



Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Texas A & M University - College Station ("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 Blackboard Master Agreement dated June 29, 2012 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					
<u>Oty</u>	<u>Product Name</u>	<u>Product or Service Description</u>	<u>Initial Term</u>	<u>Initial Term</u>	<u>Initial Term</u>
			<u>Term 1 Fees</u>	<u>Term 2 Fees</u>	<u>Term 3 Fees</u>
1	LEARNING ESSENTIALS DIAMOND HOSTED	Blackboard Learning Essentials - Diamond Managed Hosting - 50,001 – 75,000 FTE Includes: <ul style="list-style-type: none">• Blackboard Course Delivery & Test• Blackboard Course Delivery Developer• Blackboard Content Management & Test• Blackboard Community Engagement & Test• Blackboard Mobile Learn• Diamond Managed Hosting• Academic Collaboration Getting Started• Bb Collaborate Web Conferencing• Bb Collaborate Enterprise IM• Bb Collaborate Web Conferencing and Enterprise IM Standard Engagement Service• Bb Collaborate SAS Advanced Workshop• Bb Collaborate Technical Services SAS Essentials• Bb Collaborate Technical Services Health Check• Bb Collaborate Web Conferencing Learning Services: Lab Series• Bb Collaborate Communicating and Collaborating with EIM Online Workshop	\$ 299,589.04	\$ 459,000.00	\$ 468,180.00
1	HOSTING OPEN DB REPORTING ENV	Blackboard Managed Hosting Open Database Reporting Environment	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTING SSL SERVICE	Blackboard Managed Hosting SSL Service - open market	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTED TEST ENVIRONMENT	Blackboard Managed Hosting Test Environment - open market	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTING ADDL STORAGE 1TB	Blackboard Managed Hosting Storage 1TB	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTED STAGING ENVIRONMENT	Blackboard Managed Hosting Staging Environment - open market	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTED STAGING ENVIR SETUP	Blackboard Managed Hosting Staging Environment Setup	\$ 0.00	N/A	N/A
1	AS-LSFREE-STG	AS-LSFREE-STG	\$ 0.00	\$ 0.00	\$ 0.00
1	HOSTED TEST ENVIRONMENT SETUP	Blackboard Managed Hosting Test Environment Setup - open market	\$ 0.00	N/A	N/A
TOTALS:			\$ 299,589.04¹	\$ 459,000.00	\$ 468,180.00

DESIGNATED SERVER SITE: Hosted by Blackboard

B. Term					
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1. **Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be from the Effective Date through August 31, 2018.
2. 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 Initial 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 Initial Term or Renewal Term, as applicable.
3. **Effective Date:** December 31, 2015

C. Payment Terms					
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¹ Customer shall receive an unused license credit of \$ 110,570.64 which shall be applied to the Blackboard invoice for Term 1.

1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
3. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

D. Special Provisions

1. The Parties agree that as of the Effective Date and upon execution of this Order Form, the Blackboard Learn™ Software Schedule dated June 29, 2012 shall be terminated in its entirety.
2. The terms and conditions of the Blackboard Professional Services Agreement (PSA) dated June 29, 2012 and Blackboard Collaborate Schedule dated December 18, 2013 shall be incorporated herein.
3. The Statement of Work outlining the services to be provided is attached as an exhibit and incorporated herein.
4. All terms and conditions set forth at <http://agreements.blackboard.com/bbinc/learning-essentials-bundle-software-license-schedule.aspx> shall be incorporated herein.
5. All terms and conditions set forth at <http://agreements.blackboard.com/bbinc/managedhostingschedule.aspx> shall be incorporated herein.

++ Blackboard Diamond Engagement Plan: Diamond 1

- Includes hosting for Blackboard Learn™ Software
- Includes Non-Production Test Environment, Staging Environment, and Service Delivery Team resources dedicated to Diamond Engagement Level clients, all described below.
- Set-up Fee includes service for each installation of the Software or update/ upgrade requiring a revised or new hardware and/or software configuration.
- Initial Term Annual Fee includes service for up to 75,000 Active Users* and 10 TB of storage and 25 Mbps of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service.
- Additional storage and bandwidth are separately charged
- Additional Service units for 7,500 additional Active Users* (higher ed)/5,000 additional Active Users (k-12), additional 1 Mbps bandwidth and 100 GB additional storage are separately charged.
- Non-Production Test Environment
 - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment designed to handle no more than 20 concurrent users at a time.
 - Includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection.
 - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure or data set
 - By its nature DOES NOT meet the Service Level specifications under Exhibit A, and therefore, DOES NOT qualify for Service Level Guarantees.
- Staging Environment
 - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
 - Includes 100 GB of storage (not including production clones).
 - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
 - Per Customer request, Managed Hosting will provide up to four (4) clones of the Customer production data per year. This cloned data will not be backed up.
 - Is designed for Customer to test and approve new update/upgrade software and changes in software configuration before implementing such software in a production environment. It may not be used for production purposes.
 - 99.7% Availability guarantee as described in Service Level specifications in Exhibit A applies for all Staging Environments
- Service Delivery Team Resources
 - Initial term annual fee includes Diamond 1 level monthly utilization of dedicated Service Delivery Team staff resources.
 - Service Delivery Team consists of Service Delivery Manager (SDM) and Service Delivery Engineer (SDE) resources dedicated to Platinum and Diamond Engagement Plan clients only, and the team resources can be purchased such that aggregate team resource utilization rate of on average 10 hours per week (Diamond1) are available for Customers. For example, a client can purchase Diamond1 level and will receive individual SDM resource dedicated to customer in terms of the management, communication and documentation responsibilities outlined below AND SDE resource for premium level of support (dedicated Tier2 and Subject Matter Expertise on Blackboard Learn and a number of other Blackboard products). The Service Delivery Team will provide monthly Service Delivery Team resource utilization report to Customer, providing aggregate team resource consumption time detail.
 - Roles and responsibilities of the SDM will primarily fall under the following three objectives: management, communication and documentation.
 - A. **Management** – Plan and project manage Customer's Managed Hosting infrastructure implementation, growth, and planned and reactive changes. To meet this objective, the SDM's tasks may include, but not be limited to, the following:
 - Central Point of Contact and Escalation: The SDM will be the central point-of-contact within Blackboard Managed Hosting and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Customer's hosted environment and act as a coordinator within Blackboard for all operational and support issues on Blackboard products that Customer owns.
 - Infrastructure Management: Plan and manage projects involving Customer's infrastructure for scalability, optimal performance, and growth in coordination with Customer and all elements within Blackboard
 - Internal Blackboard Delivery Coordination: Coordinate with Diamond Engagement Plan Tier-1 Support Team, SDE resources and Managed Hosting Operations and Engineering, Blackboard Consulting Project Management and other elements of Blackboard as needed to deliver and manage Customer's requirements
 - Managed Hosting Support Activities: Manage directly support activities with hosted Blackboard applications and infrastructure, leveraging Tier-1 team dedicated to Service Delivery Team and SDE resources, including but not limited to:
 - Direct oversight of ticket prioritization and escalation within Blackboard
 - Risk assessment of support activities focused on impact analysis and evaluation based on updates and upgrades
 - Infrastructure and Software Upgrade Management: Design and implement Managed Hosting testing and/or staging in coordination with Customer as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another and upgrading application servers)
 - Auditing: Regularly conduct systems audit and analysis on Customer's Managed Hosting environment's performance and utilization for proactive monitoring, infrastructure management, forecasting and reporting purposes
 - Customer Business Planning Integration: Keep master schedule of Customer's academic activities and key events/milestones. Communicate to entire Blackboard Team on critical events on the calendar.
 - B. **Communication** - Build and execute business processes for communication and Customer support (with a special focus on providing transparency and visibility into the purchased Managed Hosting services and change management). To meet this objective, the SDM's tasks may include, but not be limited to, the following:
 - Contact: Be fully dedicated to Customer's Systems Administrators and Operations staff through a dedicated phone number/email/instant messenger (or other contact method) for day-to-day Managed Hosting support requests and status reporting
 - Project Communication: Build two-way communication processes in coordination with Customer for project management, support issue review and escalation, and other communication procedures as necessary
 - Regular Reporting: Coordinate and facilitate regularly scheduled (weekly or monthly or quarterly) and ad-hoc project and status update meetings

- Channel Management: Modify and update communication processes and channels as deemed necessary
- C. Documentation** - Document and report on Customer's Managed Hosting infrastructure, projects status, escalation issues, and other Customer owned Blackboard products. Complete and thorough documentation will be a key aspect of meeting the management and communications objectives of the Service Delivery Team. As such, the SDM will provide the following documents during the life of the relationship between the SDM and Customer:
- Operations and Plans: Develop detailed documents including Escalation process, Operations Handbook, Infrastructure overview and implementation plans
 - Regular Status Reporting: Document and provide weekly reports on all project plans and updates, and post-meeting (conference calls) minutes to Customer
 - Monthly Reporting: Document and provide monthly updated reports to Customer on items including but not limited to actual performance metrics against Service Level Agreement (SLA) requirements, monthly utilization rate of the Service Delivery Team resources, system utilization information and other relevant materials. Service Delivery Team will make best effort to customize the monthly reports per Customer's preferences.
 - Change Management/Status (I): Provide timely and detailed reports of planned infrastructure changes; planned or unplanned service outages, or degradation of services; and issue resolution reports
 - Change Management/Status (II): Document and communicate any procedural changes that regulate the flow of code fixes, patches to the production environment
 - SLA Performance Reporting/Analysis: Specifically against contractual SLA requirements, provide monthly reports on system utilization and performance, including host latency graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Customer, a standard set of reporting for overall systems performance and management.

