



**GENERAL SERVICES ADMINISTRATION  
FEDERAL ACQUISITION SERVICE  
AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LIST**

**MULTIPLE AWARD SCHEDULE – GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND SERVICES**

Note: Contractor has been awarded under the Cooperative Purchasing & Disaster Recovery programs.

**Blackboard Inc.**  
11720 Plaza America  
Drive, 11<sup>th</sup> Floor  
Reston, VA 20190 (P)  
800.424.9299  
(F) 866.874.9586

[www.Blackboard.com](http://www.Blackboard.com)

**CONTRACT NUMBER: GS-35F-0554M**

**PERIOD COVERED BY CONTRACT:**

**June 18, 2007 through June 17, 2022**

Pricelist current through Modification #97  
Effective date current through June 17, 2022

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: [GSAAdvantage.gov](http://GSAAdvantage.gov). For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at [fss.gsa.gov](http://fss.gsa.gov)

**TABLE OF CONTENTS**

**INFORMATION FOR ORDERING ACTIVITES .....3**

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF EQUIPMENT (SPECIAL ITEM NUMBER 33411).....7**

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE .....9**

**TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE OF SOFTWARE (SPECIAL ITEM NUMBER 54151) .....9**

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 611420).....85**

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S) .....91**

**TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES (SPECIAL ITEM NUMBER 54151ECOM).....97**

**CONTRACTOR’S AUTHORIZED GSA PRICING .....103**

**BLACKBOARD MASTER AGREEMENT FOR ALL PRODUCTS AND SERVICES.....166**

**INFORMATION FOR ORDERING ACTIVITIES APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

1a. AUTHORIZED SPECIAL ITEM NUMBERS (SINs):

<u>SIN</u>	<u>DESCRIPTION</u>
33411	Purchase of New Equipment
511210	Term Software License
54151	Maintenance of Software as a Service
611420	Training Courses
54151S	Information Technology Professional Services
54151ECOM	Electronic Commerce and Subscription Services
OLM	Order-Level Materials (OLMs)

1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN: **See Price List**

1c. SERVICES OFFERED: **See Price List**

2. MAXIMUM ORDER PER SIN:

<u>SIN</u>	<u>MAXIMUM ORDER</u>
33411	\$500,000 per SIN/Order
511210	\$500,000 per SIN/Order
54151	\$500,000 per SIN/Order
611420	\$250,000 per SIN/Order
54151S	\$500,000 per SIN/Order
54151ECOM	\$500,000 per SIN/Order
OLM	\$100,000 per SIN/Order

3. MINIMUM ORDER LIMITATION: **\$100**

4. GEOGRAPHIC COVERAGE (DELIVERY AREA): **The geographic scope of this contract is the 48 contiguous states, the District of Columbia, Alaska, Hawaii and Puerto Rico**

5. POINT OF PRODUCTION: **United States**

6. BASIC DISCOUNT: **Prices listed are net, discounts have been deducted and the industrial funding fee has been added**

7. QUANTITY DISCOUNT: **See attached pricelist**

8. PROMPT PAYMENT TERMS: **Subject to the applicable provisions of this GSA Schedule, and in consideration for the services provided and license(s) granted, Order Activity shall pay to Blackboard all fees specified or otherwise required pursuant to Order Activity's order, which fees shall be non- cancelable and non-refundable and which amounts shall be due and payable within thirty (30) days following delivery of the products or services. In consideration for Contractor's performance under this Federal Supply Schedule contract, Order Activity agrees to pay Contractor all fees required by the Ordering Activities, as applicable, which fees will be due in accordance with the provisions of the relevant Ordering Activity, but in no event later than thirty (30) days after the date of an invoice from Contractor. Blackboard expressly reserves the right to change the fees payable under any Schedule with respect to any renewal of such Schedule upon expiration of its then-current term. Order Activity will pay all fees in U.S. dollars. Payments shall be sent to the address indicated on the invoice.**

9a. GOVERNMENT PURCHASE CARDS ARE ACCEPTED UP TO THE MICRO-PURCHASE THRESHOLD.

9b. GOVERNMENT PURCHASE CARDS ARE ACCEPTED ABOVE THE MICRO-PURCHASE THRESHOLD.

10. FOREIGN ITEMS: **None**

- 11a. TIME OF DELIVERY: Software is downloadable from [www.Blackboard.com](http://www.Blackboard.com), and may be done instantly. All other goods and services are delivered as negotiated with the Ordering Activity
- 11b. EXPEDITED DELIVERY: **Contact Contractor**
- 11c. OVERNIGHT AND 2-DAY DELIVERY: **Contact Contractor**
- 11d. URGENT REQUIREMENTS: **Contact Contractor**
12. F.O.B. POINT: **Destination**
- 13a. ORDERING ADDRESS: **Blackboard, Inc.  
ATTN: Contracts  
11720 Plaza America,  
11<sup>th</sup> Floor  
Reston, VA 20190**
- 13b. ORDERING PROCEDURES: **For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.**
14. PAYMENT ADDRESS: **Same as Ordering Address**
15. WARRANTY PROVISION: **Standard Commercial Warranty**
16. EXPORT PACKING CHARGES: **Not Applicable**
17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE: **Will be accepted above the micro-purchase threshold**
18. TERMS AND CONDITIONS OF RENTAL: **Not Applicable**
19. TERMS AND CONDITIONS OF INSTALLATION: **Not Applicable**
20. TERMS AND CONDITIONS OF REPAIR PARTS: **Not Applicable**
- 20a. TERMS AND CONDITIONS FOR ANY OTHER SERVICES: **Not Applicable**
21. LIST OF SERVICE AND DISTRIBUTION POINTS: **Not Applicable**
22. LIST OF PARTICIPATING DEALERS: **Not Applicable**
23. PREVENTIVE MAINTENANCE: **Not Applicable**
- 24a. SPECIAL ATTRIBUTES: **Not Applicable**
- 24b. SECTION 508 COMPLIANCE INFORMATION: <http://www.blackboard.com/accessibility.aspx>
25. DATA UNIVERSAL NUMBER SYSTEM (DUNS) NUMBER: **016131430**
26. CONTRACTOR HAS REGISTERED IN THE SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE.
27. **WARRANTY**  
**Disclaimer of Warranty.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ORDER: (A) THE OFFERINGS ARE PROVIDED "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) NEITHER

BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE OFFERINGS.

28. **INDEMNIFICATION**

**a. Indemnification by Blackboard.** In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Blackboard will indemnify, defend and hold harmless Customer, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a “Customer Indemnitee”) from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Customer Indemnitee arising out of Blackboard’s (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.

**b. Inapplicability to Infringement.** For the avoidance of doubt, the indemnification obligations set forth in this Section shall not apply to infringement, which is addressed under the Section, entitled Infringement hereof.

29. **INFRINGEMENT**

**a) Blackboard Infringement Obligations.** If any third party brings a claim against Customer alleging that the Offering infringes a U.S. or European patent or a copyright under applicable law of any jurisdiction in which Customer is using the Offering, Customer must promptly notify Blackboard in writing and make no admission in relation to such alleged infringement. Blackboard shall indemnify, defend, and settle such claim, and, at its own expense and option: (a) procure Customer the right to use the Offering, (b) modify or replace the Offering to avoid infringement; or (c) refund the applicable fee paid for the current term. To the extent permitted by 28 U.S.C. 516, Blackboard shall have the authority to defend and/or settle any such claim or action, provided that Blackboard will keep Customer informed of, and will consult with any independent legal advisors appointed by Customer at Customer’s own expense regarding the progress of such defense.

**b) Exceptions.** Blackboard shall have no liability to Customer under Section 29.1, entitled Blackboard Infringement Obligations, or otherwise for any claim or action alleging infringement based upon: (a) any use of the Offering in a manner other than as specified by Blackboard, (b) any combination of the Offering with other products, equipment, devices, software, systems or data not manufactured or provided by Blackboard to the extent such claim is directed against such combination, (c) the Customer Content, or the use of the Customer Content, or (d) any modifications or customization of the Offering by any person other than Blackboard or a Blackboard-authorized third party (any of the foregoing, separately and collectively, “Customer Matters”).

**c) EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ORDER FORM OR SCHEDULE: (A) THE OFFERINGS ARE PROVIDED “AS IS” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY**

PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE OFFERINGS.

30. These Additional Terms for GSA Schedule Customers amend the following terms and conditions, wherever occurring in the Blackboard Documents. Except as amended hereby, the Blackboard Documents shall remain in force as written.
- a) **Fees:** All references to “then-current” or “then-standard” rate, fees or prices shall mean then- current GSA Schedule contract fees, as specified in the GSA Schedule authorized pricelist
  - b) **Renewals:** All references to automatic renewal of term-limited services or fees are hereby deleted. Term-limited services, and their associated fees, shall be renewable at the Customer’s option with a contract modification or purchase order.
  - c) **Penalties:** All references to penalty fees payable by the Customer are hereby deleted. In the event of a premature termination of a term-limited service, amounts payable by the Customer shall be determined in accordance with the terms and conditions of the GSA Schedule contract GS-35F-0554M
  - d) **Termination:** Except as provided in the following sentence, the Blackboard Documents may be terminated only in accordance with the terms of the GSA Schedule contract GS-35F-0554M.
31. **CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES**  
Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity’s convenience, and (m) Termination for Cause (See C.1.)
32. **ORDER OF PRECEDENCE**  
No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of GS-35F-0554M. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either Party.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY NEW EQUIPMENT (SPECIAL  
ITEM NUMBER 33411)**

**1. MATERIAL AND WORKMANSHIP**

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

**2. ORDER**

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

**3. TRANSPORTATION OF EQUIPMENT**

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

**4. INSTALLATION AND TECHNICAL SERVICES**

a. **INSTALLATION.** When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed below, or in the price schedule:

Blackboard subcontracts integrators to installation, de-installation, re-installation Blackboard (or their partners) Security and POS solutions.

---

b. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the

Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN **33411**.

c. **OPERATING AND MAINTENANCE MANUALS.** The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

**5. INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

## 6. WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract.

- **Limited Warranty.** Subject to the Section below, entitled "Equipment Warranty Exclusion," of this Schedule Blackboard warrants, solely for the benefit of Customer, that any Equipment manufactured by Blackboard and/or sold by Blackboard which is sold to Customer under this Schedule will substantially conform to applicable Documentation for a period of twelve (12) months after the relevant Available Date, provided that: (i) Blackboard has received all amounts owed under this Agreement; and (ii) Customer is not in material breach of this Agreement; and (iii) Customer has notified Blackboard in writing of any failure of the Equipment 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 EQUIPMENT IN A TIMELY MANNER.
- **Equipment Warranty Exclusion.** Unless otherwise specified in the Pricelist, Blackboard does not warrant or provide support for any third-party Equipment sold by Blackboard. However, Blackboard shall pass through any warranty terms that it receives from such third-parties to the Customer. Customer acknowledges that it must contact the third-party Equipment manufacturer directly for any warranty or support issues related to such third-party Equipment.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. **Limitation of Liability.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows: \_\_\_\_\_

## 7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the ordering activity purchase price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

## 8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

## 9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).



**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 54151) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

**1. INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price.

The

ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

**2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)**

See GSA approved BLACKBOARD Master Agreement for All Products and Services.

