



## Contract Renewal

Date of Renewal: **May 4, 2017**  
*Date of Award:* **October 1, 2014**

**Contract Number:** **13010037**

Buyer: Chris Howe  
Telephone: 785-864-2025  
E-Mail Address: chowe@ku.edu  
Web Address: <http://procurement.ku.edu/>

**Item:** **Software, Blackboard, Master License Agreement**

Agency: The University of Kansas  
Location(s): Lawrence, Kansas

**Period of Contract:** **September 30, 2014 to September 29, 2019**

This contract is subject to renewal as long as the software remains in service.

**Contractor:** **Blackboard Inc.**  
650 Massachusetts Ave NW, 6<sup>th</sup> Floor  
Washington DC 20001-3705  
Toll Free: 800-424-9299  
Facsimile: 202-318-2619  
PeopleSoft ID: 0000001190  
KUPPS Supplier ID: 14915582

**Remittance Address:** PO Box 200154  
Pittsburgh PA 15251-0154

**Prices:** See Contract Document

**Political Subdivisions:** Pricing is **not** available to the political subdivisions  
Pricing is available to University of Kansas institutions, regardless of location.

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FY17 Blackboard Renewal - Term: 9/30/16 - 9/29/19 (Titled "2016 Renewal") - 3 Year Agreement:

9/30/16-9/29/17 = \$211,347.00

9/30/17-9/29/18 = \$217,685.00

9/30/18-9/29/19 = \$224,213.00

## Blackboard®

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and University of Kansas ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the State of Kansas Contractual Provision and the Blackboard Master Agreement attached as Exhibits A and B respectively and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable. In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

### A. Product and Pricing Summary

QTY	Product Name	Product or Service Description	2016 Renewal	2017 Renewal	2018 Renewal
			Term Fees (USD) 9/30/16-9/29/17	Term Fees (USD) 9/30/17-9/29/18	Term Fees (USD) 9/30/18-9/29/19
1	AS-CD	Blackboard Course Delivery - 15,001 - 25,000 FTE	\$ 54,022.64	\$ 60,360.64	\$ 66,888.64
1	CL-WC-FTE	Bb Collaborate Web Conferencing - includes 50 GB of storage for standard recordings and pre-load storage, 50GB of storage for MP4 recording conversion , and 10,000 annual MP4 views/downloads - 25001-50000	\$ 53,686.64	\$ 53,686.64 (Optional Renewal)	\$ 53,686.64 (Optional Renewal)
1	CL-EIM-FTE	Bb Collaborate Enterprise IM (25001-50000)	\$14,656.69	\$14,656.69	\$14,656.69
1	XY-DL-MAINT	Xythos Digital Locker Support	\$21,504.25	\$21,504.25	\$21,504.25
1	XY-EDM-MAINT	Xythos Enterprise Document Support	\$43,102.73	\$43,102.73	\$43,102.73
1	XY-CUSTOM-MAINT	Xythos Custom Services Support	\$450.30	\$450.30	\$450.30
1	XY-DRIVE-MAINT	Xythos Drive Support	\$1,896.41	\$1,896.41	\$1,896.41
1	XY-CUSTOM-MAINT	Xythos Custom Services Support	\$1,126.74	\$1,126.74	\$1,126.74
1	XY-CUSTOM-MAINT	Xythos Custom Services Support	\$900.60	\$900.60	\$900.60
1	MOB-LRN	Blackboard Mobile Learn - 15,001 - 25,000 FTE	\$ 0.00	\$ 0.00	\$ 0.00
1	AS-CS	Blackboard Content Management - 15,001 - 25,000 FTE	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
1	AS-CM	Blackboard Community Engagement - 15,001 - 25,000 FTE	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
1	AS-CM-TEST	Blackboard Community Engagement Test - open market	\$ 0.00	\$ 0.00	\$ 0.00
1	AS-CS-TEST	Blackboard Content Management Test - open market	\$ 0.00	\$ 0.00	\$ 0.00
1	AS-OS	Blackboard Outcomes Assessment - 15,001 - 25,000 FTE	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
1	AS-OS-TEST	Blackboard Outcomes Assessment Test	\$ 0.00	\$ 0.00	\$ 0.00
<b>TOTAL:</b>			<b>\$ 211,347.00</b>	<b>\$ 217,685.00</b>	<b>\$ 224,213.00</b>

### B. Term

- 2016 Renewal Term:** Unless otherwise specified in the Product or Service Description above, the 2016 Renewal Term shall be three (3) years following the Effective Date.
- Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the 2016 Renewal Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the 2016 Renewal Term or Renewal Term, as applicable.