+ Open DB Non-Production Database Server

- Open DB environments are not to be used for Production purposes
- A single username/password will be provided for OpenDB access
- Initial Term is a minimum of twelve (12) months and renews automatically for successive 12-month terms (each, a "Renewal Term"), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial-Term or then-current Renewal Term
- Setup fee includes a clone of the production database to the Open DB server
- Subsequent clones of the Database will be performed on a DAILY/WEEKLY/AS REQUESTED base, as per customer request
- Initial Term Fee includes 700GB of server storage and grants access to the Full Database Schema with some restrictions in order to maintain a high level of security within the Hosted environment
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Environments by its nature DO NOT meet the Service Level specifications under Exhibit A, and therefore, DOES NOT qualify for Service Level Guarantees
- Access to the Open DB environment will be limited to a specific set of IP address via Blackboard's firewall
- Users will have read-only access and can query the database using any desired SQL or reporting tool
- Content files submitted into the system (e.g. Word documents and PowerPoint files) would not be copied and thus cannot be queried

+ Secure Socket Layer – annual fee that is separately charged per solution

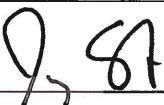
- Secure Socket Layer (SSL) is an encryption protocol that prevents eavesdropping of data that passes between a web server and an end-user's browser. SSL enabled websites encrypt data before it is transmitted from the web server to the end user and from the end user to the web server. Blackboard's Learning System 6.1 and higher versions contain SSL Choice feature, which once turned on allows Customer to choose which parts of the site should be encrypted and which should not, which in turn effectively reduces unnecessary CPU usage associated with SSL software. In order to take advantage of the SSL Choice, Customer must have SSL software enabled.
- As an optional service, Blackboard offers Software-based Secure Socket Layer (SSL) to Customer for added security to Customer's data transmission. Customer must have Blackboard Learning Systems 6.1 or higher version in order to take advantage of this Service. Blackboard will obtain an SSL certificate from a certificate authority and set up the service for the Customer at the then-standard applicable rates.

Notes:

"95th Percentile calculation" means a 95th Percentile calculation is performed by: 1) collecting IP traffic samples (both inbound and outbound traffic) every five (5) minutes over the course of a month; 2) discarding the top 5 percent of the highest peak samples; and 3) measuring the peak usage from the remaining samples.

Data Restoration Policy – per restore fees are separately charged per chargeable restore incident.

Additional Storage and Bandwidth Annual Fees are separately charged.

Customer: Texas A & M University - College Station	
Signature 	
Name (printed)	Jerry R. Strawser
Title (printed)	Vice President of Finance and Administration and Chief Financial Officer
Date	1/28/16

Blackboard ("Blackboard")	
Signature 	
Name (printed)	TESS FRAZIER
Title (printed)	VICE PRESIDENT
Date	1/22/16

EXHIBIT TO
BLACKBOARD ORDER FORM
STATEMENT OF WORK

This Work Statement is a preliminary expectation of both Blackboard and Texas A & M University – College Station ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated representatives of each Blackboard and Customer. The work described below is intended to be performed on a firm fixed price basis.

This Statement of Work (SOW) is an exhibit to the Order Form between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

1 Engagement Summary

Texas A&M University – College Station (“Customer”) has requested that Blackboard provide Customer with consultants (each a “Consultant”) to perform services as defined in this agreement in connection with the Learning Essentials Solution

2 Overview of Customer Deployment

Customer uses Learn 9.1 in a Managed Hosting environment.

3 Scope of Services

Based on discussions with the customer and our derived understanding, Blackboard will deliver the following Services:

3.1 Project Management

Blackboard will assign a project manager to facilitate communication within Blackboard and with the customer related to this engagement. The project manager will coordinate Blackboard's activities to address engagement objectives, schedule and budget, and the project manager will be responsible for day-to-day engagement management, documentation, status reporting, and organization of Blackboard resources.

3.2 Consulting Services

The objective of the Learning Essentials Program is to assist institutions that have had some experience with large-scale software implementations with the configuration and initial implementation of the Blackboard Learning Essentials Solution. This program will provide Customer with some initial training, planning, configuration guidance, and suggested effective practices and instructions on some of the tools/ features for the Blackboard Solution.

More specifically, Blackboard will assign consultants who will lead and direct a series of remote and onsite workshops and training engagements, which include:

1. Program Initiation
 - a. Blackboard will provide preliminary self-paced or facilitated training for key customer project team members to build familiarity with solution capabilities and features.
 - b. Blackboard and Customer project leadership work remotely to schedule and build agenda for Program Kickoff Call.
2. Program Kickoff Call
3. Learning Essentials Program Workshops and Training
 - a. Onsite Strategy planning meeting. Up to 5 days onsite with 1 to 3 consultants covering intended usage of Solution, strategy planning and use case development for the online learning tools.
 - b. Remote workshops (6 sessions, 2 hours each, synchronous or asynchronous) to familiarize system administrators with the core GUI administrative functions of:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - vi. Administration of included LMS integrations
 1. Web Conferencing
 2. Enterprise Instant Messenger
 - c. A series of 5 module configuration and review workshops to guide the customer through key configuration decisions (2 hours each, online)
 - d. A series of 8 synchronous online workshops (2 hours each, online) on the end user capabilities of the Learning Essentials Solution including:
 - i. Course Delivery
 - ii. Content Management
 - iii. Community Engagement
 - iv. Web Conferencing
 - v. Enterprise Instant Messaging
 - e. Three additional elective workshops (2 hours each, online) to be chosen from the currently available elective options.
 - f. A concluding general Question and Answer session (2 hours each, online) to review the implementation and discuss any refinements needed.
 - g. Prototype development and consulting (up to 15 hours, remote)
 - h. Learning Essentials Program Review and Closeout (2 hours each, online)

3.2.1 Artifacts

- Engagement Report
- Configuration Guide
- Pre-questionnaire for training
- Agendas for all Onsite and Synchronous Online Sessions

3.2.2 Customer Requirements/Assumptions

- Project is carried out over 6 months from kick-off date
- Timely response from the Customer project leadership with regard to scheduling workshops and onsite sessions
- Pre-installation of production and test environments for all Blackboard Learn Academic and Collaboration modules
- Access to Blackboard System Administrator during onsite activities to resolve issues, if they arise.
- Creation of users and courses as requested by trainer prior to training

4 Customer Responsibilities

Blackboard's Consulting model assumes active participation from the Customer team. Customer is responsible for staffing resources on the project that have the necessary functional and technical knowledge to successfully execute required tasks. Customer will staff the resources set forth below. This includes a Customer representative to be the primary point of contact for the Blackboard Project Manager. This representative shall have full authority to make all decisions regarding project scope, overall timeline, and related project costs, as well as ensuring the necessary Customer project personnel, resources, etc. are available to successfully complete the project(s).

Customer Role	Involvement
Project Owner/Executive Sponsor	The Project Owner provides strategic direction and executive sponsorship of the engagement.
Project Manager	Responsible for management of customer project tasks, schedules, and resources
Data Owners	Personnel responsible for access to and interoperability of student information data.
Information Technology Representation	Personnel responsible for the technology infrastructure of the institution.
Academic Computing/Education Technology Representation	Personnel responsible for the education technology infrastructure and training needs of the institution.
Training & Support Personnel	Personnel responsible for the ongoing training and support of the end users of the Blackboard solution.
Blackboard Solution Administrator(s)	Individuals responsible for the configuration and administration of the component systems that comprise the Blackboard solution. Activities like, but not limited to: Create institutional hierarchy, manage user roles, perform system administration and maintain integration components. While the Blackboard solution will be software as a service, there will still be day-to-day management responsibility.
Faculty	Participate in use case development sessions.

5 Professional Fees, Expenses and Terms

The Learning Essentials solution pricing listed in the bundle order is inclusive of services fees, with the exception of travel expenses associated with the delivery of services.

5.1 Expenses related to Services

Blackboard will invoice Customer for travel costs and other expenses incurred in connection with this agreement. These expenses are not included in the Solutions Pricing section. Blackboard will make reasonable efforts to manage travel costs without compromising project objectives.

5.2 Cancellation of On-site Training Workshops or On-Site Consulting Visits

In the event the Customer chooses to cancel a scheduled on-site training workshop or consulting visit within two (2) weeks of the scheduled event, Blackboard Consulting may invoice the Customer for the scheduled days at the then current daily rate for the scheduled consultant(s) plus any incurred travel change fees.

5.3 Cancellation on Synchronous On-Line Training or Consulting Engagements or Workshops

In the event the Customer chooses to cancel a scheduled synchronous on-line training workshop or consulting engagement within two (2) days of the scheduled event, Blackboard Consulting may invoice the Customer for the scheduled days at the then current rate for the scheduled consultant(s).

6 Project Timeline

The actual project schedule will be finalized with the Customer's project leadership upon project initiation. Note, the program is expected to be completed within 6 months of initiation.

7 Change Control

Changes to scope, resources, staffing, or timeline may impact the pricing set forth herein. In the event a change occurs, the parties may capture and assess the impact and relevant implications through the project change control process. In this process, the parties will agree on a Project Change Request ("PCR") document. Any PCR must be approved by both Customer and Blackboard.

8 General Engagement Assumptions

Blackboard's approach, timeline, team structure, and professional fees are based on the assumptions below. Variance from these assumptions will be considered a request to change the scope of services performed under this agreement subject to the Blackboard Professional Services Schedule between Customer and Blackboard, and may affect the actual schedule and cost of the project.