**3. GUARANTEE/WARRANTY**

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

- Blackboard warrants, solely for the benefit of Order Activity, 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, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has installed any Corrections, Upgrades and Updates made available to Order Activity; and (iv) Order Activity has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD'S SOLE OBLIGATION, AND ORDER ACTIVITY'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.**

- *Applicable for Blackboard Transact Products and Services Only:* Blackboard warrants, solely for the benefit of Order Activity, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to applicable Documentation for a period of ninety (90) days after the initial Available Date, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has installed any Corrections, Upgrades and Updates made available to Order Activity; and (iv) Order Activity has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. Order Activity acknowledges that the product is not fault tolerant and is not designed, manufactured or intended by Blackboard for use in hazardous, dangerous to life or potentially life-threatening environments requiring fail-safe performance in which the failure of products could lead directly to death, personal injury or severe physical or environmental damage. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT REQUIRED BY LAW, BLACKBOARD MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION (i) ANY WARRANTY OF FITNESS FOR ANY INTENDED PURPOSE OR (ii) ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PERFORMANCE, FUNCTIONALITY OR RELIABILITY OF THE THIRD PARTY SOFTWARE USED IN CONNECTION WITH THE SOFTWARE, NOTWITHSTANDING ANY COMMUNICATIONS OUTSIDE OF THIS AGREEMENT TO THE CONTRARY. ORDER ACTIVITY FURTHER ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN**

LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD'S SOLE OBLIGATION, AND ORDER ACTIVITY'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.

EXCEPT AS EXPRESSLY PROVIDED IN ABOVE (A) THE SOFTWARE AND ANY SERVICES, INCLUDING PROCESSING SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; AND (B) NEITHER BLACKBOARD NOR ITS LICENSORS NOR ITS PROCESSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR PROVIDED THROUGH THE SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS ORDER ACTIVITY MAY HAVE, OR THAT THE SOFTWARE OR SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE

- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

#### 4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number +1-800-424-9299 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

#### 5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined: (select software maintenance type):

X

##### 1. Software Maintenance as a Product (SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self-diagnostics.

Software maintenance as a product does **NOT** include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

X

##### 2. Software Maintenance as a Service (SIN 54151)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-

**person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.**

**Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.**

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

## **6. PERIODS OF TERM LICENSES (SIN 511210) AND MAINTENANCE (SIN 54151)**

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

## **7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE**

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to \_\_N/A\_\_% of all term license payments during the period that the software was under a term license within

the ordering activity.

## **8. TERM LICENSE CESSATION**

a. After a software product has been on a continuous term license for a period of \_\_N/A\_\_ months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to

the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 132-34, if the licensee elects to order such services.

Title to the software shall remain with the Contractor.

#### **9. UTILIZATION LIMITATIONS - (SIN 511210, AND SIN 54151)**

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

#### **10. SOFTWARE CONVERSIONS - (SIN 511210 )**

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (511210), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (511210), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

**11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

**12. RIGHT-TO-COPY PRICING**

The Contractor shall insert the discounted pricing for right-to-copy licenses.

**GSA APPROVED ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF BLACKBOARD PRODUCTS FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**Additional Terms for GSA Schedule  
Customers**

**These Additional Terms for GSA Schedule Customers apply to the following Blackboard schedules, exhibits and terms of service (collectively, “Blackboard Documents”):**

**Blackboard Learn Software Schedule**

**Blackboard Learn Developer’s Network Schedule**

**Blackboard Managed Hosting Schedule, including Exhibit A: Managed Hosting Specifications and Exhibit B: Managed Hosting Services Specifications – As of the Available Date**

**Blackboard Managed Hosting Business Continuity Schedule, including Exhibit A Managed Hosting Business Continuity Services Specifications – As of the Available Date**

**Blackboard Mobile Schedule**

**Blackboard Transact and Blackboard Community System Software Schedule**

**BbONE Services Schedule, including Exhibit A: Target List Template**

**Blackboard Connect Service Schedule, including Exhibit A: Blackboard Connect Service Schedule Additional Notification Terms of Service**

**Blackboard Analytics Software Schedule, including Exhibit: Software Support; Attachment 1: Support Service Option Election and Fees; and Attachment 2: Support Times and Contacts**

**1. INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software. Blackboard’s obligation is limited to repair or replacement of the defective Software in a timely manner, provided Licensee notifies Blackboard of the deficiency within the ninety day warranty period and provided Licensee has installed all Software Updates.

Acceptance will be deemed to have occurred thirty (30) days from client receipt of the Software or upon installation, whichever occurs first.

**2. GUARANTEE/WARRANTY**

a. Unless specified otherwise in this contract, the Contractor’s standard commercial guarantee/warranty

as stated in the contract’s commercial pricelist will apply to this contract.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

- d. **EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ORDER FORM OR SCHEDULE:** (A) THE OFFERINGS ARE PROVIDED “AS IS” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE OFFERINGS.

**3. SOFTWARE MAINTENANCE**

- a. Basic software maintenance is included in the annual term license. Maintenance upgrades are available at Ordering Agency request. See pricelist for details and specific pricing.
- b. Invoices for maintenance upgrade service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**4. EXCLUSIONS**

Blackboard shall have no obligation to support:

- a. Substantially altered, damaged or modified Software;
- b. Software that is not the then-current release, or a Previous Sequential Release;
- c. Errors caused by Licensee, hardware malfunction, or other causes beyond Blackboard’s reasonable control;
- d. Software installed in a hardware or operating environment not supported by Blackboard;
- and e. Third Party Software not licensed through Blackboard.

**5. PERIODS OF TERM LICENSES (511210)**

- a. The Offeror shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. The Offeror does not commercially offer the option to discontinue term licenses and/or maintenance and therefore does not offer it in connection with this contract.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering activity’s specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

- e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

**6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE**

The Offeror does not offer conversion on a commercial basis and therefore cannot offer it in connection with this Contract.

**7. TERM LICENSE CESSATION**

The Offeror does not offer conversion on a commercial basis and therefore cannot offer it in connection with this Contract.

**8. UTILIZATION LIMITATIONS - (511210)**

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
  - (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified. In addition, Blackboard or its licensors shall have sole and exclusive ownership of any Corrections, Updates and/or Upgrades provided to Licensee for the Software pursuant to the Support and Maintenance section herein.
  - (2) Software licenses are by site and by service, bureau, division, command, etc. The software may not be used by any subdivision of the Licensee without the appropriate license. Further, the software may not be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one agency's site.
  - (3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have Blackboard's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
  - (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred upon prior written notice to Blackboard, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes.
  - (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

**9. SOFTWARE CONVERSIONS - (511210)**

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a term license (**511210**), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.



**10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

**11. RIGHT-TO-COPY PRICING**

Contractor does not offer this option on a commercial basis and therefore cannot offer it in connection with this Contract.

**These Additional Terms for GSA Schedule Customers amend the following terms and conditions, wherever occurring in the Blackboard Documents. Except as amended hereby, the Blackboard Documents shall remain in force as written.**

1. Fees: All references to “then-current” or “then-standard” rate, fees or prices shall mean then-current GSA Schedule contract fees, as specified in the GSA Schedule authorized pricelist
2. Renewals: All references to automatic renewal of term-limited services or fees are hereby deleted. Term-limited services, and their associated fees, shall be renewable at the Customer’s option with contract modification or purchase order.
3. Penalties: All references to penalty fees payable by the Customer are hereby deleted. In the event of a premature termination of a term-limited service, amounts payable by the Customer shall be determined in accordance with the terms and conditions of the GSA Schedule contract GS-35F-0554M
4. Termination: Except as provided in the following sentence, the Blackboard Documents may be terminated only in accordance with the terms of the GSA Schedule contract GS-35F-0554M. Unilateral termination by Blackboard is permitted only if: (a) the parties are unable or unwilling to modify a Campus Program to comply with applicable regulations, as provided in the section entitled “Compliance Modification” of the *BbOne* Services Schedule; or (b) as provided in the section entitled “Termination of Access to Third-Party Software” of the Blackboard Learn Developer’s Network Schedule; or (c) Order Activity materially breached the terms herein.
5. Travel and living expenses: All travel and living expenses shall be governed by the applicable Federal travel regulations and subject in all cases to approval by the Customer’s contracting officer in accordance with the proper invoicing provisions of the GSA Schedule contract GS-35F-0554M.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF  
BLACKBOARD LEARN SOFTWARE FOR GENERAL PURPOSE COMMERCIAL  
INFORMATION  
TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD LEARN™ SOFTWARE SCHEDULE**

**ADDITIONAL DEFINITIONS**

**“Blackboard Learn™ Software”** consists of the following packages, each of which is licensed separately:

- (a) **“Blackboard Learn™ for Course Delivery”** consisting of the course delivery module.
- (b) **“Blackboard Learn™ for Community Engagement”** consisting of the course delivery and community engagement modules.
- (c) **“Blackboard Learn™ for Academic Content”** consisting of the course delivery and content management modules.
- (d) **“Blackboard Learn™ for Academic Collaboration”** consisting of the course delivery, community engagement, and content management modules.
- (e) **“Blackboard Learn™ for Outcomes Assessment”** consisting of outcomes assessment.

**Higher Ed “Authorized End User” means any individual(s) who is/are:**

- (a) a student resident in a degree- or certificate- granting program of Order Activity;
- (b) a prospective student, alumni, consortia student registered to take one of Order Activity's regularly offered courses of instruction;
- (c) an employee, trustee or collaborating researcher of Order Activity;
- (d) a Order Activity employee (solely to the extent any such employee use the Software for Order Activity's internal training purposes);
- (e) non-enrolled students participating in non-revenue generating, non-credit bearing courses or community outreach programs;
- (f) not students, faculty or employees of the Order Activity participating in academic or research collaboration sponsored by Order Activity;
- (g) accessing the Software through guest access accounts or “guest” role designations;
- (h) financial, technical, or academic auditor; or
- (i) representative of certification bodies.

Order Activity's Authorized Users will not exceed Order Activity's FTE listed on the Pricing Summary. For purposes of clarification, the Authorized End Users defined in subsection e will not count toward the ten (10%) percent excess as outlined in Expansion of Licensed Use, below.

**CORPORATE/GOV “Authorized End User”-means any individual(s) who is/are:**

- (a) a Order Activity employee or enrolled in a Order Activity course or affiliate during an Initial or Renewal Term;
- (b) not students, faculty or employees of the Order Activity participating in academic or research collaboration sponsored by Order Activity;
- (c) accessing the Software through guest access accounts or “guest” role designations;
- (d) financial, technical, or academic auditor; or
- (e) representative of certification bodies.

Order Activity’s Authorized Users will not exceed Order Activity’s User Band listed on the Pricing Summary. For purposes of clarification, the Authorized End Users defined in subsection b-e will not count toward the ten (10%) percent excess as outlined in, Expansion of Licensed Use, below.

**“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.

**“Designated Server Site”** means the physical location where the Software will be installed, as identified in the Pricing Summary.

**“Pricing Summary”** means the pricing attributable to the software and services provided pursuant to the Schedule as set forth on the cover page to the Agreement.

**“Software”** means, for purposes of this Schedule only, the Blackboard Learn proprietary software, as identified in the Pricing Summary, which contains one or more of the following packages: Blackboard Learn for Course Delivery, Blackboard Learn for Community Engagement, Blackboard Learn for Academic Content, Blackboard Learn for Academic Collaboration, and Blackboard Learn for Outcomes Assessment, including Updates, Upgrades, Corrections, and Application Packs thereto. Each package is licensed separately.

**“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 Order Activity, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Order Activity’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, (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule.

**“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

**“Third-Party Software”** means the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software

**“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.

“**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.

## **LICENSE**

**Grant of License.** Subject to the terms and conditions of this Schedule and the GSA Schedule GS-35F-0554M, Blackboard grants Order Activity a limited, non-exclusive, non-transferable non-sublicenseable right and license (i) to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Order Activity’s Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Order Activity Content to Order Activity’s Authorized End Users (unless otherwise expressly stated in the special provisions of the Pricing Summary) 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, (a) 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 (b) on multiple managed nodes that are configured and deployed on a single physical host that manages the self-contained nodes. Order Activity acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Order Activity’s Authorized End Users, Order Activity will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.

