Personal Information 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.

#### Entry control

- We use appropriate measures to prevent unauthorized parties from accessing or using our systems containing Process Personal Information.
- We require authentication and authorisation to gain access to systems that Process Personal Information (i.e. require users to enter a user id and password before they are permitted access to such systems).
- We have procedures in place to permit only authorized persons to access Personal Information internally or externally by using authentication procedures (e.g. by means of appropriate passwords), except as otherwise enabled by you.

#### Access control

- We employ appropriate measures to prevent individuals accessing Personal Information unless they hold a specific access authorization.
- We only permit access to Personal Information which the employee (or agent) needs for his/her job role or the purpose they are given access to our systems for (i.e. we implement measures to ensure least privilege access to systems that Process Personal Information). System administration and privileged access is controlled and enforced on a need-to-know basis and is reviewed regularly.
- We have in place appropriate procedures for controlling the allocation and revocation of access rights to Personal Information. For example, having in place appropriate procedures for revoking employee access to systems that Process Personal Information when they leave their job or change role. Unnecessary and default user accounts and passwords are disabled on servers.
- Our systems containing Personal Information are protected by user identifiers, passwords and role-based access rights. Special access rights are produced for the purposes of technical maintenance which do not allow access to Personal Information.
- We implement methods to provide audit logging to establish accountability by monitoring network devices, servers, and applications. Where applicable, aberrant activity generates alerts for investigation and/or action.
- All employees must use multi-factor authentication for remote access to IT assets within the corporate network.
- We take appropriate administrative safeguards to protect our services against external attacks, including, for example, deploying firewalls and using services to provide 24x7x365 security monitoring of our data centers to protect and defend against external security threats.

#### Transmission control

- We employ appropriate measures to protect the confidentiality, integrity and availability of Personal Information during electronic transmission.
- We encrypt Personal Information while in transit over the internet.

#### Input control

- We maintain logging and auditing systems to monitor activity related to the input of Personal Information.

Order control

- We ensure that all requests from you with respect to Personal Information are processed strictly in compliance with your instructions through the use of clear and unambiguous contract terms; comprehensive Statements of Work; appropriately designed policies and processes, and training.

Availability control

- We protect Personal Information in our possession against unintentional destruction or loss by implementing appropriate management, operations, and technical controls such as firewalls; monitoring; and backup procedures.
- Example measures that may also be taken include mirroring of storage media, uninterruptible power supply (UPS); remote storage; and disaster recovery plans.

**Annex C - Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: See Order Form

address:

tel:

fax:

e-mail:

Other information needed to identify the organisation

**(the data exporter)**

Name of the data importing organisations: **Blackboard Inc.**

**Blackboard Connect Inc.**

**Schoolwires Inc.**

address: **Blackboard Inc.** 1209 N Orange St., Wilmington, DE 19801

**Blackboard Connect Inc.** 160 Mine Lake Ct. Suite 200, Raleigh, NC 27615

**Schoolwires Inc.** 1209 N Orange St., Wilmington, DE 19801

tel: .....

fax: .....

e-mail: privacy@blackboard.com

Other information needed to identify the organisation .....

**(the data importer)**

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Annex A.

## 1. Definitions

For the purposes of the Clauses:

- (a) **personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1).
- (b) **the data exporter** means the controller who transfers the personal data.
- (c) **the data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC.
- (d) **the sub-processor** means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with its instructions, the terms of the Clauses and the terms of the written subcontract.
- (e) **the applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established.
- (f) **technical and organisational security measures** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## 2. Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Annex A which forms an integral part of the Clauses.

## 3. Third-party beneficiary clause

- 3.1 The data subject can enforce against the data exporter this clause 3, clause 4(b) to clause 4(i), clause 5(a) to clause 5(e) and clause 5(g) to clause 5(j), clause 6.1 and clause 6.2, clause 7, clause 8.2 and clause 9 to clause 12 as third-party beneficiary.

- 3.2 The data subject can enforce against the data importer this clause, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2 and clause 9 to clause 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- 3.3 The data subject can enforce against the sub-processor this clause 3.1, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2, and clause 9 to clause 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### **4. Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organizational security measures specified in Annex B to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

- (g) to forward any notification received from the data importer or any sub-processor pursuant to clause 5(b) and clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Annex B and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and,
- (j) that it will ensure compliance with clause 4(a) to clause 4(i).