- All workshops and trainings, onsite or online, will have a maximum attendance of 15.
- Pricing estimates outlined herein expire 30 days from date this agreement is presented to Customer. All services must be used within one (1) year of purchase.
- The services provided under this agreement are independent of any other software or services Customer may have purchased from Blackboard, and payment may not be offset or delayed in light of any such software or other services.
- Customer will provide Blackboard with access to the appropriate Customer physical and technical environments in the timeframes confirmed with the Blackboard Project Manager to the extent required for Blackboard to successfully complete the effort outlined in this document.
- When Blackboard asks Customer to make a decision on any aspect of the project set forth herein, or to review any draft working products, Customer will respond within 5 business days.
- Quality involvement and working products from the Customer are critical to the project's success. Customer's representative shall be responsible for coordinating all meetings that involve Customer and third-party contractor staff members, working products, and information requests within the agreed upon timeframes.
- Customer is responsible for providing Customer-side subject matter experts to assist in identifying business rules, resolving process discrepancies and answering ad hoc questions. The subject matter expert will be made available as needed during the course of the engagement and will be responsible for soliciting input from additional Customer personnel as needed.
- Customer shall provide hardware and software configuration and environment(s), either managed or self-hosted which can support the functional/technical services included in this agreement.
- Customer shall ensure that all interfacing systems in the environment(s) designated for functional testing will be available as needed for Blackboard to perform the Services hereunder.
- Customer will separately procure and provide all third-party products and services in a timely manner to support the Services as defined in this agreement. Blackboard is not responsible for making changes to the configuration or data contained or used in third-party systems, including but not limited to Customer's Student Information System.
- Blackboard reserves the right to change the services it offers to its customers generally and related rates at any time; provided that any such change shall not affect the Services that Blackboard is agreeing to provide under this agreement.

VOID IF EXECUTED AFTER JANUARY 31, 2016
CUSTOMER: Texas A & M University - College Station

- In the event Customer chooses to cancel a scheduled consulting visit within two (2) weeks of the scheduled event, Customer will be responsible to pay the cost of all Blackboard consultant hours scheduled for the site visit plus incurred travel change fees.
- While on Customer's premises, Blackboard's employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer, to the extent that such practices and procedures have been notified to Blackboard in writing in advance. Blackboard's 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 shall have no effect. Customer shall be responsible for all costs associated with Blackboard's compliance with Customer's security practices and procedures.

ADDENDUM
BLACKBOARD
&
TEXAS A&M UNIVERSITY

This addendum (“Addendum”) amends and supplements the Blackboard Order Form #10-217306, the terms and conditions of the Blackboard Learning Essentials (online) and the terms and conditions of the Blackboard Managed Hosting Schedule (online), (each respectively the “Agreement”) between Blackboard and Texas A&M University, a member of the Texas A&M University System, an agency of the State of Texas (“TAMU”). All terms used herein and not otherwise defined shall have the meaning as in the Agreement. In the event of any conflict in the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control. Both parties agree the Agreement is hereby amended and supplemented as follows:

Blackboard Order Form #10-217306, Section B Term, Item 2. This sentence shall be changed to read as follows: “Unless specified in the Product or Service Description above, this Order Form may be renewed for up to two successive periods of one (1) year (each a “Renewal Term”) after the expiration of the Initial Term. Customer or Blackboard may provide the other written notice of non-renewal no less than thirty (30) days prior to the end of the Initial or any Renewal Term. This requirement for Customer to provide timely notice to Blackboard is subject to Blackboard’s timely provision of pricing to Customer for any Renewal Term.”

Blackboard Learning Essentials Online Terms and Conditions:

Section 8.4 Certain Rights, first sentence is changed to read as follows: “Blackboard shall have the right to use Customer’s name and screenshots from Customer’s Blackboard Mobile to demonstrate the technology to other customers and prospective customers, so long as Blackboard does not infer, directly or indirectly, any endorsement by Customer of Blackboard products and provided that Blackboard agrees to discontinue use within fourteen (14) days of Customer’s written request.

Blackboard Learn Developer’s Network Exhibit

Section 5.1 License for Marks, Item (2) related to use by Blackboard of Developer’s corporate logo is deleted in its entirety. The next to last sentence regarding use of Developer license marks in promotional material is deleted in its entirety.

Blackboard Managed Hosting Schedule Online Terms and Conditions:

Section 3.2, Customer Content, Customer agrees to the indemnity and hold harmless provision to the extent permitted by the Constitution and laws of the State of Texas.

Section 5. Term – the following is added to this Section 5: “As consistent with the Addendum to the Master Terms and Related Schedules, as signed by the parties June 29, 2012, Blackboard agrees upon termination or expiration of the Managed Hosting Schedule or as otherwise may be requested by TAMU, Blackboard will return all Customer content, data or information, or provide validation of destruction of the same, at Blackboard’s cost.”

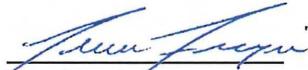
Blackboard and TAMU have agreed Blackboard, as part of its services to TAMU under the related Order Form, will receive TAMU information. As the parties recognize the importance of data security, Blackboard has previously agreed to TAMU's vendor access policy under the Addendum to the Master Terms and Related Schedules, as signed by the parties June 29, 2012. For purposes of implementation of the TAMU vendor access policy, the information resources point of contact for TAMU is Jim Snell. Blackboard shall provide Dr. Jim Snell, Director, Instructional Technology Services, 3002 TAMU, College Station, TX 77843-3002 with a list of all Blackboard employees assigned to this Agreement. Such list shall be updated and provided to Dr. Jim Snell within 24 hours of any staff changes. Blackboard is responsible for reporting all security incidents directly to TAMU. TAMU's standard business hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday. Any access to TAMU Information outside of these hours must have prior written approval of TAMU.

Additionally, Blackboard agrees to the following FERPA requirements:

Blackboard and its employees will adhere to all Texas and Federal law that regulates the confidentiality and protection of the confidential information and shall ensure proper notification of any breach thereof required under relevant law including, but not limited to, the requirements pertaining to the security, confidentiality, and privacy of the confidential information set forth in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). Blackboard agrees to indemnify and hold harmless TAMU for any damages, costs or expenses finally awarded against TAMU in any legal action as a direct result of Blackboard's failure to comply with its obligations to TAMU under this Agreement with respect to the nondisclosure of confidential information protected under the Family Educational Rights and Privacy Act.

ACCEPTED AND AGREED:

Blackboard



Tess Frazier
Vice President

1/22/2016

Date

Texas A&M University



Dr. Jerry R. Strawser
Vice President of Finance and Administration
and CFO

1/22/16

Date

LEARNING ESSENTIALS BUNDLE SOFTWARE LICENSE SCHEDULE

THIS BLACKBOARD LEARNING ESSENTIALS BUNDLE SOFTWARE LICENSE SCHEDULE ("SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER TERMS ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE SOFTWARE AND PURCHASE SOFTWARE MAINTENANCE AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

1. ADDITIONAL DEFINITIONS

- 1.1 **"Application Pack"** means the object code software utility release(s) that are designed to work with the Software that may be, in Blackboard's sole discretion, issued in between Updates, designated by AP#, and/or later incorporated into Updates or Upgrades.
- 1.2 **"Blackboard Materials"** means the Blackboard training materials, course materials, instructor's manuals, product documentation and all other instructional materials specified on the Order Form and delivered to Customer pursuant to Section 3 below. For purposes of this Schedule, unless otherwise expressly stated in the applicable Order Form, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard pursuant to Section 3 below.
- 1.3 **"Corrections"** means a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects Software Errors in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update.
- 1.4 **"Customer Data"** means all data provided by Customer or its end users through the Mobile Platform.
- 1.5 **"Customer Systems"** means any system Customer uses to house data for the Mobile Platform.
- 1.6 **"Designated Server Site"** means the physical location where the Software will be installed, as identified in the Order Form.
- 1.7 **"FTE"** or **"Full Time Equivalent"** is defined as the number of full-time students plus half of the part-time students. To the extent that Customer desires non traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses to utilize the Blackboard Software, the total number of such other users shall be communicated to Blackboard to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total FTE number reported by Customer. FTE may be further described in the Order Form, and such definition in the Order Form shall control in the event of a conflict with this Schedule.
- 1.8 **"Software Error"** means a failure of any Software materially and substantially to conform to applicable Documentation, provided that such failure can be reproduced and verified by Blackboard using the most recent Version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Customer, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Customer's or its end users' negligence, (ii) any modification or alteration to the Software not made by Blackboard, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software, or (vii) any use of the Software other than expressly authorized in this Schedule.
- 1.9 **"Supported Interface"** means application-based interfaces (API) provided pursuant to the *Blackboard Building Blocks®* program, to the extent the program is available, network protocols, data formats, database schemas, and file formats available for use in the Software as expressly specified in the Documentation.
- 1.10 **"Third Party Software"** means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software.
- 1.11 **"Updates"** means the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or solution, including Application Packs.
- 1.12 **"Upgrades"** means the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or solution.
- 1.13 **"Version"** means the release of Blackboard Materials made generally available by Blackboard that is marketed as a separate product or module and is identified by a number that differs from the prior release in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

2. GRANT OF LICENSE FOR COURSE DELIVERY, CONTENT SYSTEM, COMMUNITY ENGAGEMENT ONLY

Subject to the terms and conditions of the Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicenseable right and license to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Customer's Designated Server Site (unless Customer purchases the Blackboard Managed Hosting Non-Production Test Environment in which case Blackboard will host the Test Copy of the Software) as described in the Order Form, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Content to Customer's Authorized End Users (unless otherwise expressly stated in the special provisions of the Order Form) and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (i) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers, or (ii) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained nodes. Customer shall not (i) copy or duplicate any Software or Documentation, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; or (iii) install or use any Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard's prior written consent. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated.