**General Usage Restrictions.** Order Activity agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted above or, if applicable, any special provisions set forth on the Pricing Summary. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Order Activity shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Order Activity shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Order Activity 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 the Software is compiled or interpreted, and Order Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Order Activity any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Order Activity from configuring the Software to the extent permitted by the Software’s standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Order Activity’s rights under the license granted in above; or (vi) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Order Activity will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Order Activity add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Order Activity shall not use the Software in violation of Blackboard’s obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Order Activity of such obligation. Order Activity shall not provide access to the Software to anyone other than Authorized End Users without Blackboard’s prior written consent; provided, however, that Order Activity may provide access to *Blackboard Building Blocks*<sup>®</sup> partners that are subject to a valid Blackboard developer’s license agreement for the limited purpose of installing, maintaining and supporting their *Blackboard Building Blocks*<sup>®</sup> applications. Order Activity shall ensure that its use of the Software complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Order Activity warrants that its Authorized End Users will comply with the provisions

of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section. Order Activity 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. Under no circumstances shall Order Activity permit any third party to host the Software.

**Higher Ed Expansion of Licensed Use.** Blackboard Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE (as defined below) of licensing institution PLUS the number of Users in outside programs. Pricing is based on Order Activity's FTE. Order Activity agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. For the Software on this Schedule, a contract modification or separate purchase order will be required to document Order Activity's expanded number of FTEs, before additional fees may apply, and all additional fees will be in accordance with the GSA Schedule contract pricelist.

"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 Order Activity desires nontraditional 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 Order Activity. Notwithstanding the foregoing, the Authorized End Users defined in subsection e-i will not count toward the ten (10%) percent excess as outlined herein.

Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing. In the event of growth related to an Order Activity merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with Blackboards then-current pricing.

**Corp/Gov Expansion of Licensed Use.** Blackboard Software is priced annually based upon Order Activity's Number of Authorized End Users. Order Activity represents and warrants that the Number of Authorized End Users provided to Blackboard and set forth on the Pricing Summary is correct and accurate to the best of its knowledge and agrees that it will inform Blackboard of any increase in its Number of Authorized End Users prior to the beginning of any Renewal Term (as defined below) and a contract modification or separate purchase order will be required to document Order Activity's expanded number of Authorized End Users, before additional fees may apply, and all additional fees will be in accordance with the GSA Schedule contract pricelist Order Activity.

Authorized End User means any individual who is an Order Activity employee or enrolled in an Order Activity course or affiliate during an Initial or Renewal Term. To the extent that Order Activity desires non-traditional Authorized End Users 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 Authorized End Users number reported by Order Activity. Notwithstanding the foregoing, the Authorized End Users defined in subsection b-e will not count toward the ten (10%) percent excess as outlined herein.

Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing. In the event of growth related to an Order Activity merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with GSA Schedule contract pricelist.

## **FEES**

In consideration for the services provided and license(s) granted in this Schedule with respect to the Initial Term (as defined below), Order Activity shall pay to Blackboard all fees specified in the Pricing Summary or otherwise required in this Schedule, which fees shall be non-cancelable and non-refundable. With respect to each Renewal Term (as defined below), if any, Order Activity shall pay to Blackboard the then-current fees for such services and licenses, which amounts shall be due and payable within thirty (30) days of the date of Blackboard's invoice for such Renewal Term. Should Order Activity choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Order Activity 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. Except as otherwise required by this paragraph, all amounts payable under this Schedule shall be subject to applicable provisions of the GSA Schedule GS-35F-0554M.

## **TERM**

This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the “Schedule Effective Date”); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue in effect for a period of one (1) year (the “Initial Term”). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or purchase order for additional one (1) year terms (“Renewal Term”). Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Order Activity will: (i) immediately discontinue all use of Software licensed under this Schedule; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) remove the Software from its server and provide to Blackboard proof of the destruction of the original copy and any other copies of the Software; and (iv) return all Documentation and related training materials to Blackboard within a reasonable time at Order Activity’s cost.

## **LIMITED SOFTWARE WARRANTY**

Blackboard warrants, solely for the benefit of Order Activity, 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, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has installed any Corrections, Upgrades and Updates made available to Order Activity; and (iv) Order Activity has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD’S SOLE OBLIGATION, AND ORDER ACTIVITY’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.**

## **SUPPORT AND MAINTENANCE**

**Product Support.** Order Activity 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/supportsvcguide.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.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF  
BLACKBOARD LEARN DEVELOPER'S NETWORK FOR GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD LEARN DEVELOPER'S NETWORK**

**SCHEDULE PROGRAM DESCRIPTION**

Blackboard Inc. ("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 you 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.

**DEFINITIONS**

**"Blackboard"**

means:

(a) for a Developer downloading the Blackboard Software to an address in the United States or Canada, Blackboard Inc., a Delaware corporation with its principal place of business at 1111 19<sup>TH</sup> Street NW, Washington, DC 20036; or (b) for a Developer downloading the Blackboard Software to an address outside the United States or Canada, Blackboard International B.V., a Netherlands company.

**"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.

**"Customers"** means those persons, organizations or entities that have licensed from Blackboard one or more components of the Blackboard Software.

**"Derivative Work(s)"** shall have the meaning currently ascribed to it under the Copyright Act at 17 U.S.C. § 101 – a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which the preexisting work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".

**"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 this 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.

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

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

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

**“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.

**“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).

## **OBLIGATIONS**

**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 Schedule.

### **Blackboard Obligations**

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 below, together with Documentation to assist in developing the Developer Software.

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.

### **Developer Obligations**

Developer agrees and represents that it shall develop the Developer Software in accordance with the Purpose of this Schedule and to enable simple installation and integration of the Developer Software into the Blackboard Software, as installed by an Order Activity.

Developer shall provide its standard Order Activity support to Order Activities using and installing the Developer Software. Developer shall be solely responsible for providing all end-user support for any Developer Software.

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.

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



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 Schedule to provide consulting services that are related to the Blackboard Software and not the Developer Software.

## LICENSE

**Developers' Network Information Grant.** Solely in connection with the Purpose of this Schedule, 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 Schedule.

**Blackboard Software License Grant.** Solely in connection with the Purpose of this Schedule 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 Schedule (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.

**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 the Blackboard Software License Grant.

**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.

**No Other Rights Granted.** Apart from the licenses expressly granted in Section Developers' Network Information Grant and Blackboard Software License Grant, no license or other right is granted by Blackboard to Developer under this Schedule. 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.

**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.

**Restrictions.** Except as may be expressly permitted during the Term of this Agreement in Section Blackboard Software License Grant, 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.

## **MARKETING**

**License for Marks.** Contingent upon the requirements set forth in this Section, Blackboard grants to the Developer, for the term of this Schedule, 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 Schedule; 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 Schedule. 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 Schedule 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.

## **OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

**Ownership of Blackboard Intellectual Property.** Except as specifically set forth in this Schedule, 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 Schedule and all rights and interest to the foregoing shall remain the sole and exclusive property and proprietary information of Blackboard.

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

**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 Schedule 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 Schedule, Developer shall take all necessary action to secure on behalf of Blackboard all rights to the Derivative Works from such non-employees.

## **TERM**

**Initial Term.** The initial term of this Schedule will be one (1) year commencing on the Effective Date (the "Initial Term"). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or purchase order for additional one (1) year terms ("Renewal Term"). Thereafter, either Party may terminate this Schedule by providing written notice to the other Party no later than thirty (30) days prior to the end of such one (1) year term.

## **FEES AND PAYMENTS**

**Fees.** Developer shall pay Blackboard the annual license fee (if applicable) on the Effective Date for the first year for use of the Blackboard Software and participation in the Program and pay the then applicable amount charged by Blackboard, in its sole discretion, on the anniversary of the Effective Date for each subsequent year that the Developer uses the Blackboard Software to develop Developer Software or offers and/or supports the Developer Software for use by Order Activitys.

**Payment.** Blackboard or its subcontractor shall submit an invoice to Developer and Developer's payments shall be due and payable to the invoicing Party within thirty (30) days after receipt of the invoice. Order Activity will pay all fees in U.S. dollars, unless otherwise specified on the applicable Blackboard-issued invoice.

## **WARRANTY**

**Blackboard Warranties.** Blackboard represents and warrants that: (a) it has authorized the person who has signed this Schedule for Blackboard to execute and deliver this Schedule 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 Schedule.

**Developer Warranties.** Developer represents and warrants: (a) that it has authorized the person who has signed this Schedule for Developer to execute and deliver this Schedule 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 Schedule, 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 Schedule.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD MANAGED HOSTING FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD MANAGED HOSTING**

**SCHEDULE ADDITIONAL DEFINITIONS**

**“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 (as defined below), the initial Active User Capacity will be equal to the number indicated on Exhibit A.

**“Managed Hosting Services”** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated on Exhibit A to the Blackboard Managed Hosting Schedule.

**“Authorized End User”** will have the meaning set forth in the Software Schedule, as defined below.

**“Available Date”** means, for purposes of this Managed Hosting Schedule, the date upon which Order Activity receives notice from Blackboard that the Hosted Software is available for access by Order Activity’s Authorized End Users.

**“Hosted Software”** means the Software licensed to Order Activity pursuant to the Software Schedule for which Blackboard is to provide the Managed Hosting Services.

**“Test Copy Hosted Software”** means the Test Copy Software licensed to Order Activity 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 Exhibit A of the Managed Hosting Schedule is not covered by Service Level specifications described in Exhibit B.

**“Schedule Effective Date”** means the later of: (i) the date on which this Managed Hosting Schedule has been executed by authorized representatives of both Parties; and (ii) the Effective Date of the Agreement.

**“Software Schedule”** means the Software Schedule that has been executed by Blackboard and Order Activity for which Order Activity seeks to have Blackboard provide Managed Hosting Services, and that is in effect during the term of this Managed Hosting Schedule.

**“Staging Environment”** means that hosted additional test copy of the licensed Blackboard Software used for Order Activity to test new updates/upgrades to the Software. The staging environment may not be used for production purposes.

**BLACKBOARD RESPONSIBILITIES.**

**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 Order Activity’s Authorized End Users. Blackboard will specify to Order Activity procedures according to which Order Activity and/or its Authorized End Users may establish and obtain such access.

**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 Order Activity 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 Order Activity, or with respect to any telecommunications or computer network hardware required by Order Activity to provide access from the Internet

to any such Order Activity Web site. Nothing in this Managed Hosting Schedule shall be construed to grant to Order Activity 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 the Section Provision of Access to Hosted Software. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Schedule, Order Activity 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 Order Activity Content. As between Order Activity and Blackboard, Order Activity retains ownership of the Order Activity Content. Blackboard shall maintain the confidentiality of all Order Activity Content that is stored on its servers in accordance with the Confidentiality section of the GSA Schedule GS-35F-0554M.

**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 B; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit B. Exhibit B may be modified from time to time, upon notice to Order Activity. Notwithstanding the foregoing, Blackboard will have no liability under this Section to the extent any nonconformity with the standards set forth in Exhibit B arises, in whole or in part, from: (i) any use of the Hosted Software by Order Activity or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Order Activity or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to the section Provision of Access to Hosted Software 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 B shall be Order Activity'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 B. Blackboard does not warrant or guarantee the Managed Hosting Services except as expressly stated in this Managed Hosting Schedule.