## 5. Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Annex B before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and,
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Annex B which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with clause 11; and,
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## 6. Liability

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in clause 3 or in clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in clause 3 or in clause 11 because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in clause 3 or in clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which

case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## **7. Mediation and jurisdiction**

- 7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; and,
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

- 7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8. Cooperation with supervisory authorities**

- 8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- 8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
- 8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in clause 5(b).

## **9. Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## **10. Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## **11. Sub-processing**

- 11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by

way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

- 11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
- 11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## **12. Obligation after the termination of personal data processing services**

- 12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): See Order Form  
Position: .....  
Address: .....  
Other information necessary in order for the contract to be binding (if any): .....  
Signature .....  
  
(Stamp of organisation)

On behalf of the data importer: **Blackboard Inc.**

Name (written out in full): Stuart Kupinsky  
Position: Chief Legal Officer, General Counsel & Secretary  
Address: 1209 N Orange St., Wilmington, DE 19801  
Other information necessary in order for the contract to be binding (if any): .....  
Signature 

(Stamp of organisation)

On behalf of the data importer: **Blackboard Connect Inc.**

Name (written out in full): Stuart Kupinsky  
Position: Secretary  
Address: 160 Mine Lake Ct. Suite 200, Raleigh, NC 27615  
Other information necessary in order for the contract to be binding (if any): .....  
Signature 

(Stamp of organisation)

On behalf of the data importer: **Schoolwires Inc.**

Name (written out in full): Stuart Kupinsky  
Position: Secretary  
Address: 1209 N Orange St., Wilmington, DE 19801  
Other information necessary in order for the contract to  
be binding (if any): .....  
Signature 

## ANNEX A to the Standard Contractual Clauses

This Annex forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Annex A.

### Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

The data exporter is transferring personal data for purposes of receiving the Blackboard Products and Services

### Data importer

The data importer is (please specify briefly your activities relevant to the transfer):

The data importer is part of the Blackboard group of companies, an education technology provider which processes personal data under the instruction of the data exporter in accordance with the services agreement between the data exporter Blackboard.

### Data subjects

The personal data transferred concern the following categories of data subjects (please specify)

Customer's representatives (such as employees, contractors, consultants and agents) and Customer's Authorized Users (such as students, prospective students, parents, teachers and administrators), guest users invited by Customer or its Authorized Users.

### Categories of data

The personal data transferred concern the following categories of data (please specify)

- Name or unique identifiers
- Personal contact information and information about role at institution
- Date of birth, gender, nationality, parent/student relationships
- Course and degree information such as grade level, teachers, classes/sections/courses, grades, assignments, tests, books, attendance, homework, degree type
- Access credentials usernames and passwords
- Information related to the devices accessing our Products and Services, service or browsing history, location data, information provided by social networks, Authorized User or Customer

correspondence

- Disciplinary and conduct records

Personal information contained in content generated and/or provided by an Authorized User such as submitted papers, assignments, blog and discussion posts, contributions to online collaboration such as chats and audio/video conferencing

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify)

Blackboard's Products and Services are generally not intended to Process Special Categories of Personal Information. Any Processing of Special Categories of Personal Information is determined and controlled by you in compliance with Applicable Data Privacy Laws.

Special Categories of Personal Information may include: (a) Personal Information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; (b) genetic data and biometric data Processed for the purpose of uniquely identifying an individual; and (c) data concerning health or data concerning an individual's sex life or sexual orientation.

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify)

Processing operations may include storage and other Processing necessary to provide Blackboard's Products and Services and otherwise perform its obligations as described the services agreement.

**DATA EXPORTER**

See Order Form

**DATA IMPORTER**

Name: Stuart Kupinsky

Authorised signature:

**DATA IMPORTER**

Name: Stuart Kupinsky

Authorised signature:

**DATA IMPORTER**

Name: Stuart Kupinsky

Authorised signature:

**ANNEX B to the Standard Contractual Clauses**

This Annex B forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with clause 4(d) and clause 5(c) (or documents/legislation attached):**

See Annex B of the Data Processing Addendum

## Exhibit C - Certifications

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. By executing the contract Vendor certifies compliance with this subsection in its entirety and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on the contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the University.