**3. Effective Date:** Upon execution of this Order Form unless otherwise indicated in the Pricing Summary above.

### C. Payment Terms

- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are 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.

### D. Special Provisions

- ADA Compliance.** Blackboard is committed to making its facilities, services, programs and activities readily accessible to and usable by individuals with disabilities as required by law. Blackboard represents and warrants that the products and services offered under this agreement meet the Web Content Accessibility Guidelines (WCAG) Version 2.0 Level AA. Blackboard agrees to promptly address and resolve any complaint related to ADA accessibility requirements of its offerings under this Agreement that has been identified and brought to the attention of the Blackboard.

Customer: University of Kansas	
[Redacted]	
Sig	
VIALE Sodaro	
Name & Title (printed)	Vice Provost
Date	4/24/2017

Blackboard ("Blackboard")	
[Redacted]	
BILL JONES, DEPUTY GENERAL COUNSEL	
Name & Title	
Date	April 24, 2017

State of Kansas  
University of Kansas  
KU-146a (Rev. 05-14; MAT Rev. 11-16)

**EXHIBIT A TO  
CONTRACTUAL PROVISIONS ATTACHMENT –For Blackboard Master Agreement Only**

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Disclaimer Of Liability:** Except as permitted or otherwise not prohibited by law, no provision of this contract will be given effect that attempts to require the University of Kansas or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

3. **Termination Due To Lack Of Funding Appropriation:** After the first term (9/30/16-9/29/17), if in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in state or federal courts located in the State of Kansas.

5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order specific to the University so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or agreed to the payment of damages and/or penalties as a result of binding arbitration. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403) and no provision will be construed to limit any remedies the State of Kansas may provide by law.

8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in accordance with this Agreement.

**EXHIBIT B TO**  
**BLACKBOARD® Master Agreement for All Products and Services**

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

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

**2.4 Authorized Users.** You agree to only grant access to the SaaS Services and/or Software (as applicable) to those individuals for whom such SaaS Services and/or Software are intended (“**Authorized Users**”). Your Authorized Users are defined in the Terms Applicable to Specific Products and Services, below.

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

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

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

**3. SUPPORT AND SERVICE LEVEL AGREEMENTS**

**3.1. In General.** If you purchase or are otherwise eligible to receive Support from us as reflected on an Order Form, we will provide you with the Support described in the Blackboard Customer Support Services Guide (“**Services Guide**”) located on our website at <https://blackboard.secure.force.com/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,

<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.

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 or "PI", 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 our, our affiliates' or our third party service providers' support or (if applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Customer Property was collected, in order to provide 24/7 to your Authorized Users 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.** Upon prior written permission, 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. PERSONAL INFORMATION AND STUDENT DATA

**5.1. Personal Information** and/or "PI" is information that can identify a specific individual. Blackboard will only use and disclose Personal Information in accordance with this Agreement. "Student Data" is Personal Information that is directly related to an identifiable current or former student that is maintained by a school, school district, or related entity or organization, or by us. To the extent U.S. Law applies, Student Data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

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

**5.3. Personal Information Access.** To the extent necessary to provide you with the Products and Services, you authorize us to access or collect Personal Information, including Student Data, and shall facilitate a reasonable method for us to obtain such information, for example via secure transfer from your student information systems. In the US, we access, collect and process Student Data as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). You agree that, as between the parties, you are solely responsible for all Student Data, whether provided by you, students, or any other third-party.

**5.4. Use of Personal Information.** By submitting or providing us access to Personal Information, you agree that Blackboard may use the Personal Information solely for the purposes of (i) providing Products and Services to you as contemplated in this Agreement, (ii) improving and developing our Products and Services, (iii) enforcing our rights under the Agreement, and (iv) as permitted with the Authorized User's, or end user's consent. Improving and developing our Products and Services includes de-identifying, analyzing, and storing Personal Information so long as we do not share, publish, distribute or display Personal Information to any third party for this purpose. Notwithstanding anything to the contrary, we shall not use Student Data to engage in targeted advertising.

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

**5.6. Blackboard's Third-Party Service Providers.** You acknowledge and agree that Blackboard may provide access to Personal Information to our employees, affiliates, and to certain third party service providers, which have a legitimate need to access such information in order to provide their services to us as part of our provision of the Products and Services to you. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Personal Information will be required to maintain the confidentiality of such data. You also acknowledge that, subject to the terms of this Agreement and to the extent permitted by Law, Personal Information may be accessed and processed by our affiliates' or our third party service providers' personnel in foreign countries, including countries other than the jurisdiction from which the Personal Information was collected in order to provide 24/7 support to your Authorized End Users, and you hereby authorize such access and processing.