**Data Restoration Policy.** Blackboard will back-up and archive Order Activity Content at a secure location for the retention period(s) specified in Exhibit B. In the event that Order Activity requests recovery of any lost or damaged Order Activity Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Order Activity), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Order Activity 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 Order Activity; 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, Order Activity agrees to pay Blackboard its then- standard applicable rates for such restoration services.

**Data Archiving and Cleanup Policy.** Blackboard will undertake commercially reasonable efforts to accommodate Order Activity's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Order Activity'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 Order Activity 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 Order Activity requires Blackboard to batch archive data on to a hard-drive and ship to Order Activity, Blackboard will charge \$500 for the cost of each of 320 GB hard-drive and shipping required. Order Activity may ship the hard drive back to Blackboard for reuse in the next such task, in which case Order Activity shall not be charged an additional fee.

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

**Additional Managed Hosting Services.** In the event that Order Activity desires to receive Managed Hosting Services in addition to the particular services specified in the table above, including, by way of example, incremental storage capacity and/or additional bandwidth capacity and/or higher Active User Capacity, Order Activity may submit a written and executed purchase order requesting such additional Managed Hosting Services. Subject to Order Activity's payment of all applicable fees and further subject to all applicable provisions of this Agreement, including, without limitation, the GSA Schedule GS-35F-0554M and this Managed Hosting Schedule, Blackboard agrees to make such additional Managed Hosting Services available to Order Activity for so long as this Managed Hosting Schedule remains in effect after acceptance of such purchase order. 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 Order Activity 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.

**IP Addresses.** Any IP addresses assigned or allocated to Order Activity by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable and Order Activity shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Order Activity to the Blackboard allocated addresses must be agreed to by the Parties. Order Activity understands that the IP Services provided under this Agreement (including Internet use) may require registrations and related administrative reports that are public in nature.

## **ORDER ACTIVITY RESPONSIBILITIES.**

**General Usage Limitations.** Order Activity acknowledges that use and operation of the Hosted Software by Order Activity and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding the Software Schedule, for so long as this Managed Hosting Schedule remains in effect, Order Activity may not install, host or operate the Hosted Software, nor may Order Activity 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 Order Activity has installed the Hosted Software upon any computer server(s) prior to the Schedule Effective Date (as defined below), Order Activity agrees promptly to remove the Hosted Software from such computer server(s). Order Activity 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 the IP Addresses Section. Order Activity 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. Order Activity 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. Order Activity warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

**Order Activity Content.** Order Activity represents and warrants that: (i) Order Activity owns or has sufficient rights in and to the Order Activity Content, including, without limitation, personal, educational and financial information contained within the Order Activity Content, in order to use, and permit use of, the Order Activity Content as contemplated in this Managed Hosting Schedule and to grant the license granted in Responsibility for Hosting; and (ii) the Order Activity 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. Order Activity also acknowledges that Order Activity 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 Order Activity Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. Order Activity agrees that it shall make no claim whatsoever against Blackboard relating to the Order Activity Content or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet. **When the end user is an instrumentality of the US Government, the general indemnity requirement shall not apply. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. While a dispute is pending** the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

## **FEES**

In consideration for provision of the Managed Hosting Services, Order Activity shall, during the Initial Term (as defined below) pay to Blackboard: (i) an annual fee in an amount set forth in the Pricing Summary with respect to the particular Managed Hosting Services provided under this Managed Hosting Schedule, which fees shall be due and payable upon Agreement execution; 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 Order Activity requests additional Managed Hosting Services as contemplated in Additional Managed Hosting Services, 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.

Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Order Activity'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 Service alleviate Order Activity's obligation to pay past, current, or future charges incurred hereunder. Once Order Activity pays in full the past due fees, Blackboard may resume services.

With respect to each Renewal Term (as defined below), if any, Order Activity shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Should Order Activity choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Order Activity 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. 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 GSA Schedule GS-35F-0554M.

## **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 otherwise specified in Exhibit A. Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or purchase order for additional one (1) year terms ("Renewal Term") at Blackboard's then current pricing for Order Activity'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 Initial Renewal Term or then-current Renewal Term, as applicable. Upon termination of this Managed Hosting Schedule, all licenses granted under this Managed Hosting Schedule shall immediately cease, and Order Activity 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 Order Activity's cost.

## EXHIBIT A

### MANAGED HOSTING SPECIFICATIONS

#### + **Blackboard Learn™ for Course Delivery/Community Engagement/Academic Content/ Academic Collaboration/ Outcomes Assessment: [pick the appropriate Learn package!]**

- Set Up Fee for each solution 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 for each solution includes service for up to \_\_\_\_\_Active Users \_\_\_\_\_GB of storage and \_\_\_\_\_Mbps of bandwidth measured using the 95<sup>th</sup> percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Additional storage and bandwidth for each solution are separately charged
- Additional Service Units, which include additional Active Users\*, additional bandwidth, and additional storage are separately charged.

#### + + **Blackboard Diamond Package**

- Includes hosting for Blackboard Learn™ Software
- Includes Non-Production Test Environment, Staging Environment, and Complex Hosting Manager, 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 8,000 Active Users\* and 500 GB of storage and 20 Mbps of bandwidth measured using the 95<sup>th</sup> percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- 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 (LS-Enterprise) or 100 GB additional storage (CE and Vista) are separately charged. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Non-Production Test Environment
  - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
  - Includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Order Activity full root access to servers.
  - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure
  - By its nature DOES NOT meet the Service Level specifications under Exhibit B, 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.
- Is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
- Per Order Activity request, Managed Hosting will provide up to four (4) clones of the Order Activity production data per year. This cloned data will not be backed up.
- Is designed for Order Activity 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 B applies for all Staging Environments
- Complex Hosting Technical Manager
  - Initial term annual fee includes service of X% CHM
  - A Complex Hosting Manager is a Project Manager and Technical Specialist whose resources can be purchased such that the time a CHM dedicates to a client is in line with the individual needs of that client. For example, a client can purchase a 25%, 50%, 75%, or 100% CHM. A 25% CHM will have up to four (4) clients total and will spend 25% of their time dedicated to each one. A 50% CHM will have up to two (2) clients and will spend 50% of their time dedicated to each, and so forth.
  - Roles and responsibilities of the Blackboard Complex Hosting Manager (“CHM”) will primarily fall under the following three objectives: management, communication and documentation.

A. **Management** – Plan and project manage Order Activity’s Managed Hosting infrastructure implementation, growth, and planned and reactive changes. To meet this objective, the CHM’s tasks may include, but not be limited to, the following:

- **Central Point of Contact and Escalation:** The CHM will be the central point-of-contact within Blackboard Managed Hosting CHM Services and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Order Activity’s hosted environment
- **Infrastructure Management:** Plan and manage projects involving Order Activity’s infrastructure for scalability, optimal performance, and growth in coordination with Order Activity and all elements within Blackboard
- **Internal Blackboard Delivery Coordination:** Coordinate with Blackboard Global Services Project Management, Developers, and Order Activity’s Technical Support Manager in Managed Hosting CHM Services, and Managed Hosting Operations and Engineering and other elements of Blackboard to deliver and manage Order Activity’s requirements
- **Managed Hosting Support Activities:** Support directly the hosted Blackboard application and infrastructure through:
  - Direct Managed Hosting ticket escalation management and documentation

- Development support activities focused on impact analysis and evaluation based on updates and upgrades
- **Infrastructure Expansion:** Modify and order hardware when necessary in coordination with Order Activity
- **Infrastructure and Software Upgrade Management:** Design and implement Managed Hosting testing and/or staging in coordination with Order Activity as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another, upgrading application servers)
- **Auditing:** Regularly conduct systems audit and analysis on Order Activity's Managed Hosting environment's performance and utilization for proactive monitoring, infrastructure management, forecasting and reporting purposes
- **Order Activity Business Planning Integration:** Keep master schedule of Order Activity'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 Order Activity support (with a special focus on providing transparency and visibility into the purchased Managed Hosting services and change management). To meet this objective, the CHM's tasks may include, but not be limited to, the following:

- **Contact:** Be fully dedicated to Order Activity's Systems Administrators and Operations staff through a dedicated phone number for day-to-day Managed Hosting support requests and status reporting
- **Project Communication:** Build two-way communication processes in coordination with Order Activity for project management, support issue 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
- **On-site Support:** CHM will make two on-site visits within the one year contract period.

C. **Documentation** - Document and report on Order Activity's Managed Hosting infrastructure, projects status, escalation issues, and other Order Activity Managed Hosting environment-relevant knowledge. Complete and thorough documentation will be a key aspect of meeting the management and communications objectives of the CHM. As such, the CHM will provide the following documents during the life of the relationship between the CHM and Order Activity:

- **Operations and Plans:** Develop detailed documents including Escalation process, Operations Handbook, Infrastructure test and implementation plans
- **Regular Status Reporting:** Document and provide weekly reports to Order Activity on all project plans and updates
- **Infrastructure Reporting:** Document and provide monthly updated reports to Order Activity on Infrastructure design, hardware inventory, monitoring and management infrastructure, change management logs and other relevant materials

- **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:** Provide monthly reports (and as often as necessary to manage system stability) on system utilization and performance, including MRTG graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Order Activity, a standard set of reporting for overall systems management.

#### **+ + Blackboard Platinum Package**

- Includes hosting for Blackboard Learn™ Software
- Includes Non-Production Test Environment, described below.
- During major upgrade periods, this also includes Non-Production Staging Environment and a Platinum Project Manager, each 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 8,000 Active Users\* and 500 GB of storage and 20 Mbps of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- 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 1Mbps bandwidth and 100 GB additional storage (LS-Enterprise) or 100 GB additional storage (CE and Vista) are separately charged. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Non-Production Test Environment
  - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
  - Includes 20 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Order Activity full root access to servers.
  - Is not designed to fully replicate or clone the production environment in terms of physical infrastructure
  - By its nature DOES NOT meet the Service Level specifications under Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.
- Staging Environment, available during major upgrade periods only
  - Includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's production environment.
  - Includes 100 GB of storage

- Is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
- Per Order Activity request, Managed Hosting will provide up to four (4) clones of the Order Activity production data per year. This cloned data will not be backed up.
- Is designed for Order Activity 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 B applies for all Staging Environments.
- The Platinum Project Manager is a proactive relationship manager whose primary goal is to manage the Order Activity's upgrade period(s) from the Managed Hosting side. He/ she will work as a single point-of- contact for all major upgrades.

### **Business Objectives of the Platinum PM**

#### **(PPM): A. Management**

- **Central Point of Contact and Escalation:** The PPM will be the central point-of-contact within Blackboard Managed Hosting Services during the upgrade period, lasting no longer than three months per upgrade with no more than two major upgrades during a year term.
- **Internal Blackboard Delivery Coordination:** Coordinate with Blackboard Global Services Project Management, Developers, Order Activity's Technical Support Manager in Managed Hosting, Managed Hosting Operations, Engineering, and other elements of Blackboard to deliver and manage Order Activity's requirements during the upgrade periods.
- **Infrastructure and Software Upgrade Management:** Design and implement Managed Hosting testing and/or staging in coordination with Order Activity as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another, upgrading application servers).

#### **B. Communication**

- **Contact:** Be dedicated to Order Activity's Systems Administrators and Operations staff through a dedicated phone number/ email/ Instant Messenger (or other contact method) for day- to-day Managed Hosting upgrade project status reporting.
- **Project Communication:** Build pro-active, two-way communication processes in coordination with Order Activity for upgrade project management, support issue escalation, and other communication procedures as necessary.
- **Regular Reporting:** Coordinate and facilitate regularly scheduled (weekly or bi-weekly) and ad- hoc project and status update meetings surrounding the upgrade project.