3. DELIVERY FOR COURSE DELIVERY, CONTENT SYSTEM, COMMUNITY ENGAGEMENT

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, and, if applicable, Blackboard will make available a copy of the Software for downloading from the Internet by Customer for purposes of installation by Customer, and delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available for download. Customer acknowledges that the download site will be made available to Customer for a period not longer than thirty (30) days from the date of such notice, and Customer will have no right to download the Software after this thirty (30) day period.

4. AUDIT

For the sole purpose of ensuring compliance with this Agreement, Blackboard shall have the right, at its expense, to audit Customer's use of the Software upon not less than seven (7) days' advance notice. Any such audit shall be during Customer's normal business hours and shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, Blackboard may conduct such audits on a quarterly basis until such audits confirm that the relevant breach has been cured. The cost of any such audit shall be borne by Blackboard unless the audit reveals that Customer has underpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case Customer shall, in addition, reimburse to Blackboard the reasonable costs of conducting the audit.

5. LIMITED WARRANTY

5.1 For Course Delivery, Content System, Community Engagement, Mobile Learn only: Blackboard warrants, solely for the benefit of Customer, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to the applicable Documentation for a period of ninety (90) days after the initial Available Date. The warranty set forth in this Section shall only be valid if: (i) Blackboard has received all amounts owed under this Agreement, (ii) Customer is not in material breach of this Agreement, (iii) Customer has installed any Corrections, Upgrades and Updates made available to Customer, and (iv) Customer has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. **BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS REPAIR OR REPLACEMENT (AT BLACKBOARD'S OPTION) OF THE RELEVANT SOFTWARE IN A TIMELY MANNER.**

5.2 For Blackboard Web Conferencing and Blackboard IM Services only: Blackboard warrants for Customer's benefit alone that, for the License Period, the Service will perform substantially in accordance with the Documentation, provided that: (i) Blackboard has received all amounts owed under this Schedule; (ii) Customer is not in material breach of this Schedule; (iii) Customer has installed any Corrections, Upgrades and Updates made available to Customer; and (iv) Customer has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period.

6. SUPPORT AND MAINTENANCE

Customer is eligible to receive Product Support from Blackboard as described in the Blackboard Client Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/supportsvguide.pdf>, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link, such posting to constitute effective notice of changes.

7. FERPA

In the event that Customer provides Blackboard access, in the course of providing any services under this Agreement, to non-public end user educational information covered under the Family Education Rights and Privacy Act of 1974 ("FERPA"), Blackboard shall maintain the confidentiality of such information in accordance with the provisions of FERPA but in no event shall Blackboard have any responsibility for breaches caused by the acts or omissions of Customer or Customer's users relating to such information.

8. BLACKBOARD MOBILE SERVICE

8.1 Distribution of User Software. Subject to the terms and conditions of this Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable right during the Term to distribute any applications provided by Blackboard for use on mobile devices ("User Software"). Promotion and distribution of the User Software is the responsibility of Customer. Distribution of the User Software by Customer to its end users shall be pursuant to a license agreement which is reasonably satisfactory to Blackboard; provided, however, that the standard distribution terms utilized by Apple Inc. to distribute applications through its Apple App Store shall be deemed satisfactory unless Blackboard otherwise notifies Customer in writing. Additionally, if Customer has selected the Personal Pay Customer's End Users will pay the fees set forth in the Order Form for Blackboard Mobile products and services, except for those fees which are designated in such Order Form to be paid by Customer.

8.2 Customers Obligations. Customer is responsible for promptly providing and maintaining Customer Data feeds to the Mobile Application for each of the licensed modules (the modules contained within Customer's Mobile Application) which Customer has selected for the User Software in formats which are compatible with the Mobile Application. Customer is responsible for maintaining Customer Applications, Customer Systems and Customer Data and promoting and distributing Customer applications which are not licensed by Blackboard to Customer, Updates and Upgrades to end users via Customer's distribution channels such as Customer's Apple application Store page. Customer will designate a qualified individual to serve as Customer's support contact with Blackboard for maintenance and support issues, requests and inquiries ("Site Administrator"). Customer may change its Site Administrator at any time by providing written notice to Blackboard. Customer and its End Users will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use each Blackboard Mobile Service, including, without limitation, any and all costs, fees, expenses and taxes of any kind related to the foregoing.

8.3 Third Party Software/Content. The Blackboard Mobile Services may contain Third Party Software. In order to distribute any User Software for a given mobile platform, Customer is required to enroll in the appropriate Developer Program for that platform, such as the Apple Developer Program or any successor program; such program enrollment is between Customer and the proprietor of such Developer Program directly.

8.4 Certain Rights. Blackboard shall have the right to use Customer's icon and screenshots from Customer's Blackboard Mobile Services to demonstrate the technology to other customers and prospective customers and in Blackboard's promotional materials, provided that Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request. Blackboard shall have a royalty-free, worldwide, perpetual license to use or incorporate into Blackboard's products or services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or Customer's users. The User Software will be marked "Powered by Blackboard" or similar designation and Customer shall maintain such designation on Customer's webpage that promotes the Service to Customer's users.

8.5 Product Support. Customer is eligible to receive Product Support from Blackboard as described from time to time in the Blackboard Customer Support Services Guide located on Blackboard's website [here](#) or any successor website, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link, such posting to constitute effective notice of changes.

8.6 Application Development Kit. Customers that license the Mobile Platform may at its option utilize the Blackboard Mobile Software Development Kit under the terms located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website.

9. BLACKBOARD COLLABORATE WEB CONFERENCING AND IM SERVICES

The following provisions apply only to the Blackboard Collaborate Web Conferencing and Blackboard IM software and services only:

9.1 Specific Definitions.

- A. **ASP Services** shall mean those services, as may be amended from time to time, provided by Blackboard in respect of the hosting of, and access via the Internet to, the Software for the purpose of permitting Customer and its Authorized End Users to use the Software in the manner as more particularly set out herein (for greater certainty, ASP Services are optional and are only provided when indicated in the Order Form).
- B. **Event** means a single live broadcast event transmitted over the 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.
- C. **Seat** means each End User served by a Stream in the Service and shall include an Authorized End 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 End Users of the Service.
- D. **Stream** means the stream of digitally encoded data that delivers an Event to an Authorized End User.
- E. **Support Instance** is a unique request for support or service, and encompasses the cycle of communication from request initiation to instance resolution. Up to 250 Support Instances are included in the price in the Order Form ("Included Instances"). Support Instances in excess of the Included Instances are subject to purchase.

9.2 Registration; Passwords and Access.

A. **Registration.** In consideration of Customer's use of the Software and ASP Services, Customer or its Authorized End Users may be required to provide information in order to register for and/or use certain Software and ASP Services. Customer agrees to (a) provide true, accurate, current and complete information about Customer and its Authorized End Users as prompted by the Software's registration form, and (b) maintain and promptly update all such information to keep it true, accurate, current and complete.

B. **Passwords and Access.** Customer and its Authorized End Users may receive a password and account designations upon completing the registration process. Customer is solely responsible for maintaining the confidentiality of these account(s) and password(s), and is fully responsible for all activities that occur under such passwords or user identifications. Customer shall be permitted to provide access codes and passwords to Authorized End Users. Customer acknowledges and agrees that Customer is solely responsible for the issuance of access codes and passwords and that Blackboard will only issue access codes or passwords to Authorized End Users on Customer's instruction and as Customer's agent. Customer acknowledges and agrees that Customer shall be responsible for each and every access, use or employment of the ASP Services or Software that occurs by its Authorized End Users and/or in conjunction with such passwords and user identifications, and that Blackboard is authorized to accept the user identifications and passwords as conclusive evidence that Customer, or its Authorized End Users, as the case may be, have accessed, utilized, or otherwise employed the ASP Services and/or the Software. Customer agrees to (a) notify Blackboard of any unauthorized use of such password or user identifications and any other breach of security, and (b) ensure that Customer and its Authorized End Users exit from Customer's or such Authorized End User's account at the end of each session using the logout button. Customer and its Authorized End Users are solely responsible for applying the appropriate level of access rights to Customer Content and to communications involving the use of the ASP Services or Software.

9.3 **Consents; Customer Content.** Where ASP Services are specified in the Order Form, Customer acknowledges and agrees that the ASP Services are provided via the Internet and that Customer and its Authorized End Users' information, including personal information, may be transferred across national borders and stored or processed in any country in the world. Customer is solely responsible for obtaining and maintaining any necessary consents or permissions from its Authorized End Users or others whose information may be collected, recorded, processed, stored, used, disclosed, transferred, exchanged or otherwise handled as a result of, or as part of, any Customer Content or any communications involving the use of the ASP Services or Software and agrees to obtain and maintain all such consents or permissions throughout the term of this Agreement. If Customer or any Authorized End User resides in the European Union, upon registration Customer or such Authorized End User will be indicating its explicit consent that the personal information it provided may be transferred and stored in countries outside the EU, including the United States. If Customer or such Authorized End User fails to provide such consent, Customer or such Authorized End User will not be permitted to access the Services for which registration is required. Personal information shall only be used in accordance with Blackboard's Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Center.aspx>.