If this contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the University by the date specified by the University and in no event later than July 1 of each year that this contract remains in effect.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- a. the contract may be void by operation of law,
  - b. the Chief Procurement Officer may void the contract, and
  - c. the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **NOT APPLICABLE TO BLACKBOARD. This applies to individuals, sole proprietorships, partnerships and LLCs, but is not otherwise applicable.** Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
4. Vendor certifies that, for the duration of this contract it will:
  - a) post its employment vacancies in Illinois and border states on the Department of Employment Security's IllinoisJobLink.com website or its successor system; or
  - b) will provide an online link to these employment vacancies so that this link is accessible through the IllinoisJobLink.com website or its successor system; or
  - c) is exempt from 20 ILCS 1005/1005-47 because the contract is for construction-related services as that term is defined in section 1-15.20 of the Procurement Code; or the contract is for construction and vendor is a party to a contract with a bona fide labor organization and performs construction. (20 ILCS 1005/1005-47)
5. **NOT APPLICABLE TO BLACKBOARD. This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services were covered by a collective bargaining agreement, Vendor certifies (i) that it will Offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or Offer; and (ii) that it shall Offer employment to all employees currently employed in any existing bargaining unit who perform

substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80.

6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5.
9. Vendor certifies it is not barred from having a contract with the State based upon violating prohibitions related to submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing or preparing any invitation for bid, request for proposal, or request for information or similar assistance (except as part of a public request for such information. 30 ILCS 500/50-10.5(e)).
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the University or the State (or if delinquent, has entered into a deferred payment plan to pay the debt). 30 ILCS 500/50-11, 50-60.
11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12.
12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.
14. Vendor certifies it is not in violation of the "Revolving Door" provision of the Illinois Procurement Code. 30 ILCS 500/50-30.
15. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
16. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, Offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
17. **NOT APPLICABLE TO BLACKBOARD.** Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring University grants an exception in writing. 30 ILCS 565.
18. Drug Free Workplace
  - 18.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act. 30 ILCS 580
  - 18.2 If Vendor is an individual and this contract is worth more than \$5,000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract.

Contract

Certifications  
V.14.2

19. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582.
20. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
21. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
22. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2.
23. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the University under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
24. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the University under the contract have been produced in whole or in part by the labor or any child under the age of 12. 30 ILCS 584.
25. Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45.
26. **This applies to information technology contracts and is otherwise not applicable.** Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at ([www.dhs.state.il.us/iita](http://www.dhs.state.il.us/iita)). 30 ILCS 587.
27. **NOT APPLICABLE TO BLACKBOARD.** Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or a subcontract that are manufactured in the United States. 30 ILCS 517.
28. Conflict of Interest. Vendor is under no legal prohibition on contracting with the State of Illinois and has no known conflicts of interest. In addition, Vendor has disclosed, if required, on forms provided by the University, and agrees it is under a continuing obligation to disclose to the University, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or that would prohibit Vendor from having or continuing the Contract.
29. **NOT APPLICABLE TO BLACKBOARD.** Vendor certifies in relation to Medicare/Medicaid and other federal debarments that neither Vendor nor any of its employees or subcontractors who may provide services pursuant to this Contract is currently subject of an investigation or proceeding to exclude it as a provider under Medicare or Medicaid or under any other federal or state health care program or under any third party insurance program, nor is it currently excluded or debarred from submitting claims to Medicare or Medicaid or to any other federal or state health care program or to any third party insurer. Vendor represents and warrants it has checked the U.S. General Service Administration's (GSA) Excluded Party Listing System (EPLS), which lists parties excluded from federal procurement and non-procurement programs. The EPLS website includes GSA/EPLS, the U.S. Department of Health and Human Services (HHS) Office of Inspector General's (OIG) List of Excluded Individuals/Entities (LEIE), and the Department of Treasury's (Treasury) Specially Designated Nationals (SDN) list. Vendor further represents and warrants it has checked the Illinois Department of Public Aid (IDPA) OIG Provider Sanctions list of individuals and entities excluded from state procurement with respect to Vendor's employees and agents. See the following websites: <https://www.sam.gov/> and <http://www.state.il.us/agency/oig/search.asp>. University will terminate Contract without penalty to University if

Vendor becomes excluded during the life of this Contract.