#### **C. Documentation**

- **Upgrade Project Planning and Regular Status Reporting:** Document upgrade project plans with milestones, timelines, and resource requirements. Provide weekly updates to Order Activity on status of the project plan until the upgrade has completed successfully with the Order Activity's approval for project closure.

**+ Blackboard Non-Production Test Environment per solution:**

- Test environments are designed to handle twenty (20) or less concurrent users and is not to be used for Production purposes
- Initial Term is a minimum of twelve (12) months and renew 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 installation of Test Copy Hosted Software on computer servers and systems in Blackboard’s non-production environment.
- Initial Term Fee includes 20 GB of server storage and burstable bandwidth provided through Blackboard’s broadband connection, and grants Order Activity full root access to servers.
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Test Environment by its nature DOES NOT meet the Service Level specifications under Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.

**Blackboard Non-Production Test Environment (for use as LDAP failover server by Order Activity) per solution:**

- Test environments are designed to handle twenty (20) or less concurrent users and is not to be used for Production purposes
- Initial Term is a minimum of twelve (12) months and renew 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 installation of Red Hat Linux OS and availability of a server to be used by Order Activity for LDAP failover.
- Order Activity is solely responsible for setting up the server as Order Activity’s LDAP failover server, including the installation and maintenance of Order Activity’s LDAP application.
- Initial Term Fee includes 20 GB of server storage and burstable bandwidth provided through Blackboard’s broadband connection, and grants Order Activity full root access to servers.
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Test Environment by its nature DOES NOT meet the Service Level specifications under Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.

**+ Blackboard Staging Environment per solution:**

- 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 installation of Test Copy Hosted Software on computer servers and systems in Blackboard’s production environment.

- Initial Term Fee includes 20 GB of storage and 1 Mbps of bandwidth measured using the 95th percentile calculation (as defined above) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- The Staging Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure.
- Per Order Activity request, Managed Hosting will provide up to four (4) clones of the Order Activity production data per year. This cloned data will not be backed up.
- The Staging Environment is designed for Order Activity 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.
- The Staging Environment, when sold with the Platinum Package, is only available during major upgrade periods.
- 99.7% Availability guarantee as described in Service Level specifications in Exhibit B applies for all Staging Environments.

**+ Blackboard High Availability/High Performance Managed Hosting Service per solution:**

- Oracle RAC clustered database nodes configuration pointing to a separate Order Activity-dedicated RAID-4 protected storage volumes for redundant and load balanced database servers configuration.
- Oracle RAC license included
- Minimum of two (2) dedicated database servers as database nodes
- Includes point-in-time database backup and restore capability.

**+ Complex Hosting Technical Manager per solution:**

- Initial term annual fee includes service of X% CHM
- A Complex Hosting Manager is a Project Manager and Technical Specialist whose resources can be purchased such that the time a CHM dedicates to a client is in line with the individual needs of that client. For example, a client can purchase a 25%, 50%, 75%, or 100% CHM. A 25% CHM will have up to four (4) clients total and will spend 25% of their time dedicated to each one. A 50% CHM will have up to two (2) clients and will spend 50% of their time dedicated to each, and so forth.
- Roles and responsibilities of the Blackboard Complex Hosting Manager (“CHM”) will primarily fall under the following three objectives: management, communication and documentation.
- The Platinum Project Manager – formerly called the CHM for Platinum Package clients –is only available during major upgrade periods, as necessary

**A. Management** – Plan and project manage Order Activity’s Managed Hosting infrastructure implementation, growth, and planned and reactive changes. To meet this objective, the CHM’s tasks may include, but not be limited to, the following:

- **Central Point of Contact and Escalation:** The CHM will be the central point-of-contact within Blackboard Managed Hosting CHM Services and maintain day-to-day knowledge of all plans, activities, and status of projects and issues involving Order Activity’s hosted environment

- **Infrastructure Management:** Plan and manage projects involving Order Activity’s infrastructure for scalability, optimal performance, and growth in coordination with Order Activity and all elements within Blackboard
- **Internal Blackboard Delivery Coordination:** Coordinate with Blackboard Global Services Project Management, Developers, and Order Activity’s Technical Support Manager in Managed Hosting CHM Services, and Managed Hosting Operations and Engineering and other elements of Blackboard to deliver and manage Order Activity’s requirements
- **Managed Hosting Support Activities:** Support directly the hosted Blackboard application and infrastructure through:
  - Direct Managed Hosting ticket escalation management and documentation
  - Development support activities focused on impact analysis and evaluation based on updates and upgrades
- **Infrastructure Expansion:** Modify and order hardware when necessary in coordination with Order Activity
- **Infrastructure and Software Upgrade Management:** Design and implement Managed Hosting testing and/or staging in coordination with Order Activity as necessary for testing and evaluation purposes (examples: upgrading from one Blackboard version to another, upgrading application servers)
- **Auditing:** Regularly conduct systems audit and analysis on Order Activity’s Managed Hosting environment’s performance and utilization for proactive monitoring, infrastructure management, forecasting and reporting purposes
- **Order Activity Business Planning Integration:** Keep master schedule of Order Activity’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 Order Activity support (with a special focus on providing transparency and visibility into the purchased Managed Hosting services and change management). To meet this objective, the CHM’s tasks may include, but not be limited to, the following:

- **Contact:** Be fully dedicated to Order Activity’s Systems Administrators and Operations staff through a dedicated phone number for day-to-day Managed Hosting support requests and status reporting
- **Project Communication:** Build two-way communication processes in coordination with Order Activity for project management, support issue 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
- **On-site Support:** CHM will make two on-site visits within the one year contract period.

**C. Documentation** - Document and report on Order Activity’s Managed Hosting infrastructure, projects status, escalation issues, and other Order Activity Managed Hosting environment-relevant knowledge. Complete and thorough documentation will be a key aspect of meeting the management and communications

objectives of the CHM. As such, the CHM will provide the following documents during the life of the relationship between the CHM and Order Activity:

- **Operations and Plans:** Develop detailed documents including Escalation process, Operations Handbook, Infrastructure test and implementation plans
- **Regular Status Reporting:** Document and provide weekly reports to Order Activity on all project plans and updates
- **Infrastructure Reporting:** Document and provide monthly updated reports to Order Activity on Infrastructure design, hardware inventory, monitoring and management infrastructure, change management logs and other relevant materials
- **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:** Provide monthly reports (and as often as necessary to manage system stability) on system utilization and performance, including MRTG graphs, user activities summaries, and systems performance analysis. Goal will be to develop, mutually with Order Activity, a standard set of reporting for overall systems management.

**+ 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 Order Activity 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, Order Activity must have SSL software enabled.
- As an optional service, Blackboard offers Software-based Secure Socket Layer (SSL) to Order Activity for added security to Order Activity's data transmission. Order Activity 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 Order Activity at the then-standard applicable rates.

**+ Virtual Private Network -- setup fee plus annual fee that is separately charged per solution:**

- As an optional service, Blackboard offers a Virtual Private Network (VPN) service, which is a point to point virtual network tunneling and data encryption technology that allows the passing of sensitive information over public networks while protecting the data from being intercepted by a third party. Blackboard hosts VPN devices in Blackboard's facility and manages the VPN encryption tunnel between the Blackboard datacenter and Order Activity-designated site. Blackboard will ship to Order Activity VPN hardware which sits in front of the snapshot controller and encrypts all information coming from Blackboard to Order Activity's servers.
- Order Activity is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Order Activity with documentation to be used with the VPN hardware installation process. Order Activity will receive standard Product Support as specified in the Agreements. Upon the request of the Order Activity, Blackboard may send a Technical Consultant to assist in the



installation of the VPN hardware. The Technical Consultant will be provided at the then current Blackboard rates, including time and materials.

- Order Activity will be charged a one-time set up fee and annual recurring charge at the then-standard applicable rates for this optional service.

#### + **Virtual Private Network for Blackboard Analytics for Learn:**

- As an optional service, Blackboard offers a Virtual Private Network (VPN) service, which is a point to point virtual network tunneling and data encryption technology that allows the passing of sensitive information over public networks while protecting the data from being intercepted by a third party. Blackboard hosts VPN devices in Blackboard's facility and manages the VPN encryption tunnel between the Blackboard datacenter and Order Activity-designated site. Blackboard will ship to Order Activity VPN hardware which sits in front of the snapshot controller and encrypts all information coming from Blackboard to Order Activity's servers.
- Order Activity is responsible for installing the configured VPN hardware to their existing network. Blackboard will provide the Order Activity with documentation to be used with the VPN hardware installation process. Order Activity will receive standard Product Support as specified in the Agreements. Upon the request of the Order Activity, Blackboard may send a Technical Consultant to assist in the installation of the VPN hardware. The Technical Consultant will be provided at the then current Blackboard rates, including time and materials.

#### + **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 renew 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 Order Activity 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 Test Environment by its nature DOES NOT meet the Service Level specifications under Exhibit B, 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

**\*95<sup>th</sup> Percentile calculation – 95<sup>th</sup> 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.**

## EXHIBIT B

### MANAGED HOSTING SERVICES SPECIFICATIONS- As of the Available Date

**NOTE: ORDER ACTIVITY ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT B CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE MANAGED HOSTING SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE GSA SCHEDULE GS-35F-0554M, AS APPLICABLE.**

#### *SERVICE LEVEL Security:*

- Single point of entry to co-location is guarded 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-hour battery backup (industry standard only 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 Order Activity server(s). This includes but not limited to, 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 Order Activity from the hosting site within ten (10) business days after execution of the applicable Order Form, provided that Order Activity 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 Order Activity 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 Order Activity 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 Hosted 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 Order Activity reaches the external firewall of the Blackboard datacenter environment and ending when the first packet of data

responding to such transmission leaves the external firewall of the Blackboard datacenter environment. Latency measurements will not be measured during scheduled Maintenance windows. Host Latency excludes any latency incurred on the Order Activity site or when traversing the internet between the Order Activity site and the Blackboard datacenter environment. Upon Order Activity'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:**

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

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

***Availability/Service Credit:***

**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 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, Order Activity will be eligible to receive service credits as outlined below. Such service credits shall be Order Activity's sole remedy for failure to meet the applicable targeted uptime. In order to receive any service credit, Order Activity must notify Blackboard within seven (7) days from the time Order Activity becomes eligible to receive a service credit, which is the end of each calendar month. Failure to comply with this requirement will forfeit Order Activity's right to receive a service credit. In order to be eligible, Order Activity 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 Order Activity for any and all downtime periods and performance problems during any given calendar month shall not exceed the fees for one month of service.

**Length of Unavailability (per calendar month)**

**Service Credit**

<b>1 to 4 hours of aggregate unavailability below 99.7%</b>	<b>1 day of service fees credited (i.e., 1/30 monthly fees)</b>
<b>4 to 48 hours of aggregate unavailability below 99.7%</b>	<b>2 days of services fees credited (i.e.,1/15* monthly fees)</b>
<b>48 to 96 hours of aggregate unavailability below 99.7%</b>	<b>5 days of service fees credited (i.e., 1/6 * monthly fees)</b>

\*Each block of 96 hours of aggregate unavailability thereafter shall be credited 5 days of service fees.

\*All Service Credit shall be applied to the next period's Managed Hosting fees.

**Enhanced Service Levels (99.9%):**

If Order Activity meets the following requirements, Order Activity 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. Order Activity 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. Order Activity'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. Order Activity is currently subscribed to Integration and Customization Maintenance (ICM) Service from Blackboard Consulting for supporting any SIS integration between the Hosted Software and Order Activity'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 Order Activity meets the following requirements, Order Activity 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. Order Activity 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. Order Activity'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 Order Activity 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 Order Activity'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 Order Activity.