9.4 **ASP Storage.** ASP Services include a total of 50GB of storage for archives ("Storage Capacity"), unless otherwise specifically set forth in the Order Form. Storage in excess of the Storage Capacity is subject to purchase.

BLACKBOARD LEARN DEVELOPER'S NETWORK EXHIBIT

THIS BLACKBOARD LEARN DEVELOPER'S NETWORK EXHIBIT ("EXHIBIT") IS A "EXHIBIT" PURSUANT TO THE BLACKBOARD LEARNING ESSENTIALS BUNDLE SOFTWARE LICENSE SCHEDULE ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE AND USE SOFTWARE AND PURCHASE SOFTWARE MAINTENANCE AS IDENTIFIED IN THE ORDER FORM.

1. PROGRAM DESCRIPTION

1.1 Blackboard desires to create a community of developers who design software that is interoperable with Blackboard's existing software. In order to do so, Blackboard makes available, subject to the terms of this Agreement, membership in a Blackboard Developers Network (the "Developers Network" or "BbDN"). Members of the BbDN have access to a Software Development Kit (the "SDK"), a package containing APIs and documentation that allow Customer to write code that interfaces with certain Blackboard software, reference materials and other documentation, support provided via a community discussion forum and a copy of Blackboard Academic Suite™. If you wish to join the Developer's Network and get access to the SDK and other benefits of membership, you must agree to the terms of this Agreement. This program relates to the Blackboard Learn applications only.

2. DEFINITIONS.

2.1 "**Blackboard Software**" means the Blackboard software, limited to a maximum of 150 users, 100 courses, and 1,000 enrollment records, provided pursuant to this Agreement, and Supported Interfaces (and any Documentation and help files included within such software), as well as any additional materials that Blackboard may, in its sole discretion, provide, such as corrections, updates and Upgrades. Blackboard shall have no obligation to provide such additional materials, and any such additional materials that it does provide shall be deemed to be part of the Blackboard Software under this Agreement.

2.2 "**Developer Software**" means: (i) software application programs created by the Developer 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: (a) the software application programs and documentation are authored or created by Developer or on Developer's behalf and that such software programs do not contain intellectual property from the Blackboard Software, and (b) the software application programs do not incorporate any part of the Blackboard Software, other than the connectors into the APIs of the Blackboard Software; or (c) such software applications programs and documentation do not otherwise constitute a Derivative Work of the Blackboard Software.

2.3 "**Developer's Network Information**" means the sample software code developed by Backboard pursuant to the Developer's Network, related Documentation and other proprietary information made available to Developer as a result of this Agreement.

2.4 "**Purpose**" means the purpose of this Exhibit, which is to create a community of developers who design software that is interoperable with Blackboard's existing software.

2.5 "**Specifications**" means the technical specifications for the Blackboard Software as set forth in the applicable documentation.

2.6 "**Supported Interfaces**" means application programming interfaces ("API"), network protocols, data formats, database schemas, and file formats used in the Blackboard Software as described in the Documentation.

2.7 "**Upgrades**" mean the object code versions of the Blackboard Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that has been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

3. OBLIGATIONS

3.1 **General.** Developer shall use the Blackboard Software to develop the Developer Software in a manner and for purposes that are consistent with the Purpose of this Exhibit.

3.2 **Blackboard Obligations.**

3.2.1 Blackboard shall provide Developer with: (a) access to the Developer's Network Information; and (b) one (1) copy of the Blackboard Software, pursuant to the licenses in Section 4 below, together with Documentation to assist in developing the Developer Software.

3.2.2 For thirty (30) days after the Effective Date, Blackboard shall provide web-based technical support, for installation purposes only, to two (2) technical contacts at Developer's location who are the only individuals who may contact Blackboard regarding installation support services. Developer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed two (2) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, except federal holidays. Except with regard to the foregoing, Blackboard will have no obligation to provide: (a) any support regarding the Blackboard Software, (b) any development tools for, or updates to, the Blackboard Software, and (c) any maintenance or training for the Blackboard Software.

3.3 **Developer Obligations**

3.3.1 Developer agrees and represents that it shall develop the Developer Software in accordance with the Purpose of this Exhibit and to enable simple installation and integration of the Developer Software into the Blackboard Software, as installed by a Customer.

3.3.2 Developer shall provide its standard customer support to Customers using and installing the Developer Software. Developer shall be solely responsible for providing all end-user support for any Developer Software.

3.3.3 Prior to permitting a third party to resell or distribute the Developer Software, Developer shall provide Blackboard a right of first refusal to resell or distribute the Developer Software based upon mutually agreeable terms which shall be no worse than the most favorable terms granted to such third party.

3.3.4 Developer shall not disable the Auto Reporting Option of the Blackboard Software.

3.3.5 The Developer may provide consulting services to third parties relating to the Developer Software, but the Developer shall not use the Blackboard Software licensed to the Developer under this Exhibit to provide consulting services that are related to the Blackboard Software and not the Developer Software.

4 LICENSE

4.1 **Developers' Network Information Grant.** Solely in connection with the Purpose of this Exhibit, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a limited, nonexclusive, nontransferable right and license to download, review and use up to twenty five (25) copies of the Developer's Network Information on the Internet or Intranet server or servers at Developer's site. Developer may use the Developer's Network Information solely in connection with its own internal development purposes in connection with the Purpose of this Schedule. Developer may copy the Developer's Network Information, or any portion thereof, in whole or in part only for the Purpose of this Exhibit.

4.2 **Blackboard Software License Grant.** Solely in connection with the Purpose of this Exhibit and the development of the Developer Software, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a nontransferable, nonexclusive right and license to use the copy of the Blackboard Software provided to Developer by Blackboard, but only at the address at which Developer provides pursuant to this Exhibit (or other locations, provided that Developer notifies Blackboard in writing and Blackboard does not object within ten (10) days of receiving such notice), and solely for the purposes of: (1) creating the Developer Software at the Designated Server Site; and (2) supporting the Developer Software at the Designated Server Site. No right is granted to distribute all or any portion of the Blackboard Software or the Documentation. In the event that Developer desires to receive a license to use the Blackboard Software other than in connection with development or support of the Developer Software, or on operating system other than the one at the Designated Server Site, such license shall be pursuant to a separate license agreement. Developer may only make one (1) backup copy of the Blackboard Software for its own internal purposes, but otherwise may not copy, duplicate or reproduce the Blackboard Software in any manner.

4.3 **Third Party Software/Content.** Developer acknowledges that the Blackboard Software may utilize software and/or content made available to Blackboard by certain third parties (the "Third Party Software"). Pursuant to its agreements with such third parties, Blackboard hereby grants to Developer a non-exclusive, nontransferable and sublicensable right and license to load and/or operate and use the Third Party Software solely to the extent of the license in Section 4.2.

4.4 Termination of Access to Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Developer's access to all or any part of the Third Party Software at any time for any reason without prior notice or liability. Blackboard's licensors and suppliers may change, suspend or discontinue all or any aspect of the Third Party Software, including the availability, without prior notice or liability.

4.5 No Other Rights Granted. Apart from the licenses expressly granted in Sections 4.1 and 4.2, no license or other right is granted by Blackboard to Developer under this Exhibit. Developer shall have no right or access to the source code of the Blackboard Software. Developer shall appoint no resellers, other developers, or sub-distributors or ASPs of the Blackboard Software, and shall not permit any third party to access the Blackboard Software, including, without limitation, any subcontractors for the purpose of subcontracting the development of the Developer Software.

4.6 Nondisclosure and Nonuse. Developer shall (a) disclose Developer's Network Information during the term of this Agreement to only those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Developer's Network Information; and (b) use such Developer's Network Information during the term of this Agreement only for the Purpose set forth in this Agreement. Developer shall treat the Developer's Network Information as strictly confidential, and shall use the same care to prevent disclosure of such information as it uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances.

4.7 Restrictions. Except as may be expressly permitted during the Term of this Agreement in Section 4.2, Developer shall not: (a) modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Blackboard Software or any part thereof, or grant any other person or entity the right to do so or take any action that would assist any other person or entity in doing so (and Developer will promptly notify Blackboard of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify the Blackboard Software); (b) modify, delete, replace, change, prepare derivative works of or otherwise alter any files in the Blackboard Software; (c) loan, rent, lease, give, sublicense, distribute, transfer, publish, disclose, display, or otherwise make available the Blackboard Software, in whole or in part, to any other person or entity except as expressly permitted herein; (d) use the Blackboard Software in connection with the development of any products other than the Developer Software or (e) transmit the Blackboard Software over a network or from one computer to another (other than on a limited basis within Developer's local area network), or upload the Blackboard Software to electronic bulletin boards, web sites, or otherwise distribute them (or any portion), whether electronically, or on tangible media.