30. **NOT APPLICABLE TO BLACKBOARD.** Vendor certifies in relation to supply of medical goods and services that such goods and services will be provided in accordance with all applicable legal requirements, including the laws at issue under the Public Law No. 109-171 - Deficit Reduction Act of 2005 (DRA) with respect to the establishment and dissemination of written policies for detecting and preventing waste, fraud and abuse as addressed in the University policies and code of conduct.
31. Vendor certifies that it has read, understands and is in compliance with the registration requirements of the Illinois Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.

**In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:**

**Vendor is not required to register as a business entity with the State Board of Elections.**

**Vendor is a not-for-profit entity.**

**or**

**Vendor does not have pending and/or current bids/proposals and contracts which in the aggregate exceed \$50,000 annually. (If this solicitation has an estimated annual value of \$50,000 or more, or when vendor's pending and/or current bids/proposals, contracts and orders in the aggregate exceed \$50,000 annually, vendor must register.)**

**Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act. (include a copy of Vendor's registration certificate)**

32. In accordance with 30 ILCS 500/50-36, each bid, Offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 of the Illinois Procurement Code, shall include a disclosure of whether or not the bidder, Offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, Offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:
- more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or
  - the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran.

There are no business operations that must be disclosed to comply with the above cited law.

or

The following business operations are disclosed to comply with the above cited law: \_\_\_\_\_

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33. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or Offer. 30 ILCS 500/20-43. If you do not meet these criteria, then your bid or Offer will be disqualified.

**Vendor must make one of the following four certifications by checking the appropriate box. If C or D is checked, then Vendor must attach to this form the requested documentation.**

- A.  Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.
- B.  Vendor certifies that it is a legal entity, and was authorized to do business in Illinois as of the date for submitting this bid or Offer. The State may require Vendor to provide evidence of compliance before award.
- C.  Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or Offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or Offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.
- D.  Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or Offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or Offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

34. The Vendor (and any Subcontractors) is required under 30 ILCS 500/20-65 to maintain, for a period of three (3) years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the University under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the University and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Vendor agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the required books and records shall establish a presumption in favor of the University for the recovery of any funds paid by the University under this Contract for which adequate books and records are not available

**UIS Contract Approval/Routing Form (CARF)**

All fields in Sections 1 through 3 are required.

**Section 1 - Contract**

Contract Category:  Payable  No Funds  Receivable

New Contract  Amendment # \_\_\_\_\_

Contract Type: General Services (Purchasing)

Contract Sub Type: General Services

## Brief Description:

Blackboard Mobile is an application that allows users to utilize an app on their various devices to access announcements, tasks, discussions, grades, all areas of Blackboard on smart devices.

Chart: 4 Org: 305 Amount: 0.00

Start Date: upon contract comp End Date: 10 year

# of Renewals: 0

Health Care Related?  No  Yes

Document Source:  Custom  Other Party  Template No Changes  Template with Changes

**Section 2 - Contracting Party**

Name: Blackboard Inc

Contact: Steve Sartori

Phone: 201-961-3274

E-Mail: steve.sartori@blackboard.com

Address: 8335 Keystone Crossing Suite 200 Indianapolis, IN 46240

Street, City, State, Zip

**Section 3 - Unit Information**

Name: Information Technology Services

Contact: Tamara Boeker

Phone Number: 217-206-6556

E-Mail: tgosn2@uis.edu

Address: One University Plaza Springfield IL 62703

Street, City, State, Zip

**Section 4 - Preliminary Approvals**

The signatures below indicate approval of the contract at the amount specified.