Following recovery from any System Outage, Blackboard will provide Order Activity 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 Order Activity via [www.behind.blackboard.com](http://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 Order Activity, Blackboard will provide Order Activity with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month.

Order Activity acknowledges and agrees that any reports provided by Blackboard to Order Activity 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 Order Activity 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 Order Activity-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 68¼F, plus or minus 2¼F, 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 Order Activity is eligible for enhanced service levels as set forth above).

### **ORDER ACTIVITY RESPONSIBILITIES**

Blackboard is not responsible for management and actual use of the features and function of the Hosted Software by

Order Activity. Order Activity 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 Order Activities are assigned a URL that reads `http://institutionname.blackboard.com`. The institution is allowed to pick the “institution name”. However, any re-directs to other URLs are the responsibility of Order Activity and not Blackboard. For example, if the Order Activity chooses the URL `http://institutionname.org`, Order Activity is responsible for the redirect to the `http://institutionname.blackboard.com` site using a CNAME record. Any IP addresses allocated by Blackboard to Order Activity are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

### **BUILDING BLOCKS POLICY**

If Order Activity has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to implement a Building Block, Blackboard recommends that Order Activity take the following steps before installing a Building Block on a production system: 1) apply and thoroughly test all Building Blocks in Order Activity’s test/development environment prior to implementing the Building Block in the production environment; and 2) before requesting an update/upgrade to Blackboard on Order Activity’s production environment, contact the vendor of the Building Block or check the Building Blocks Catalog to ensure that Order Activity has the latest version prior to upgrading Order Activity’s Hosted Software. If an issue arises with Order Activity’s Hosted Software, the Blackboard Managed Hosting Service support team will work with Order Activity 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.

**BLACKBOARD MANAGED HOSTING BUSINESS CONTINUITY  
SCHEDULE**

**ADDITIONAL  
DEFINITIONS**

**“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. This is the maximum number of users that the backup site must be able to support during a disaster period.

**“Managed Hosting Services”** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated in the table above.

**“Authorized End User”** will have the meaning set forth in the Software Schedule, as defined below.

**“Available Date”** means, for purposes of this Managed Hosting Business Continuity Schedule, the date upon which Order Activity hosting the primary Blackboard production environment locally (“a locally-hosted Order Activity”) receives notice from Blackboard that the Business Continuity environment is up and ready to support Order Activity during a disaster period. For Order Activity hosting the primary Blackboard production environment with Managed Hosting Services (“Managed Hosting-hosted Order Activity”), this will be the time that the disaster recovery site is up and ready to support a disaster period.

**“Business Continuity Service”** is a disaster recovery service provided by Blackboard and means network environment and Order Activity-dedicated equipment that come on line within the Service Level specifications described in Exhibit A when Order Activity’s primary hosting environment in a physically separate location – whether hosted by Blackboard or locally hosted by Order Activity – fails. Failure is understood to be a catastrophic failure at the hosted site. Order Activity must have executed a Blackboard Software Schedule to receive this Business Continuity Service.

**“Schedule Effective Date”** means the later of (i) the date on which this Managed Hosting Business Continuity Schedule has been executed by authorized representatives of both Parties and (ii) the Effective Date of the Agreement.

**BLACKBOARD**

**RESPONSIBILITIES Provision of**

**Access to Hosted Software.**

In cases where Order Activity is locally hosting the primary site: Once the Order Activity has contacted

Blackboard Managed Hosting to notify them of a disaster scenario, Blackboard will bring up the backup site as per the defined RTO and RPO (see Exhibit A). At that point, Blackboard will make access to the features and functions of the Hosted Software available to Order Activity’s Authorized End Users. Blackboard will specify to Order Activity procedures according to which Order Activity should contact Blackboard in the event of a disaster.

In cases where Blackboard Managed Hosting is hosting the primary site: Once Blackboard has determined that a disaster scenario has occurred; Blackboard will bring up the backup site as per the defined RTO and RPO (see Exhibit A). At that point, Blackboard will make access to the features and functions of the Hosted Software available to Order Activity’s Authorized End Users. Blackboard will specify to Order Activity procedures according to which Order Activity should contact Blackboard in the event of a disaster.



**Responsibility for Hosting During Disaster Period.** 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 Order Activity Content for purposes of access by the Hosted Software, provided that nothing in this Managed Hosting Business Continuity 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 Order Activity, or with respect to any telecommunications or computer network hardware required by Order Activity to provide access from the Internet to any such Order Activity Web site. Nothing in this Managed Hosting Business Continuity Schedule shall be construed to grant to Order Activity 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 Provision of Access to Hosted Software. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Business Continuity Schedule, Order Activity 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 Order Activity Content. As between Order Activity and Blackboard, Order Activity retains ownership of the Order Activity Content. Blackboard shall maintain the confidentiality of all Order Activity Content that is stored on its servers in accordance with the Confidentiality terms of the GSA Schedule GS-35F-0554M.

**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 Business Continuity Schedule remains in effect the Managed Hosting Services provided pursuant to this Managed Hosting Business Continuity Schedule will (i) be available and accessible as contemplated in this Managed Hosting Business Continuity 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, upon notice to Order Activity. Notwithstanding the foregoing, Blackboard will have no liability under this Section 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 Order Activity or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Order Activity or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to Provision of Access to Hosted Software of this Managed Hosting Business Continuity 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 Order Activity's sole remedy, and Blackboard's sole obligation, with respect to failures of the Managed Hosting Business Continuity Services to meet the technical specifications and performance parameters set forth in Exhibit A. Blackboard does not warrant or guarantee the Managed Hosting Business Continuity Services except as expressly stated in this Managed Hosting Schedule.

**Data Restoration Policy.** Once Business Continuity Service comes online and while the Business Continuity environment is active, Blackboard will back-up and archive Order Activity Content at a secure location for the retention period(s) specified in Exhibit A. In the event that Order Activity requests recovery of any lost or damaged Order Activity Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Order Activity), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Order Activity 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 Order Activity; 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, Order Activity agrees to pay Blackboard its then- standard applicable rates for such restoration services.

**IP Addresses.** Any IP addresses assigned or allocated to Order Activity by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable and Order Activity shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Order Activity to the Blackboard allocated addresses must be agreed to by the Parties. Order Activity understands that the IP Services provided under this Agreement (including Internet use) may require registrations and related administrative reports that are public in nature.

## **Reverse-DR.**

In cases where Order Activity is locally hosting the primary site: Once the disaster is over, and the Order Activity is ready to bring up their production site, Blackboard Managed Hosting will provide disk backups of all client data. However, it is up to the Order Activity themselves to bring up their production site. Managed Hosting is not responsible for bringing up the production site.

In cases where Blackboard Managed Hosting is hosting the primary site: Once the disaster is over, Blackboard Managed Hosting will be responsible for bringing up the primary site again, should they decide to do so. They may also decide to continue using the backup as the production site and use the newly brought up disaster site as the backup.

## **ORDER ACTIVITY RESPONSIBILITIES**

**General Usage Limitations.** Order Activity acknowledges that use and operation of the Hosted Software by Order Activity and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding the Software Schedule, for so long as this Managed Hosting Schedule remains in effect, Order Activity may not install, host or operate the Hosted Software, nor may Order Activity or its Authorized End Users otherwise use the Hosted Software, except as hosted and made available by Blackboard under this Agreement. Order Activity 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. Order Activity 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. Order Activity 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. Order Activity warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Business Continuity Schedule in all respects.

**Order Activity Content.** Order Activity represents and warrants that (i) Order Activity owns or has sufficient rights

in and to the Order Activity Content, including, without limitation, personal, educational and financial information contained within the Order Activity Content, in order to use, and permit use of, the Order Activity Content as contemplated in this Managed Hosting Schedule and to grant the license granted ; and (ii) the Order Activity 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. Order Activity also acknowledges that Order Activity 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 Order Activity Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. **When the end user is an instrumentality of the US Government, the general indemnity requirement shall not apply. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. While a dispute is pending** the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**Provision of Data, Order Activity Content and Customization and Configuration files.** In cases where Order Activity is locally hosting the primary site, Order Activity is responsible for providing Blackboard through a pre-established, mutually agreed process between Order Activity and Blackboard, all data, Order Activity Content and Customization and Configuration Files that Blackboard will back up on Business Continuity Service in accordance with the service specifications stated under Business Continuity Service Guarantees in Exhibit A. Failure on Order Activity's part to provide this information will release Blackboard from any obligation or liability pursuant to this Managed Hosting Business Continuity Schedule.

### **Domain Name System (DNS).**

In cases where Order Activity is locally hosting the primary site, it is the responsibility of Order Activity to ensure that either they communicate a separate URL for the backup site, or that a redirect page has been established to send users to the backup site. It is not the responsibility of Blackboard Managed Hosting to ensure that Order Activity has notified its Authorized End Users of a new address and IP address for the Blackboard site.

In cases where Blackboard is hosting the primary site, Blackboard will handle all DNS issues and redirect Order Activity's Authorized End-Users automatically to the new site.

### **FEES**

In consideration for provision of the Managed Hosting Business Continuity Services, Order Activity shall, during the Initial Term (as defined below) pay to Blackboard (i) the set up fee, (ii) an annual fee in an amount set forth above with respect to the particular Managed Hosting Services provided under this Managed Hosting Business Continuity Schedule, which fees shall be due and payable upon Agreement execution; as well as (iii) any other fees otherwise required by this Managed Hosting Business Continuity Schedule (for additional services, additional bandwidth, or additional users). In the event that the Business Continuity Service comes on line, Blackboard will operate the Service

30 days from the first activation day. For locally-hosted Order Activity, if Order Activity desires Blackboard to continue to maintain the service on line after the initial 30 days, Order Activity must pay the then-current monthly recurring charge for the Managed Hosting Service. In the event that Order Activity requests additional Managed Hosting Services as contemplated above, 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 Business Continuity Schedule shall be non-cancelable and non-refundable.

Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Order Activity's account becomes more than sixty (60) days past due. Suspension of Managed Hosting Services does not constitute a termination or suspension of this Agreement nor does such suspension of Service alleviate Order Activity's obligation to pay past, current, or future charges incurred hereunder. Once Order Activity pays in full the past due fees, Blackboard will resume services.

With respect to each Renewal Term (as defined below), if any, Order Activity shall pay to Blackboard the then-current fees for such Managed Hosting Business Continuity Services upon commencement of the Renewal Term. Should Order Activity choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Order Activity 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. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Managed Hosting Business Continuity 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 Business Continuity Schedule shall be subject to applicable provisions of the GSA Schedule GS-35F-0554M.

### **TERM**

This Managed Hosting Business Continuity Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of one (1) year (the "Initial Term"). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for successive one (1)-year periods (each, a "Renewal Term"). Upon termination of this Managed Hosting Business Continuity Schedule, all licenses granted under this Managed Hosting Business Continuity Schedule shall immediately cease, and Order Activity will (i) pay to Blackboard all amounts due and payable under this Managed Hosting Business Continuity Schedule; and (ii) return all Documentation and related training materials to Blackboard within a reasonable time at Order Activity's cost.