5 MARKETING

5.1 License for Marks. Contingent upon the requirements set forth in this Section 5, Blackboard grants to the Developer, for the term of this Exhibit, a limited, nonexclusive, royalty-free license to use the "Blackboard®", the "Bb" logo, and "Blackboard Building Blocks®", "Blackboard Developer's Network™", "Blackboard Developer's Network Catalog", "BbDN", "Blackboard PowerLinks™", "Blackboard PowerLinks DevNet" trademarks and trade names, each only in order to show that Developer is a member of the Developer's Network and that the Developer Software is compatible with the Blackboard Software (the "Blackboard Licensed Marks"). Developer grants to Blackboard a limited, nonexclusive, royalty-free license to use the following Marks: (1) the Developer's corporate name and/or trade name, (2) the Developer's corporate logo; and (3) the product name of the Developer Software developed under this Exhibit; each only in order to identify Developer Software that is compatible with the Blackboard Software (the "Developer Licensed Marks"). Collectively, the Blackboard Licensed Marks and the Developer Licensed Marks shall be referred to as the "Licensed Marks". Each of these two licenses is contingent on the requirements that each Party: (a) does not create a unitary composite mark involving a Mark of the other Party without the prior written approval of such other Party; (b) displays symbols and notices clearly and sufficiently, indicating the trademark status and ownership of the other Party's Marks in accordance with applicable trademark law and practice; and (c) uses the other Party's Marks in a manner that is consistent with the Purpose of this Exhibit. In no event shall Developer use the word "Blackboard" in the name of any of its products or services, including, without limitation, the use of "[product] for Blackboard". Each Party acknowledges that its utilization of the Licensed Marks under this Exhibit will not create in it, nor will it represent that it has any right, title or interest in or to such Licensed Marks other than the licenses expressly granted herein. Blackboard may, but is not obligated to, list the Developer Licensed Marks on web sites and product marketing materials associated with the Developer's Network and the Blackboard Building Blocks and Blackboard PowerLinks Programs. Neither Party will do anything to contest or impair the trademark rights of the other Party and will comply with such Party's standard trademark usage guidelines as such Party may provide from time to time.

5.2 Press Releases. Subject to Section 7.3, any news release, public announcement, marketing materials, advertisement or publicity proposed to be released by either Party concerning the activities of either Party in connection with this Exhibit, including the Developer Software, will be subject to the written approval of the other Party prior to release. Any such publicity shall be consistent with the Purpose of this Exhibit and will give due credit to the contribution of each Party.

5.3 Marketing Costs. Any costs of promotion and marketing shall be borne solely by the respective Party, and nothing in this Exhibit shall be interpreted to require promotion of products or services through marketing media forms which either Party normally charges a fee to provide.

5.4 Marketing Materials. Each Party will submit to the other Party for its prior written approval, which shall not be unreasonably withheld, any marketing materials to be used in connection with performing its obligations or rights under, or related to, this Exhibit, including but not limited to business card, website or jewel case design, that incorporates any of the other Party's Marks. Each Party will undertake to respond to any such request for approval within ten (10) business days. Each Party reserves the right to disapprove such marketing materials if it reasonably determines that its Marks are improperly used or if the marketing materials do not accurately represent the business relationship between the Parties or the services or products of the other Party.

5.5 Quality Standards. Each Party agrees that the nature and quality of its products and services supplied in connection with the other Party's Marks shall conform to quality standards communicated in writing by the other Party for use of its Marks. Each Party agrees to supply the other Party, upon request, with a reasonable number of samples of any marketing or other materials publicly disseminated by such Party which utilize the other Party's Marks. Each Party shall comply with all applicable laws, regulations and customs and obtain any required government approvals pertaining to use of the other Party's Marks.

6 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Blackboard Intellectual Property. Except as specifically set forth in this Exhibit, no title to or ownership of any portion of the Developer's Network Information or Blackboard Software as well as any other products or services manufactured, sold and/or distributed or otherwise made available by Blackboard, or to any proprietary rights related to those products/services, is transferred pursuant to or by virtue of this Exhibit and all rights and interest to the foregoing shall remain the sole and exclusive property and proprietary information of Blackboard.

6.2 Ownership Rights in the Developer Software. Developer retains all rights in the Developer Software that it creates pursuant to this Exhibit, provided that the Developer Software does not contain or constitute Blackboard intellectual property.

6.3 Ownership Rights in Derivative Works. All Derivative Works of the Blackboard Software shall be owned exclusively by Blackboard. All Derivative Works shall be deemed to be "works made for hire." To the extent that title to the Derivative Works does not, by operation of law, vest in Blackboard or the Derivative Works are not considered "works made for hire," Developer hereby irrevocably assigns all right, title and interest therein to Blackboard. Blackboard, however, shall grant and hereby grants to Developer a nonexclusive, royalty-free, world-wide, license to use any such Derivative Works for the Purpose set forth in this Exhibit during the Initial Term and any subsequent Renewal Terms. In the event that Blackboard permits Developer in writing to use non-employees to perform the obligations of Developer under this Exhibit, Developer shall take all necessary action to secure on behalf of Blackboard all rights to the Derivative Works from such non-employees.

7 LIMITED WARRANTY

7.1 Blackboard Warranties. Blackboard represents and warrants that: (a) it has authorized the person who has signed this Exhibit for Blackboard to execute and deliver this Exhibit to Developer on behalf of Blackboard; (b) it and/or its suppliers and licensors possess all rights necessary to grant the rights herein; and (c) it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.

7.2 Developer Warranties. Developer represents and warrants: (a) that it has authorized the person who has signed this Exhibit for Developer to execute and deliver this Exhibit to Blackboard on behalf of Developer, (b) the Developer Software shall be developed in a good and workmanlike manner and in compliance with the requirements and Purpose of this Exhibit, and (c) that it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.

BLACKBOARD MANAGED HOSTING SCHEDULE

THIS BLACKBOARD MANAGED HOSTING SCHEDULE ("MANAGED HOSTING SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER TERMS (THE "AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY PURCHASE BLACKBOARD MANAGED HOSTING SERVICES AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

1. ADDITIONAL DEFINITIONS.

- 1.1 **Active User Capacity** means the number of Authorized End Users, at any particular time, permitted to be registered to access one (1) or more educational courses provided through the Hosted Software. As of the Schedule Effective Date, the initial Active User Capacity will be equal to the number indicated on the Order Form.
- 1.2 **Available Date** means the date upon which Customer receives notice from Blackboard that the Hosted Software is available for access by Customer's Authorized End Users.
- 1.3 **Hosted Software** means the Software licensed to Customer pursuant to the Software Schedule for which Blackboard is to provide the Managed Hosting Services.
- 1.4 **Managed Hosting Services** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated on the Order Form and Exhibit A to this Managed Hosting Schedule.
- 1.5 **Schedule Effective Date** means the later of: (i) the date on which the Order Form has been executed by authorized representatives of both Parties; and (ii) the Effective Date of the Agreement.
- 1.6 **Software Schedule** means the Software Schedule between Blackboard and Customer for which Customer seeks to have Blackboard provide Managed Hosting Services, and that is in effect during the term of this Managed Hosting Schedule.
- 1.7 **Staging Environment** means that hosted additional test copy of the licensed Blackboard Software used for Customer to test new Updates/Upgrades to the Software. The Staging Environment may not be used for production purposes.
- 1.8 **Test Copy Hosted Software** means the Test Copy Software licensed to Customer pursuant to the Software Schedule which Blackboard is hosting. Test Copy Hosted Software is to be used solely for the purposes of testing the Software and is not to be used for production purposes and unless otherwise indicated in the Order Form is not covered by Service Level specifications described in Exhibit A.

2. BLACKBOARD RESPONSIBILITIES.

- 2.1 **Provision of Access to Hosted Software.** As soon as commercially practicable after the Schedule Effective Date, Blackboard will make access to the features and functions of the Hosted Software available to Customer's Authorized End Users. Blackboard will specify to Customer procedures according to which Customer and/or its Authorized End Users may establish and obtain such access.
- 2.2 **Responsibility for Hosting.** Blackboard shall install and operate the Hosted Software on computer servers and systems under its direct or indirect control. Blackboard will also install and store the Customer Content for purposes of access by the Hosted Software, provided that nothing in this Managed Hosting Schedule shall be construed to require Blackboard to provide for, or bear any responsibility with respect to, the design, development, operation or maintenance of any Web site owned or operated by Customer, or with respect to any telecommunications or computer network hardware required by Customer to provide access from the Internet to any such Customer Web site. Nothing in this Managed Hosting Schedule shall be construed to grant to Customer a license to access and/or use Blackboard's systems except for purposes of accessing and using the Hosted Software and except pursuant to the procedures and protocols specified by Blackboard pursuant to Section 2.1. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Schedule, Customer grants to Blackboard a royalty-free, non-exclusive, worldwide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the Hosted Software, modify and create derivative works from the Customer Content. As between Customer and Blackboard, Customer retains ownership of the Customer Content. Blackboard shall maintain the confidentiality of all Customer Content that is stored on its servers in accordance with the Master Terms.
- 2.3 **Availability and Operational Specifications.** Blackboard will undertake commercially reasonable measures to ensure that, from and after the Available Date and for so long as this Managed Hosting Schedule remains in effect, the Managed Hosting Services provided pursuant to this Managed Hosting Schedule will: (i) be available and accessible as contemplated in this Managed Hosting Schedule twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Exhibit A; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit A. Exhibit A may be modified from time to time by Blackboard, upon notice to Customer. Notwithstanding the foregoing, Blackboard will have no liability under this Section 2.3 to the extent any nonconformity with the standards set forth in Exhibit A arises, in whole or in part, from: (i) any use of the Hosted Software by Customer or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Customer or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to Section 2.1 of this Managed Hosting Schedule; or (iii) any causes beyond the control of Blackboard or which are not reasonably foreseeable to Blackboard, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. It is agreed and acknowledged that the service credits referred to in Exhibit A shall be Customer's sole remedy, and Blackboard's sole obligation, with respect to failures of the Managed Hosting Services to meet the technical specifications and performance parameters set forth in Exhibit A. Blackboard does not warrant or guarantee the Managed Hosting Services except as expressly stated in this Managed Hosting Schedule.
- 2.4 **Data Restoration Policy.** Blackboard will back-up and archive Customer Content at a secure location for the retention period(s) specified in Exhibit A. In the event that Customer requests recovery of any lost or damaged Customer Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Customer), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Customer has provided to Blackboard all information necessary to enable Blackboard to perform such services. Blackboard shall perform up to four (4) data restorations at no charge to Customer; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the Managed Hosting Services, Customer agrees to pay Blackboard its then-standard applicable rates for such restoration services.