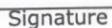
Unit Head:  Tulio Llosa  
Required  Printed Name



8/30/18

Date

Dean/Director:  \$25,000 or More  
 Printed Name



Date

VP/Chanc./V. Chanc.:  \$50,000 or More  
 Printed Name



Date

University Comptroller:  Route to:  
UIS Building Servs Bldg, Rm 57



Date

University Counsel:  Printed Name



Date

*University Counsel review is required for payable contracts of \$250,000 or more, all contracts requiring BOT approval, all settlements of claims or disputes, all contracts for legal services, all contracts where student data will be shared with outside entities, and all employment contracts.*

**OBFS Use Only**

Contract Records Office:  107 Coble Hall  
 Printed Name



Date

Subcontractor Included?  No  Yes

Contract #:

PPB Approval Date:

BOT Approval Date:

Procurement Method:

Contact Name/Phone:

Bulletin Procurement Number:

**Special Notes:**

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"), or the acceptance by Blackboard of an acknowledgement form or purchase order (any additional, conflicting, or different terms of which are null and void, except to the extent expressly agreed to by Blackboard in writing) form the entire agreement ("Agreement") between you, The Board of Trustees of the University of Illinois on behalf of the University of Illinois Springfield (the entity listed in any Order Form; hereafter, "Customer" or "you") and Blackboard (the Blackboard entity listed in any Order Form; hereafter, "we", "us", "Vendor" 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").<sup>1</sup>

Initial agreement to  
changes above [REDACTED]

## 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 Perpetual or Term Basis.** With respect to Software, for the term specified in the applicable Order Form, 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.** Subject to your obligations under the Agreement, if Customer 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, on the Internet or Intranet server or servers at your site ("Evaluation License"). You may not copy the Software, SaaS Service, or Hosting Services, or any portion thereof, in whole or in part, except as is necessary to load and/or operate and use one installation copy. You agree not to use the Software for any purposes beyond the scope of the license granted in this section. You may use the Evaluation License solely in connection with your own internal evaluation of the Software, SaaS Service or Hosting Services. The Evaluation License may not be used for any production use or commercial purpose. You acknowledge and understand that, in the event You wish to use the Software, SaaS Service, or Hosting Services for any purposes other than expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not your Authorized Users, You will be required to obtain additional license rights from Us pursuant to a separately executed Order Form and payment of additional license fees. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS EXPRESSLY PROHIBITED BY LAW, IN NO EVENT SHALL BLACKBOARD'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT FOR AN EVALUATION LICENSE, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED \$100.00.

**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.

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<sup>1</sup> 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.

**2.5 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.

**2.6 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 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).

**2.7 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. Customer is responsible for providing connectivity to the Internet for purposes of providing adequate access to the Software or SaaS Services.

**2.8 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/publicarticleview?id=ka570000000PB0o> for the relevant Products and Services.

**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. Customer Property may also contain Personal Information which is defined in Section 5 and discussed further below.

**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 us 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 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. 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 19<sup>th</sup> 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. PROTECTION OF PERSONAL INFORMATION

**5.1. "Personal Information."** Is information that can identify a specific individual.

**5.2. "Student Data"** is a type of 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. In the U.S., Student Data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

**5.3. 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.

**5.4. Personal Information Access.** To the extent necessary to provide you with the Products and Services, you authorize us, our affiliates and subsidiaries to process, access, and/or collect 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 US, we access, collect, and process Personal Information as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). When you authorize us to process, access, and/or collect Personal Information on your behalf, you remain in control of and own that Personal Information.

**5.5. Personal Information Consents and Authority.** You represent and warrant that you have the authority to provide Personal Information 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, 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"), as applicable. We rely on each school to obtain and provide appropriate consent and disclosures, if necessary, for Blackboard to collect any Personal Information, including the collection of Personal Information 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 to download, export, save, maintain or for transfer their own Personal Information, and Blackboard shall retain records of such consents which shall be available to Customer upon request.

**5.6. Use of Personal Information.** By submitting or providing us access to Personal Information, you agree that Blackboard, its affiliates, and subsidiaries, may use the Personal Information solely for the purposes of (i) providing Products and Services to you as contemplated in this Agreement, (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 or end user's consent solely with respect to such Authorized User's own Personal Information. Blackboard personnel shall only have access to Personal Information on a need to know basis in accordance with the Agreement. Notwithstanding anything to the contrary, we shall not use Personal Information to engage in targeted advertising.

**5.7. Use of De-Identified Data.** You agree that we may collect and use, both during and after the term of this Agreement, 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.