## EXHIBIT A

### MANAGED HOSTING BUSINESS CONTINUITY SERVICES SPECIFICATIONS- As of the Available Date

**NOTE: ORDER ACTIVITY ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT A CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE Managed Hosting SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE GSA SCHEDULE GS-35F-0554M, AS APPLICABLE.**

#### *SERVICE LEVEL Security:*

- Single point of entry to co-location is guarded 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-hour battery backup (industry standard only 15 minutes), and diesel generator with full-load capability and 18 hr. 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 backup site. This includes but not limited to, 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

#### *Business Continuity Service Guarantees:*

**Disaster Recovery Environment in stand-by in Blackboard's XX datacenter to back up the Order Activity's Production Environment in Order Activity's / Managed Hosting's XX datacenter.**

**Blackboard provides the following levels of Business Continuity Service guarantees. Order Activity will receive service guarantees in accordance to the level that Order Activity has subscribed:**

	<b>OS/Database Environment</b>	<b>Recovery Time Objective (RTO)</b>	<b>Recovery Point Objective (RPO)</b>	<b>Customization &amp; Configuration</b>
<b>Blackboard Managed Hosting</b>	<b>Windows/SQL or</b>			
<b>– hosted or Order Activity Locally hosted Production Environment</b>	<b>Linux/Oracle or Solaris/Oracle or other</b>	<b>XX hours</b>	<b>XX hours</b>	<b>Fully backed up or rebuild</b>

- Recovery Time Objective (RTO) is defined as the time it takes from Blackboard being notified of the loss of the business function of the primary site to activation of the Business Continuity Service.
- Recovery Point Objective (RPO) is defined as the specific point-in-time that the data was backed up and can be recovered.
- Customization is limited to any customizations made to Order Activity’s Hosted Software for which Order Activity has notified Blackboard and has given Blackboard the permission to backup and store. Similarly, configuration is limited to any and all hardware and software configuration files that Order Activity has given Blackboard the permission to backup and store (in the case of Order Activity-hosted primary site).
- In addition to the above Service Guarantees, Blackboard may make available at Order Activity’s request, a detailed data backup time and date report.
- Blackboard will also perform a disaster recovery test once a year at a time coordinated with Order Activity in order to ensure the readiness of the Business Continuity Service.
- The RTO only covers the time that it takes for the Blackboard application to become available to Order Activity. In cases where Order Activity is locally hosting the primary site, the RTO does not cover the time it takes for Order Activity to let Authorized End-Users know what the backup URL is or adjust their DNS configurations.

***Service Credit:***

If Blackboard fails to meet the RTO and RPO service guarantee time frames, Blackboard will issue service credits to Order Activity to be applied against future Blackboard Managed Hosting service fees. In order to receive any service credit, Order Activity must notify Blackboard within seven (7) days from the time Order Activity becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Order Activity's right to receive a service credit. Service credits are issued as followed and shall be Order Activity’s sole remedy for failure to meet the foregoing service levels:

<b><u>Length of Unavailability</u></b>	<b><u>Service Credit*</u></b>
<b>Up to 12 hours beyond the guaranteed RTO and/or RPO Continuity service fees credited</b>	<b>50% of annual Business</b>
<b>Between 12 to 24 hours beyond the guaranteed RTO and/or RPO Continuity service fees credited</b>	<b>75% of annual Business</b>
<b>Above 24 hours beyond the guaranteed RTO and/or RPO continuity service fees credited</b>	<b>100% of annual Business</b>

\*All Service Credit shall be applied to the next period’s Managed Hosting fees.

\*Total Business Continuity Service Credit in any term is limited to the full amount of the annual Business Continuity service fees.

### ***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 the client 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.
- 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 Order Activity-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 68¼F, plus or minus 2¼F, with humidity of 45%.

#### **Environment Setup:**

Production environments are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and minimum of 99.7% uptime.

### **ORDER ACTIVITY RESPONSIBILITIES**

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

- The Order Activity has full access to the Administrator Menu and is responsible for the following:
  - Creating/Removing Users including Students, Teachers, System Administrators, etc.
  - Modifying all 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 clients 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 the Order Activity and not Blackboard. For example, if the Order Activity chooses the URL `http://institutionname.org`, the institution is responsible for the redirect to the `http://institutionname.blackboard.com` site using a CNAME record. Any IP addresses are allocated by Blackboard to Order Activity are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD MOBILE FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD MOBILE SCHEDULE BLACKBOARD MOBILE SERVICE**

**Service.** In consideration for the applicable fees, Blackboard shall provide the Order Activity with the use of the selected Blackboard Mobile Service(s) for Order Activity's institution. Upon execution of this Schedule, Blackboard shall provide Order Activity's designated representative with access to one or more of the Blackboard Mobile service team members who will be responsible for providing Order Activity with the support services (the "Support Services") associated with the selected Blackboard Mobile Services.

**Distribution of User Software.** Subject to the terms and conditions of this Schedule and the GSA Schedule GS-35F-0554M, Blackboard grants Order Activity a limited, non-exclusive, non-transferable, right during the Term to distribute any User Software produced through the Support Services to be used in conjunction with the Central Service for non-commercial use. Promotion and distribution of the User Software is the responsibility of Order Activity. Distribution of the User Software by Order Activity 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 Order Activity in writing.

**Order Activity's Obligations.** Order Activity is responsible for promptly providing and maintaining Order Activity Data feeds to the Central Service for each of the Licensed Modules which Order Activity has selected for the User Software in formats which are compatible with the Central Service. Order Activity is responsible for maintaining Order Activity Applications, Order Activity Systems and Order Activity Data and promoting and distributing Order Activity Applications, User Software, Updates and Upgrades to End Users via Order Activity's distribution channels such as Order Activity's Apple App Store page. Order Activity will designate a qualified individual to serve as Order Activity's support contact with Blackboard for maintenance and support issues, requests and inquiries ("Site Administrator"). Order Activity may change its Site Administrator at any time by providing written notice to Blackboard. Order Activity 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. Blackboard will not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

**Term.** This Schedule shall become effective when executed by authorized representatives of both Parties (the "Schedule Effective Date"); and shall continue in effect for the initial term stated in the applicable Order Form (the "Initial Term"), unless earlier terminated in accordance with the termination provisions of the Agreement. Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for additional one (1) year terms ("Renewal Term"). Upon termination of this Schedule, the Blackboard Mobile Services shall cease and all licenses granted under this Schedule shall immediately cease, and Order Activity will: (i) immediately discontinue use of the Blackboard Mobile Services; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) delete any copies of the User Software from its server or other locations such as the Order Activity's Apple App Store page, and provide to Blackboard proof of the destruction of the original copy and any other copies of the User Software; and (iv) return all documentation and related training materials to Blackboard within a reasonable time at Order Activity's cost.

**Fees.** In consideration for the services provided and license(s) granted in this Schedule with respect to the Initial Term, Order Activity shall pay to Blackboard all fees specified in each applicable Order Form, which fees shall be non-cancelable and non-refundable. For purposes of clarification, the setup fee, once paid, will be valid during the term of the Agreement, including any renewal thereof. With respect to each Renewal Term, if any, Order Activity shall pay to Blackboard the then-current fees for such services and licenses, which amounts shall be due and payable within thirty (30) days of the date of Blackboard's invoice for such Renewal Term. Should Order Activity choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Order Activity 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. Order Activity further agrees to reimburse Blackboard for: (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors in connection



with the performance of maintenance and support services under this Schedule and; (ii) any other expenses described in this Schedule, provided that Blackboard will receive Order Activity's prior approval for single expenses greater than \$250, and further provided that, upon Order Activity's request, Blackboard will provide reasonable documentation indicating that Blackboard incurred such expenses. Except as otherwise required by this paragraph, all amounts payable under this Schedule shall be subject to applicable provisions of the GSA Schedule GS-35F-0554M.

**Higher Ed Expansion of Licensed Use.** The Blackboard Mobile Services are priced annually based upon Order Activity's FTE. Order Activity represents and warrants that the FTE provided to Blackboard and set forth on any Order Form is correct and accurate to the best of its knowledge and agrees that it will inform Blackboard of any increase in its FTE prior to the beginning of any Renewal Term (as defined below) Blackboard will assess additional fees for increases in Order Activity's FTE beyond the subscribed level in accordance with the GSA Schedule contract pricelist.

"FTE" or "Full Time Equivalent" is defined as the number of full-time students plus half of the part-time students.

## **GENERAL TERMS**

**General Usage Terms.** Order Activity agrees not to use the User Software or Central Service for any purposes beyond the scope of the license granted in this Schedule. Without limiting the foregoing, Order Activity shall not: (i) use the User Software or Central Service to provide commercial services; (ii) develop, utilize or distribute any software application that accesses the Central Service, or allow any third party software application to access the Central Service other than with Blackboard's prior approval; (iii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the User Software or Central Service is compiled or interpreted, and Order Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Order Activity any right to obtain or use such source code; (iv) modify the User Software or Central Service or create any derivative product of the User Software or Central Service, except with the prior written consent of Blackboard; (v) obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the User Software; or (vi) Order Activity shall not use or distribute the User Software in violation of any obligations relating to any Third Party Software, provided that Blackboard has notified Order Activity of such obligation. Order Activity shall be responsible for ensuring that the use of the User Software is in compliance with all applicable laws, statutes, regulations or rules. Order Activity acknowledges that the Licensed Modules may operate differently on different Licensed Platforms and on different mobile devices within the same Licensed Platforms, and certain Licensed Modules may not be offered on all Licensed Platforms.

**Third Party Software/Content.** The Blackboard Mobile Services may contain Third Party Software and Blackboard reserves the right to modify the Blackboard Mobile Services to maintain compliance with the license terms of Third Party Software. Order Activity acknowledges that in the case of distribution of User Software for certain third party platforms, such as the Apple iPhone platform, Order Activity's distribution of User Software will be subject to such third party's program terms and conditions and may require such third party's approval. In the event that Order Activity opts to enroll in any Third Party Programs, Order Activity shall be responsible for compliance with the terms and conditions of such Third Party Programs. In order to distribute any User Software for the iPhone platform, Order Activity is required to enroll in the Apple Developer Program or any successor program; such program enrollment is between Order Activity and Apple directly.

**Certain Rights.** Order Activity shall be deemed to own and hold all right, title and interest to the Order Activity Data and Order Activity's logos. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Blackboard Mobile Services, and Order Activity acknowledges that it neither owns nor acquires any additional rights in and to the Blackboard Mobile Services not expressly granted by this Agreement, and Order Activity further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Agreement, including, without limitation, the right to use any component of the Blackboard Mobile Services for any purpose in Blackboard's sole discretion. Blackboard shall have the right to use Order Activity's icon and screenshots from Order Activity's Blackboard Mobile Services to demonstrate the technology to other Order Activities and prospective Order Activities and in Blackboard's promotional materials, provided that Blackboard agrees to discontinue such use within fourteen (14) days of Order Activity'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 Order Activity or Order Activity’s users. The User Software will be marked “Powered by Blackboard” or similar designation and Order Activity shall maintain such designation on Order Activity’s webpage that promotes the Service to Order Activity’s users.

**Limited Software Warranty.** Blackboard warrants, solely for the benefit of Order Activity, that any Blackboard Mobile Service licensed under this Schedule which is manufactured by Blackboard will substantially conform to the designated technical documentation for a period of ninety (90) days after the Schedule Effective Date, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has provided all required Order Activity Data feeds and made the system configurations required to interface with the Blackboard Mobile Services; and (iv) Order Activity has notified Blackboard in writing of any failure of the Blackboard Mobile Services to conform to the foregoing warranty within the warranty period. The foregoing shall not apply to any portion of the Blackboard Mobile Services offered as a beta version, which shall be deemed to be available on an as-is basis, without warranty of any kind including all implied warranties including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD’S SOLE OBLIGATION, AND ORDER ACTIVITY’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.**

**Product Support.** Order Activity is eligible to receive Product Support from Blackboard as described from time to time in the Blackboard Order Activity Support Services Guide located on Blackboard’s website at <http://library.blackboard.com/docs/support/mobiledu/> 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.