- 2.5 **Data Archiving and Cleanup Policy.** Blackboard will undertake commercially reasonable efforts to accommodate Customer's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Customer's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a database query. Blackboard will make reasonable efforts to perform up to four (4) data archiving and cleanup related tickets per Customer per year (the tasks can be grouped together as one support ticket to be addressed at once per semester or per quarter). After four (4) free services per year, Blackboard reserves the right to charge a flat fee of \$1,000 per ticket created for data archiving and cleanup related tasks. If Customer requires Blackboard to batch archive data on to a hard-drive and ship to Customer, Blackboard will charge \$500 for the cost of

each of 320 GB hard-drive and shipping required. Customer may ship the hard drive back to Blackboard for reuse in the next such task, in which case Customer shall not be charged an additional fee.

2.6 Additional Storage and Bandwidth Policy. As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Customer's storage and bandwidth usage. In the event Customer has exceeded contracted storage and/or contracted bandwidth during a sustained period of sixty (60) days or more, Blackboard will provide a report to Customer concerning Customer's current storage and bandwidth usage. In the event Customer does not purchase additional storage and/or bandwidth within thirty (30) days of receiving such report, Blackboard reserves the right to charge Customer additional fees at Blackboard's then-standard applicable rates.

2.7 Additional Managed Hosting Services. In the event that Customer desires to receive Managed Hosting Services in addition to the particular services specified in the Order Form, including, by way of example, incremental storage capacity, additional bandwidth capacity and/or higher Active User Capacity, Customer may submit a written and executed purchase order requesting such additional Managed Hosting Services. Subject to Customer's payment of all applicable fees required by Section 4, and further subject to all applicable provisions of this Agreement, including, without limitation, the Master Terms and this Managed Hosting Schedule, Blackboard agrees to make such additional Managed Hosting Services available to Customer for the duration of this Managed Hosting Schedule or such purchase order, whichever is shorter. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Customer with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

2.8 IP Addresses. Any IP addresses assigned or allocated to Customer by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable by Customer. Customer shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Customer to the Blackboard allocated addresses must be agreed to by the Parties. Customer understands that the services provided under this Agreement relating to IP addresses (including Internet use) may require registrations and related administrative reports that are public in nature, and Customer shall have no claim against Blackboard relating to such public registrations and reports that are required for Blackboard to perform its obligations under this Schedule.

3. CUSTOMER RESPONSIBILITIES.

3.1 General Usage Limitations. Customer acknowledges that use and operation of the Hosted Software by Customer and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding anything to the contrary in this Agreement (including the Software Schedule), for so long as this Managed Hosting Schedule remains in effect, Customer may not install, host or operate the Hosted Software, nor may Customer or its Authorized End Users otherwise use the Hosted Software, except as hosted and made available by Blackboard under this Agreement. In the event that Customer has installed the Hosted Software upon any computer server(s) prior to the Schedule Effective Date, Customer agrees promptly to remove the Hosted Software from such computer server(s). Customer agrees that it may not cause or permit any third parties to access the Hosted Software other than Authorized End Users, nor may Authorized End Users in excess of the then-current Active User Capacity access and use the Hosted Software at any time, provided that the Active User Capacity may be modified in accordance with Section 2.7. Customer shall refrain from, and shall ensure that Authorized End Users refrain from, using the Managed Hosting Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Managed Hosting Services or the resources available through the Managed Hosting Services. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Customer warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

3.2 Customer Content. Customer represents and warrants that: (i) Customer owns or has sufficient rights in and to the Customer Content, including, without limitation, personal, educational and financial information contained within the Customer Content, in order to use, and permit use of, the Customer Content as contemplated in this Managed Hosting Schedule and to grant the license granted in Section 2.2; and (ii) the Customer Content does not and shall not contain any content, materials, advertising or services that infringe on or violate any applicable law, regulation or right of a third party. Customer also acknowledges that the Customer Content may be accessed by Blackboard's support or Managed Hosting personnel outside of the country of the hosted facility, and hereby authorizes such access. Blackboard only provides access to the Hosted Software; Blackboard does not operate or control the information, services, opinions or other content of the Internet. Blackboard does not monitor and shall have no liability or responsibility whatsoever for the Customer Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. Customer agrees that it shall make no claim whatsoever against Blackboard relating to the Customer Content or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet, and Customer shall indemnify and hold Blackboard harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related, directly or indirectly, to such Customer Content.

3.3 Data Processing Addendum. If Customer is subject to the European Union Data Protection Directive 95/46/EC, the European Union General Data Protection Regulation or similar statute, then this Schedule expressly incorporates by reference the Data Processing Addendum available at <http://agreements.blackboard.com/bbinc/blackboarddeudataprocessingaddendum.aspx>. Customer agrees that it is the controller of all Customer data, including Customer Content, within the Hosted Software and that Blackboard is not a controller of such data.

4. FEES

4.1 In consideration for its receipt of the Managed Hosting Services, Customer shall, during the Initial Term (as defined below) pay to Blackboard: (i) an annual fee in an amount set forth in the Order Form with respect to the particular Managed Hosting Services provided under this Managed Hosting Schedule, which fees shall be due and payable upon execution of the Order Form; as well as (ii) any other fees otherwise required by this Managed Hosting Schedule (for additional services, additional bandwidth, or additional users). In the event that Customer requests additional Managed Hosting Services as contemplated in Section 2.7, applicable fees shall be due and payable from and after the month during which such additional services are first made available. All fees payable under this Managed Hosting Schedule shall be non-cancelable and non-refundable.

4.2 Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Customer's account becomes more than sixty (60) days past due. The act of suspending Managed Hosting Services does not, in itself, constitute a termination or suspension of this Agreement nor does such suspension of Managed Hosting Services alleviate Customer's obligation to pay past, current, or future charges incurred hereunder. Once Customer pays in full the past due fees, Blackboard may resume the Managed Hosting Services in accordance with this Agreement.

4.3 With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Should Customer terminate a multi-year Schedule in advance of the expiration of the then-current Term for any reason other than Blackboard's uncured breach of the Agreement, Customer will be required to pay a penalty fee to Blackboard equal to the total discount received by Customer under such Schedule up through the date of termination. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Managed Hosting Schedule, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Except as otherwise required by this paragraph, all amounts payable under this Managed Hosting Schedule shall be subject to applicable provisions of the Master Terms.

5. TERM

This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of one (1) year (the "Initial Term") or as otherwise specified in the Order Form. Thereafter, the Managed Hosting Schedule will renew automatically upon the conclusion of the Initial Term for successive one (1)-year periods (each, a "Renewal Term" and together with the Initial Term, the "Term"), at Blackboard's then-current pricing for Customer's then-current usage level, unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the then-current Term, as applicable. Upon termination of this Managed Hosting Schedule, all licenses granted under this Managed Hosting Schedule shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Hosted Software under this Managed Hosting Schedule; (ii) pay to Blackboard all amounts due and payable under this Managed Hosting Schedule; and (iii) return all Documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

EXHIBIT A
MANAGED HOSTING SERVICES SPECIFICATIONS

SERVICE LEVELS

Security:

- Single point of entry to co-location is guarded twenty-four (24) hours a day with access controlled by an access database and video surveillance.
- Monitoring of the co-location area and only those persons authorized by Blackboard's access list are allowed past a central point.
- Surveillance cameras located throughout the facility capture activity to help ensure no unauthorized entry to protected areas.

Power:

- State-of-the-art generators clean and condition commercial electrical power to remove irregularities in the signal. Power is run through the generators before being passed into the facility.
- In the event of a loss of power from the grid, power backups are utilized in the following order: commercial utility underground conduits, two (2) hour battery backup (industry standard is only fifteen (15) minutes), diesel generator with full-load capability and additional fuel supply.

Network:

- Redundant Internet connections through dual Tier-1 Internet Service Providers.

Startup:

Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Customer server(s). This includes the server hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Hosted Software.

Initial Access Date:

The Hosted Software is typically initially accessible by Customer from the hosting site within ten (10) business days after execution of the applicable Order Form, provided that Customer has provided to Blackboard a URL and any other information required by Blackboard to perform its obligations under this Managed Hosting Schedule. Blackboard shall provide Customer with procedures for access. The procedures may include, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Customer to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Managed Hosting Schedule.

Host Latency Service Credit:

The Managed Hosting Service provides a monthly average of two (2) seconds or better Host Latency. "Host Latency" is defined as the time period beginning when the first packet of data transmitted from Customer reaches the application host within the Blackboard datacenter environment and ending when the first packet of data responding to such transmission leaves the application host within the Blackboard datacenter environment. Latency measurements will not be measured during scheduled maintenance windows. Host Latency excludes any latency incurred on the Customer site or when traversing the internet between the Customer site and the application host within the Blackboard datacenter environment. Upon Customer's request, Blackboard will provide a report generated by a commercial tool showing Host Latency for the preceding month. Failure to meet the Host Latency service level occurs when, during any calendar month, the average Host Latency for such calendar month is greater than two seconds. Service credits for failure to meet the Host Latency service level are as follows:

Service credits for failure to meet the Host Latency service level are as follows:

<u>Time of Latency (per calendar month)</u>	<u>Service Credit</u>
>3-4 Seconds Monthly Average Host Latency	2 days of service fees credited (i.e. 1/15* monthly fees)
>4-5 Seconds Monthly Average Host Latency	4 days of service fees credited (i.e. 2/15* monthly fees)
>5 Seconds Monthly Average Host Latency	8 days of services fees credited (i.e. 4/15* monthly fees)

In order to receive any service credit for Host Latency, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit, which is the end of each calendar month. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. In order to be eligible, Customer must be in compliance with the Agreement including the contracted Active User Capacity and storage quota.