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

**5.8. Personal Information and Student Data Consents and Authority.** You represent and warrant that, to the best of your knowledge, you have the authority to provide Personal Information, including Student Data, to Blackboard for the purpose of performing its duties under the Agreement, and that you have provided

KORA Request #2019-179

5 of 13 5/14/2019

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

**5.9 Student Data Retention and Deletion Requests.** You may request that we delete or retrieve your Student Data in our possession at any time by providing such a request in writing, and we shall comply with such request in a commercially reasonable time unless a shorter time is required by Law, and then in such shorter time. We will otherwise delete Student Data within the time-periods required by Law, and at a minimum other than ordinary course backups within a commercially reasonable time following the end of the term of the Agreement. We are not required to delete data that has been derived from Student Data so long as it has been anonymized such that it does not reasonably identify an individual. Upon your request, we shall certify in writing that all Student Data has been permanently erased or Destroyed.

**5.10 Data Localization.** You acknowledge and agree that Blackboard will store and process PI in various data centers around the world, including in the U.S., and that your PI may not be stored or processed only within the country in which it was collected in order to provide 24/7 support to your Authorized Users unless and except to the extent required by Law. You warrant and agree that you have obtained all necessary consents from your Authorized Users for Blackboard to process such PI in the U.S. and elsewhere in the world.

**5.11 EU Data Protection.** 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 of this Agreement expressly conflicts with any term of the DPA, the conflicting term in the DPA shall control.

## 6. DATA SECURITY

**6.1. Data Security and Breach Notification.** We will implement commercially reasonable administrative, physical and technical safeguards designed to secure Customer Property and PI, including Student Data, from unauthorized access, disclosure or use, which could include where commercially reasonable or to the extent required by Law, data encrypting, firewalls, and physical access controls to buildings and files. In the event we have a reasonable, good faith belief that an unauthorized party has gained access to or been disclosed PI, including Student Data, that you have provided us or that we have collected on your behalf under the Agreement, we will notify you within seventy-two (72) hours, or if required by Law in such other time required by such Law, notify you and will use reasonable efforts to cooperate with your investigation of the incident. If such incident triggers any third-party notice requirements under Laws, you agree that unless otherwise required by Law, as the owner of the PI, you will be responsible for the timing, content, cost and method of any such notice and compliance with such Laws.

## 7. PROFESSIONAL SERVICES

**7.1.** If you purchase Professional Services under an Order Form, we will provide you with the Professional Services described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace or change employees and subcontractors in our sole discretion with other suitably qualified employees or subcontractors.

**7.2. Security.** While on Customer's premises, our employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer to the extent that we have been notified in advance of such practices and procedures in writing. Our employees and subcontractors will not be required to sign any waivers, releases or other documents relating to ownership of intellectual property or changes, modifications, amendments or waivers to any previously agreed to contract provision in order to gain access to Customer's premises in connection with the Professional Services and any such waivers, releases, or other documents shall be invalid and have no effect.

## 8. MANAGED HOSTING SERVICES

If you purchase managed hosting services as reflected on an Order Form, the Agreement shall include the terms located on our website at <https://blackboard.secure.force.com/publicarticleview?id=kA570000000PB0c>, with such terms governing the managed hosting 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 in no event 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 End User 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 and/or additional Authorized End User licenses in excess of what is contemplated in the applicable Order Form or the support terms of this Agreement may be subject to additional fees.

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

**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 (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information.

**10.4. Survival.** The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting the foregoing, the provisions of Sections 4, 5, 9, 10.3, 10.4, 11.3, 12, 13, 14, 18.5, and 24.7 of this Master Agreement shall survive the termination of the Agreement for any reason.

## 11. GENERAL WARRANTIES.

**11.1. By Blackboard.** We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined above) for one year from its delivery or for the term of the relevant SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly notify 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 PI, including Student Data, (b) you will comply with all Laws related to your use of our Products and Services; and (c) the person executing this Agreement has sufficient authority to execute or accept the Order Form and this Agreement on behalf of the Customer.