**5.8. 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 of the Agreement.

**5.9. 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 furtherance of providing Products and Services to you as contemplated in this Agreement, (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. 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 countries other than the jurisdiction from which the Personal Information was collected, and you hereby authorize such access and processing. All third party service providers involved in the handling, transmitting, and 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 this Agreement.

**5.10. Customer-Requested Third-Party Access.** Blackboard provides Customer and its Authorized Users with the ability to use third-party services with Blackboard products. If explicitly authorized by you, your Authorized User, or an end user who is eligible to provide such consent under applicable law, you consent to allow us to provide access to Personal Information to third parties through the provision of our Products and Services under this Agreement. You agree 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 Personal Information, and that, as between us, you are solely responsible for 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.

**5.11. Data Localization.** You acknowledge and agree that Blackboard will store and process Personal Information in various data centers around the world, including in the U.S., and that your Personal Information may not be stored, processed, or accessed 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 Personal Information in the U.S. and elsewhere in the world.

**5.12. 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 this Agreement expressly conflicts with any term in the DPA, the conflicting term in the DPA shall control. Blackboard shall maintain certification under the US-EU Privacy Shield or another legal mechanism to transfer Personal Information outside the EU during the course of this Agreement.

## 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 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. All Professional Services must be used within one (1) year of the annual Term in which they are purchased.

**7.2. Online Training Services.** Online Training classes are restricted to a maximum of 20 Authorized Users. Each Authorized User must possess basic Web navigation and file management skills, Internet access, and an email address.

**7.3. Onsite Training Services.** Onsite Training classes are restricted to a maximum of 15 Authorized Users. Classes may not be recorded. You must provide the following: (1) One computer for each Authorized User with a high bandwidth Internet connection, Microsoft Internet Explorer 6.0 or later, Microsoft 2000 or later, at least 800 MHz processors, 256 MB of RAM, and monitors capable of at least 1024x768 resolution; (2) a video projection device capable of 1024x768 resolution attached to a "lead" computer; and (3) access to the Software or SaaS Service. In the event that you cancel a scheduled Onsite Training workshop, you shall be charged a cancellation fee as follows: Prior to 21 days before the scheduled event: \$200.00, 15-21 days before the scheduled event: \$600.00, 8-14 days before the scheduled event: \$1,000.00, 1-7 days before the scheduled event: Current Fee for workshop as referenced in the Order Form.

**7.4. 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.

**7.5. Professional Services Expenses.** You shall reimburse us for: (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors for travel from Blackboard's offices in connection with the performance of Onsite Training Services, and (ii) international telephone charges, if applicable. We do not maintain or provide original receipts for any expense under \$500. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance of the Professional Services including the cost of facilities, work space, computers, personnel, supplies and the like, except that you shall be responsible for supplying facilities for the training services if we conduct Professional Services at a site other than our facilities.

## 8. MANAGED HOSTING AND SAAS SERVICES

If you purchase managed hosting or SaaS Services as reflected on an Order Form, the Agreement shall include the terms located on our website at <https://blackboard.secure.force.com/publicarticleview?id=kA570000000PB0o>, with such terms governing the applicable managed hosting or SaaS services.

## 9. FEES, EXPENSES AND PAYMENT TERMS

**9.1 Fees; Payments.** In consideration for our performance under the Agreement, you agree to pay all fees required by the Order Form, as applicable, which fees will be due in accordance with the provisions of the Order Form, but if no such provision is included in the Order Form, then no later than thirty (30) days after the date of an invoice issued to you. 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.

**9.2 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 this 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 this 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.

**9.3 Late Fees.** Interest may be charged on any overdue amounts as per the *Illinois Prompt Payment Act* 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.

**9.4 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 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.

**9.5 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.

## 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 (c) 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.

Initial agreement to changes  
to #9.3 and #10.1 above \_\_\_\_\_ [REDACTED]

## 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 delivery of the Software 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, 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 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 Personal Information, 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 OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, OR YOUR USE OF A PRODUCT OR SERVICE IN VIOLATION OF APPLICABLE LAW, AND EACH PARTY'S OBLIGATIONS IN SECTIONS 13.1 AND 13.3, 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).

**12.2. Mutual Limitations of Liability.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, AND YOUR PAYMENT OBLIGATIONS, AND EACH PARTY'S OBLIGATIONS IN SECTIONS 13.1 AND 13.3, 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.