Availability/Service Credit:

Standard Service Levels:

Standard Service Levels:

Blackboard shall use commercially reasonable efforts to ensure the Managed Hosting Services are Available twenty-four (24) hours a day, seven (7) days a week with a targeted uptime of 99.7% per calendar month. The Managed Hosting Services shall be considered "Available" except to the extent that an Authorized End User cannot access the Hosted Software due to hardware failure or sustained latency within the Blackboard hosting facilities. Notwithstanding the foregoing, the Availability of the Managed Hosting Services shall be determined without regard to any (i) packet loss, latency or network unavailability due to scheduled maintenance, (ii) the inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the reasonable control of Blackboard, or (iii) Force Majeure. For purposes of this section, "Force Majeure" means causes beyond Blackboard's reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation 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.

If the Managed Hosting Services are Available less than 99.7% per calendar month, Customer will be eligible to receive service credits as outlined below. Such service credits shall be Customer's sole remedy for failure to meet the applicable targeted uptime. In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit, which is the end of each calendar month. Failure to comply with this requirement will forfeit Customer's right to receive a service

credit. In order to be eligible, Customer must be in compliance with the Agreement including the contracted Active User Capacity and storage quota. The aggregate maximum number of service credits to be issued by Blackboard to Customer for any and all downtime periods and performance problems during any given calendar month shall not exceed the fees for one month of service.

<u>Length of Unavailability (per calendar month)</u>	<u>Service Credit</u>
1 to 4 aggregate hours below 99.7% Availability	1 day of service fees credited (i.e., 1/30* monthly fees)
4 to 48 aggregate hours below 99.7% Availability	2 days of services fees credited (i.e., 1/15* monthly fees)
48 to 96 aggregate hours below 99.7% Availability	5 days of service fees credited (i.e., 1/6* monthly fees)

*Each block of 96 hours below 99.7% Availability thereafter shall be credited 5 days of service fees.

*All service credits shall be applied to the next period's Managed Hosting fees.

The service levels set forth herein are subject to change upon 30 days' prior written notice to Customer.

Enhanced Service Levels (99.9%):

If Customer meets the following requirements, Customer shall automatically be entitled to 99.9% enhanced service levels. This means that the Availability of the Managed Hosting Services shall be calculated against a 99.9% targeted uptime rather than a 99.7% targeted uptime. All other provisions of the Standard Service Levels shall continue to apply.

- a. Customer has Platinum Level Service (on Blackboard Platinum Package) or Diamond Level Service (which requires having annual subscription to Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services);
- b. The production environment of the Hosted Software is on Blackboard Learn Course Delivery 9.1 or later version and is at maximum only two application pack versions older than the then-current Generally Available version;
- c. Customer's usage is within contracted levels for Active User Capacity and storage;
- d. Any Building Blocks deployed on the production environment of the Hosted Software are compliant with the standard Managed Hosting Building Blocks Policy; and
- e. Customer is currently subscribed to Integration and Customization Maintenance (ICM) Service from Blackboard Consulting for supporting any SIS integration between the Hosted Software and Customer's student information system ("SIS") that was completed by Blackboard Consulting.

The enhanced service levels described herein apply only to production environments and do not apply to Staging Environments.

Enhanced Service Levels (99.8%):

If Customer meets the following requirements, Customer shall automatically be entitled to 99.8% enhanced service levels. This means that the Availability of the Managed Hosting Services shall be calculated against a 99.8% targeted uptime rather than a 99.7% targeted uptime. All other provisions of the Standard Service Levels shall continue to apply.

- a. Customer has Gold Level Service (subscription to Production Environment hosting other than Basic licenses, Foundations program, K12 LAC Bundle or Prosites hosting services) or Platinum Level Service (on Blackboard Platinum Package) or Diamond Level Service (which requires having subscription to annual Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services);
- b. Hosted Software on production environment is on Learn Course Delivery 9.1. or later version and is at maximum only two application pack versions older than the then-current Generally Available version; and
- c. Customer's usage is within contracted levels for Active User Capacity and storage.

The enhanced service levels described herein apply only to production environments and do not apply to Staging Environments.

If Customer does not have Platinum Level Service (on Blackboard Platinum Package) or Diamond Level Service (which requires having annual subscription to Production Environment, Staging Environment and non-production Test Environment and minimum of 25% Time Complex Hosting Manager services), the Availability/Service Credit does not apply to the 7 calendar day period following the installation of an application pack, update or upgrade on the production environment because of the lack of Blackboard's full control over the upgrade project management.

Backup and Disaster Recovery:

Blackboard provides comprehensive redundant backups which are stored online and at a separate facility. Blackboard retains backup data for one month. In the event of a disaster, Blackboard will use reasonable efforts to restore service. Blackboard will not attempt to restore service if such attempt may in Blackboard's sole discretion, put Blackboard, its employees or its agents at risk for injury.

Outages

Upon receipt of notification of a problem with the Blackboard system or the Managed Hosting Services, Blackboard will investigate the problem and determine if a System Outage exists. For purposes of this subsection, a "System Outage" means the Managed Hosting Services are not Available. If the problem is due to a System Outage, Blackboard will notify Customer's designated technical contact via email. This notice will include the reason for the System Outage and estimated time for restoration of Managed Hosting Services, to the extent known by Blackboard at the time of such notice. Blackboard will promptly commence remedial activities and use commercially reasonable efforts to resolve the System Outage within the time estimate provided to Customer.

Following recovery from any System Outage, Blackboard will provide Customer with a post-incident summary that includes:

- cause of the System Outage (if determined);
- method used to correct the problem; and
- measures Blackboard will take to prevent similar System Outages in the future (if any).

MONITORING AND PERFORMANCE

Blackboard will make network performance reports available to Customer via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment. In addition, upon request by Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month.

Customer acknowledges and agrees that any reports provided by Blackboard to Customer pursuant to this Schedule shall constitute Blackboard's Confidential Information for purposes of this Agreement.

Ongoing:

The hardware, software and network are monitored and maintained by Blackboard and will be accessible twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which Customer shall be notified by email.

- Blackboard maintains responsibility for all day-to-day server maintenance. Server maintenance may include, but is not limited to, hardware upgrades, OS upgrades, patch installations, database administration, server user administration and performance tuning.
- Blackboard maintains a software monitoring system to provide real-time information about the Managed Hosting environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the Managed Hosting environment.
- Blackboard maintains the functioning of all hardware components for which it is responsible under this Exhibit and will replace any failed components. Hardware replacement will begin immediately upon identification of the hardware failure and if cannot be completed with a reasonable amount of time, the access to the Hosted Software will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily backups with a retention period of 1 month. Where possible, data is replicated to an offsite location.
- Blackboard collects bandwidth usage and web hit statistics on all Customer-hosted machines. This information will be provided upon request.

DATA CENTER SPECIFICATIONS

Blackboard deploys infrastructure in a facility that offers environment control, security, and backup power, as more specifically described below:

Environment:

The data center is designed to maintain a constant temperature of 68½F, plus or minus 2½F, with humidity of 45%.

Environment Setup:

Production environments are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and 99.7% uptime (except to the extent Customer is eligible for enhanced service levels as set forth above).

CUSTOMER RESPONSIBILITIES

Blackboard is not responsible for management and actual use of the features and function of the Hosted Software by Customer. Customer bears all responsibility for such management and actual use, including, without limitation:

- Creating/removing users including Students, Teachers, System Administrators, etc.
- Modifying all Authorized End User information
- Creating/removing all course web sites
- Building and managing all course web sites
- Customization to the site
- System usage tracking reports
- Deciding which product features will be available or unavailable, how much functionality instructors will be allowed, etc.
- Choosing icon themes
- All changes to the Blackboard-named URL. All Blackboard Customers are assigned a URL that reads <http://institutionname.blackboard.com>. The institution is allowed to pick the "institutionname". However, any re-directs to other URLs are the responsibility of Customer and not Blackboard. For example, if the Customer chooses the URL <http://institutionname.org>, Customer is responsible for the redirect to the <http://institutionname.blackboard.com> site using a CNAME record. Any IP addresses allocated by Blackboard to Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

BUILDING BLOCKS POLICY

If Customer has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to implement a Building Block, Blackboard recommends that Customer take the following steps before installing a Building Block on a production system: 1) apply and thoroughly test all Building Blocks in Customer's test/development environment prior to implementing the Building Block in the production environment; and 2) before requesting an update/upgrade to Blackboard on Customer's production environment, contact the vendor of the Building Block or check the Building Blocks Catalog to ensure that Customer has the latest version prior to upgrading Customer's Hosted Software. If an issue arises with Customer's Hosted Software, the Blackboard Managed Hosting Service support team will work with Customer to troubleshoot the problem. If the Blackboard Managed Hosting Service support team isolates the problem as related to one or several Building Blocks, the Blackboard Managed Hosting Service support team may need to disable the Building Block to further troubleshoot the issue or to restore overall service.