**11.3. Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THE AGREEMENT: (A) THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) NEITHER WE NOR OUR LICENSORS WARRANT THAT THE PRODUCTS AND SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION; AND (C) WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, AND ASSUME NO LIABILITY, FOR ANY THIRD PARTY SOFTWARE OR SERVICES OR FOR THE CONTENT OR OPERATION OF ANY THIRD PARTY WEBSITE (INCLUDING A WEBSITE TO WHICH A LINK IS PROVIDED FROM OUR PRODUCTS AND SERVICES).

## 12. MUTUAL LIMITATIONS OF LIABILITY.

**12.1. Consequential Damages Exclusion.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, AND EACH PARTY'S INDEMNITIES SET FORTH IN THE AGREEMENT, IN NO EVENT WILL EITHER PARTY OR SUCH PARTY'S LICENSORS' BE LIABLE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY, FOR: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA, OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES).

**12.2. 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 PAYMENT OBLIGATIONS, AND EACH PARTY'S INDEMNITIES SET FORTH IN THE AGREEMENT, 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.** Subject to liability limitations under Kansas 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, or (c) to make such court filings as may be required to establish a party's rights under the Agreement.

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

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

#### 15. MISCELLANEOUS MATTERS.

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

**15.2. Governing Law.** 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. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

The applicable governing Law if you acquired these Products and Services in North America or South America, the governing Law is the State of Kansas

**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.

**15.12. Contractual Provisions Attachment** (Form KU-146a), which is attached hereto as Exhibit A, and hereby incorporated in this Master Agreement and made a part hereof.

#### 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. 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.

**16.4. 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.

**16.5. 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).

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

**16.7. "Building Blocks."** You are permitted to utilize the API's licensed pursuant to Section 2.3 to create Building Blocks (as defined below.) You will retain ownership rights in the Building Blocks and may distribute them with or without charge to third parties. You are solely responsible for supporting such Building Blocks. You agree that you will: (i) develop the Building Blocks in a good and workmanlike manner; (ii) comply with all applicable laws and regulations related to the Building Blocks; and (iii) indemnify Blackboard for any issues associated with such Building Blocks. "Building Blocks" shall mean: (i) software application programs created by You that are designed to operate in combination with the Blackboard Learn™ software that is provided pursuant to the Agreement; and (ii) all documentation for these software application programs; provided that the software application programs and documentation are authored or created by You and that such software programs do not contain intellectual property from the Software, other than the connectors into the APIs.

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

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

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

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

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

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

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

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

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

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

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 a 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.

**Certain Customer Responsibilities.** Customer is responsible for maintaining the desktop computers of Customer End Users and providing Customer End Users network access to the SaaS Service. Customer shall provide connectivity and security for the Internet for its location(s) for purposes of providing adequate access to SaaS Service hosted at the Moodle-related Products and Services hosting facility. Blackboard shall not be responsible for the reliability or continued availability of the communication lines, or the corresponding security configurations, used by Customer in accessing the Internet to access the SaaS Service. Customer shall provide adequate industry "best practice" standards to ensure reasonable security for integration between applications at the Customer site and the SaaS Service hosted by Blackboard. Customer shall advise Blackboard of any changes to Customer's operations, vendor relationships, primary contact or other information that would require a change in the support, operation or configuration of the hosted SaaS Service. Examples of Customer's responsibilities include but are not limited to the following: (i) staying within allotted storage space; (ii) course creation; (iii) loading and removing courses; (iv) maintaining user information and modification; (v) loading and/or removing users, such as students, teachers, parents and administrators; (vi) building and managing Customer Content; (vii) selecting features and functionality; (viii) determining roles and responsibilities for users, teachers, administrators and parents; and (ix) providing a URL that can be mapped to Blackboard's URL, if so desired.

**21.2. Storage.** Storage in excess of that listed in the Order Form is subject to additional fees and purchase.

## 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; Students. 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 and prospective students ("Students"). In addition, if specified on the applicable Order Form, your 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 PI 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 End 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 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 End 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 End 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 End Users, (ii) the email addresses and/or phone numbers of Authorized End Users, (iii) student demographic information, and (iv) headcount data.

24.7 **Representations and Indemnity.** If you request that we contact any Authorized End 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 End 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 End User where there is no interaction between the Service Desk and an Authorized End User.

**24.9.3 "Outbound Interaction"** means an outbound interaction between the Service Desk and an Authorized End 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 End 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 End User where there is no interaction between the Service Desk and an Authorized End User.

**24.9.4 "Service Desk"** means our personnel that provide Student Support Services to Authorized End 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 End User, such as any answered phone call, answered email, or answered chat.