**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 and are not in material breach of the Agreement, 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 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.

**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 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").

**13.3. Your Indemnity Obligations.** Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you shall, at your own expense, indemnify, defend and hold Blackboard and its affiliates, and together their respective employees, contractors, agents, or assigns ("Blackboard Indemnitee") 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 a Blackboard Indemnitee arising out of a Customer Matter (any of the foregoing indemnifiable matters, each a "Blackboard Claim"). 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.

**13.4. 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.

**14.2. Nondisclosure and Nonuse.** 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.** Except as otherwise provided by Law, neither party shall disclose the terms of the Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this section on confidentiality to keep such terms confidential.

**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 provided that the party making the disclosure will first have given notice to the other party, unless the party is prohibited from providing such notification, 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 also authorize us to provide individual Customer contact information (i.e., primary contact, system administrator) to third parties for the limited purpose of serving as a reference for Blackboard. 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 Authorized User or end 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. Conflict Resolution.** ~~In the event of any controversy or claim arising out of or relating to this Agreement, or a breach thereof, the parties will consult and negotiate with each other and attempt to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by any party to the other, any such controversy or claim will be referred to arbitration for full and final settlement by a panel of three arbitrators (or fewer if agreed by the Parties) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). All arbitration proceedings will be conducted in the English language and will be conducted pursuant to ICC Rules. Any award issued pursuant to ICC Rules may be enforced by any court of competent jurisdiction. The allocation of the cost of the arbitrators and administration of conducting the arbitration will be borne equally by the Parties. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.~~

The applicable governing Law and place of the arbitration will be as follows: (a) if you acquired these Products and Services in North America or South America, the governing Law is the State of ILLINOIS New York unless you are located in the United States and you are legally required to be bound by the state in which you are domiciled, and in such case, the governing law shall be such state and the place of arbitration is Washington, D.C.; (b) if you acquired these Products and Services in Europe, the Middle East, or Africa, the governing Law is England and Wales and the place of arbitration is London, England; (c) if you acquired these Products and Services in Australia or New Zealand, the governing Law is South Australia and the place of arbitration is Adelaide, South Australia; and (d) if you acquired these Products and Services in a region not otherwise mentioned above, the governing Law is Singapore and the place of arbitration is Singapore.

**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 19<sup>th</sup> 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.

## 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™**

**16.1. 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-sublicenseable, 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>.

**16.2. 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.

**16.3. 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 secure use of the Learn API(s). You may not 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.

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

**16.5. 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.

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

**16.7. 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.

### **17. BLACKBOARD COLLABORATE**

**17.1. 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.

**17.2. 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).

**17.3. 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.

**17.4. Use Limitations.** With respect to your license to use the SaaS Services, 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.

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

## **18. BLACKBOARD CONNECT; MASS NOTIFICATION SERVICES**

**18.1. 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.

**18.2. 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.

**18.3. Web Portal.** If you are a higher-education institution and 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.

**18.4. Weather Alerts.** If you are purchasing 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.**

**18.5. 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 18.5 is a material breach of this 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 this Agreement.

**18.6. Emergency & Outreach Messaging.** If you are purchasing Messaging restricted by use-case, the following definitions shall apply. An "Emergency" is an incident, situation or natural phenomenon that: (i) is immediately threatening to life, health, property or the environment; or (ii) has caused loss of life, health detriments, property damage or environmental damage; or (iii) 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.

**18.7. 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.

**18.8. 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.

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

#### **19. 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.

## **20. SCHOOLWIRES, EDLINE & WEBSITE COMMUNITY MANAGEMENT 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. 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.

**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. 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.

**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. 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.

**20.5. 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.

**20.6. 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.

**20.7. 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.

## **21. MOODLE-RELATED PRODUCTS AND SERVICES**

Blackboard's Moodle-related Products and Services incorporate the Moodle open-source learning platform ("Moodle CMS"). The Moodle CMS is free and not owned by Blackboard or any of its subsidiaries.

**21.1. 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 Moodle-related Products and Services learning management 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.

## **22. 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 Student Data on your behalf, which is governed by this Master Agreement. Blackboard makes no representation regarding the availability of third-party application stores or the Mobile Software's compatibility with mobile devices.

## **23. SMARTVIEW™**

**23.1. 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.

**23.2. Representations and Obligations.** You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Student Data, 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; and (d) 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.

**23.3 Remedies and Disclaimers.** You acknowledge that: (a) you are solely responsible for the accuracy of Student Data 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 KnowledgeBase; (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.

## **24. STUDENT SUPPORT SERVICES**

**24.1 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 monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. In the event that 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. 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.

**24.1.1 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. The "Per Incident Rate" is calculated by dividing the total Student Support Services Fee (as listed on the applicable Order Form or Renewal Notice) for the annual term by the total Estimated Inbound Interactions. You may upwardly adjust estimated monthly Inbound Interactions for any future month upon delivery of 60 days' prior written notice to us.

**24.1.2 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).

**24.2 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").

**24.3 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 an account executive and an operational account manager. During the implementation phase, the parties shall co-author the call script to be used by our representatives.

**24.4 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.

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

**24.5.1 Access.** You agree to provide us 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.

**24.5.2 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.

**24.5.3 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.

**24.6 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.

**24.7 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 this 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 this Agreement.

**24.8 Changes and Oral Instructions.** The parties shall participate in monthly change management discussions and will document any agreed changes. 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.

#### **24.9 Added Definitions.**

**24.9.1 "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.

**24.9.2 "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.

**24.9.3 "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.

**24.9.4 "Service Desk"** means our personnel that provide Student Support Services to Authorized Users under this Section 24.

**24.9.5 "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.

#### **25. ALLY**

**25.1 Grant of License.** With respect to the 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 Ally service made available by Blackboard.

**25.2 No advice.** We do not guarantee that the use of the 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 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 2.0), 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.

The Parties agree that Exhibit A, Certifications, is hereby incorporated into this Agreement as fully set forth.

#### **APPROVAL AND EFFECTIVE DATE**

This Agreement shall not be binding until signed by all parties. The persons signing this Agreement represent and warrant that they have authority to bind their respective parties.

**The Board of Trustees of the  
University of Illinois**

By:

Avijit Ghosh, Comptroller  
Signature of Comptroller Delegate  
Jill Menezes, Director of Purchases

Date \_\_\_\_\_

**Blackboard Inc.**



Authorized Signature

Date 10-10-2018

Bill Jones, Deputy General Counsel  
Print Name & Title

## Exhibit A

### Certifications

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of any resulting contract and any renewals is a material requirement and condition of the contract. By executing the contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If the contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
  - the contract may be void by operation of law,
  - the State may void the contract, and
  - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.** Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3
4. Vendor certifies that it has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.
5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80
6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5
7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10
8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least

five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5

9. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e)
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt. 30 ILCS 500/50-11, 50-60
11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12
12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14
13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25
14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30
15. Vendor certifies that if it hires a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration will be billed to the State. 30 ILCS 500/50-38
16. Vendor certifies that it will not retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50
18. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or subcontract that are manufactured in the United States. 30 ILCS 517
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565
20. Drug Free Workplace
  - 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act
  - 20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580
21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582

22. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583
23. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584
24. Illinois Information Technology Accessibility: As required by Illinois Public Act 095-0307 AND 30 ILCS 587, all information technology, including electronic information, software, systems, and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as posted at <http://www.dhs.state.il.us/iitaa> as of the date that this contract is executed. In order to permit Customer to comply with the requirements of Section 508 and Illinois Public Act 095-0307 in connection with this Agreement, Vendor will make available to Customer Voluntary Product Accessibility Templates (VPATs) concerning the degree to which the software licensed by Customer pursuant to the Agreement supports the Section 508 Accessibility Standards. Customer may request at any time, and Vendor will provide, the current VPATs with respect to any software product licensed by Customer from Vendor. Notwithstanding anything else herein to the contrary, Vendor's sole obligation with regard to the terms of this section is to provide the aforementioned VPATs.
25. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45
26. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4
27. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105
28. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2
29. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
30. Vendor certifies that if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133
31. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37

**In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:**

**Vendor is not required to register as a business entity with the State Board of Elections.**

**or**

**Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.**

32. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43