**Development Kit.** Order Activities that license Blackboard Mobile Central 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.

Licensed Modules:	Blackboard Mobile Central suite	iPhone iPod touch mobile web browser Android HP webOS (delete if ANGEL or CE Vista)
Licensed Modules:	Blackboard Mobile Learn	iPhone iPod touch BlackBerry Android iPad HP webOS (delete if ANGEL or CE Vista)

**ADDITIONAL DEFINITIONS**

**“Central Service”** means software and systems provided by Blackboard which facilitate the exchange of Order Activity Data between User Software and Order Activity Systems and any associated administrative tools or systems provided by Blackboard to Order Activity.

**“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 or Upgrade.

**“Order Activity Data”** means data, information and any other content supplied by Order Activity through Order Activity Systems.

**“Order Activity Systems”** means Order Activity’s business applications, databases and other information technology systems that will interface with the Central Service.

**“Licensed Modules”** means each of the software modules licensed by Order Activity pursuant to an Order Form and any Upgrades, Updates or Corrections provided thereto.

**“Licensed Platforms”** means each of the software platforms for mobile devices licensed by Order Activity pursuant to an Order Form.

**“Blackboard Mobile Service”** means each service provided by Blackboard for each Licensed Module consisting of support services in the production, configuration and maintenance of User Software which operates in conjunction with the Central Service.

**“Order Form”** means an order form executed by Order Activity and Blackboard relating to Blackboard Mobile products or services.

**“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, Updates, and Upgrades) of such Software made available to Order Activity, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Order Activity’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, (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule.

**“Third Party Software”** means the software or content manufactured, distributed or created by third parties that has been incorporated by Blackboard into the Blackboard Mobile Services.

**“Third Party Programs”** means the programs or agreements offered by third parties, such as Apple Inc.’s iPhone Developer Program, relating to mobile devices on which the User Software is intended to operate.

**“Updates”** means the object code versions of the Licensed Modules or other 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 module.

**“Upgrades”** means the object code versions of the Licensed Modules or other 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 module.

**“User Software”** means the software containing Licensed Modules, including Updates, Upgrades, and Corrections, provided by Blackboard to Order Activity for distribution.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD TRANSACT AND BLACKBOARD COMMUNITY SYSTEM FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD TRANSACT™ AND BLACKBOARD COMMUNITY SYSTEM SOFTWARE SCHEDULE**

**ADDITIONAL DEFINITIONS**

“**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 Upgrades, designated by AP#, and/or later incorporated into Upgrades.

“**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.

“**Designated Server Site**” means the physical location where the Software will be installed as identified in the Pricing Summary.

“**Pricing Summary**” means the pricing attributable to the software and services provided pursuant to the Schedule as set forth on the cover page to the Agreement

“**Software**” means, for purposes of this Schedule only, the Blackboard Transact and Blackboard Community System proprietary software, including Updates, Upgrades, Corrections, and Application Packs thereto.

“**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 Order Activity, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Order Activity’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, (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than expressly authorized in this Schedule.

“**Supported Interface**” means application-based interfaces (API) provided pursuant to the *Blackboard Building Blocks*® program, network protocols, data formats, database schemas, and file formats available for use in the Software as expressly specified in the Documentation.

“**Third-Party Software**” means the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software or that has been shipped with the Software.

“**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 module, including Application Packs.

“**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 module.

**LICENSE**

**Grant of License.** Subject to the terms and conditions of this Schedule and the GSA Schedule GS-35F-0554M, Blackboard grants Order Activity a limited, non-exclusive, nontransferable, right and license to (i) use one (1) executable version of the Software and one (1) unsupported Test Copy at Order Activity’s site and on the server(s) designated 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, (a) 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 (b) on multiple managed nodes that are configured and deployed on a single physical host that manages the self-contained nodes, and for the Blackboard software, solely with the number of workstations, point-of-sale devices or other Equipment identified on the attached Equipment Schedule (as

such may be amended) that are covered by the limited warranty in Section 7.1 of the GSA Schedule GS-35F-0554M or maintenance and support services; and to use the Documentation [IF PURCHASED] and if indicated on the Pricing Summary, (ii) use one (1) additional supported Test Copy of the Software on a single computer server at Order Activity's Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely for non-production, testing purposes. An install copy of the Software is "made available" to the Order Activity either (i) on the date on which Blackboard has notified Order Activity that an install copy of the Software is available for download; or (ii) the date on which the Software made available for installation via diagnostic modem; The download site will be made available to Order Activity for a period of thirty (30) days and Order Activity shall download the Software within this thirty day period. Order Activity acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, Order Activity will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.

**General Usage Restrictions.** Order Activity agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in Grant of License. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Order Activity shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Order Activity shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Order Activity 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 the Software is compiled or interpreted, and Order Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Order Activity any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Order Activity from configuring the Software to the extent permitted by the Software's standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Order Activity's rights under the license granted in Grant of License; or (vi) use the Software or Documentation to provide services to third parties other than Cardholders (as defined below) in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Order Activity will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Order Activity add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Order Activity shall not use the Software in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Order Activity of such obligation. Order Activity shall not provide access to the Software to anyone other than Cardholders without Blackboard's prior written consent; provided, however, that Order Activity may provide access to *Blackboard Building Blocks*<sup>®</sup> partners that are subject to a valid Blackboard developer's license agreement for the limited purpose of installing, maintaining and supporting their *Blackboard Building Blocks*<sup>®</sup> applications. Order Activity shall ensure that its use of the Software complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Order Activity warrants that its Cardholders will comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section. Order Activity will take appropriate steps to ensure that it and its Cardholders do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Under no circumstances shall Order Activity permit any third party to host the Software.

**Expansion of Licensed Use.** The Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the number of Cardholders. A Cardholder (a "Cardholder") will be defined as any individual associated with a licensing institution that can reasonably be anticipated to use a card, or perform a transaction, or utilize a privilege/event in the Blackboard Transact<sup>™</sup> and Blackboard Community System<sup>™</sup>, within the forward licensing period (12 months). A Cardholder may include, but is not inclusive of, a stored value charge in any module, regular applied board transaction, guest applied board transaction, cash equivalence charge, regular event entry, and guest event entry.

Prior to a Renewal Term, Blackboard may conduct an audit in accordance with the GSA Schedule GS-35F-0554M, to determine the number of Cardholders (as defined above) in the current licensing period. Blackboard shall utilize the current number of Cardholders determined in such audit and any information that may be supplied by Order Activity to reasonably determine the number of Cardholders for the forward licensing period (12 months).

Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing. In the event of growth related to a Order Activity merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with the GSA Schedule contract pricelist.

## **FEES**

In consideration for the services provided and license(s) granted in this Schedule with respect to the Initial Term (as defined below), Order Activity shall pay to Blackboard all fees specified in the Pricing Summary or otherwise required in this Schedule, which fees shall be non-cancelable and non-refundable. With respect to each Renewal Term (as defined below), if any, Order Activity shall pay to Blackboard the then-current fees for such services and licenses, which amounts shall be due and payable within thirty (30) days of the date of Blackboard's invoice for such Renewal Term. . Except as otherwise required by this paragraph, all amounts payable under this Schedule shall be subject to applicable provisions of the GSA Schedule GS-35F-0554M.

## **TERM**

This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the "Schedule Effective Date"); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue in effect for a period of one (1) year (the "Initial Term"). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for additional one (1)-year periods (each, a "Renewal Term"). Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Order Activity will: (i) immediately discontinue all use of Software licensed under this Schedule; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) remove the Software from its server and provide to Blackboard proof of the destruction of the original copy and any other copies of the Software; and (iv) return all Documentation and related training materials to Blackboard within a reasonable time at Order Activity's cost.

## **LIMITED SOFTWARE WARRANTY**

Blackboard warrants, solely for the benefit of Order Activity, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to applicable Documentation for a period of ninety (90) days after the initial Available Date, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has installed any Corrections, Upgrades and Updates made available to Order Activity; and (iv) Order Activity has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. Order Activity acknowledges that the product is not fault tolerant and is not designed, manufactured or intended by Blackboard for use in hazardous, dangerous to life or potentially life-threatening environments requiring fail-safe performance in which the failure of products could lead directly to death, personal injury or severe physical or environmental damage. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT REQUIRED BY LAW, BLACKBOARD MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION (i) ANY WARRANTY OF FITNESS FOR ANY INTENDED PURPOSE OR (ii) ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PERFORMANCE, FUNCTIONALITY OR RELIABILITY OF THE THIRD PARTY SOFTWARE USED IN CONNECTION WITH THE SOFTWARE, NOTWITHSTANDING ANY COMMUNICATIONS OUTSIDE OF THIS AGREEMENT TO THE CONTRARY. ORDER ACTIVITY FURTHER ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD'S SOLE OBLIGATION, AND ORDER ACTIVITY'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.

EXCEPT AS EXPRESSLY PROVIDED IN ABOVE (A) THE SOFTWARE AND ANY SERVICES, INCLUDING PROCESSING SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; AND (B) NEITHER BLACKBOARD NOR ITS LICENSORS NOR ITS PROCESSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR PROVIDED THROUGH THE SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS ORDER ACTIVITY MAY HAVE, OR THAT THE SOFTWARE OR SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE.

## SUPPORT AND MAINTENANCE

**Maintenance.** Blackboard will provide Order Activity with Upgrades, Corrections and Updates to the Software as they are made generally available from time to time. Software declared by Blackboard to be a general release ("General Release") shall be installed within ninety (90) days of being made generally available by Blackboard. Blackboard reserves the right to terminate this Schedule upon thirty (30) days prior written notice, provided, Order Activity has not installed such Software. Notwithstanding any other provision of this Schedule, Blackboard shall provide maintenance and support only with respect to the then current generally available version(s) and/or General Release version.

**Installation and Assistance.** Blackboard will install Software provided pursuant to this Schedule during the Coverage Hours as defined in Blackboard Commerce Suite Maintenance and Support Schedule, provided, Blackboard has not deemed Software to be Order Activity installable. In the event Software is deemed by Blackboard to be Order Activity installable, Blackboard will provide telephone assistance during Coverage Hours. In either instance, Order Activity will schedule in advance with Blackboard for such telephone assistance or installation of Software.

**Purchase of Maintenance and Support Services.** Order Activity may purchase maintenance and support services in accordance with the applicable Schedule.

**Additional Services.** Any time or expense incurred by Blackboard in diagnosing or fixing problems that are not caused by the Software or are not covered by the maintenance and support services are billable to Order Activity.

## FINANCIAL MATTERS

**Card Processor.** In the event that Order Activity uses the functionality incorporated into the Software enabling the capture of consumer or commercial payment card data, such as branded credit/debit cards or ACH clearing information, Blackboard provides connectivity with such payment processors, at the levels designated, set forth in the Documentation ("Processors") for the purpose of authorization and settlement of transactions via the Blackboard Payment Gateway. Order Activity shall establish a merchant account with a financial institution that processes credit card or ACH transactions with one of the Processors Blackboard has established relationships with prior to deployment of the Software. Modifications required to support changes of Order Activity's bank, accepted Order Activity payment methods, payment processor of Order Activity's bank, or communication interfaces with the payment processor will be chargeable to Order Activity and performed on a timely basis upon written notice to Blackboard. Changes required to the Software to enable Order Activity to change payment processors or communication interfaces to a payment processor will be subject to a one-time charge for labor and licensing of software, to be determined by Blackboard at the time of the change request.

**Fiscal responsibility.** Order Activity retains responsibility for compliance with all rules and regulations of any bank, card association, card processor and other entities related to issuance, acceptance, and settlement and clearing of payment transactions conducted through the Software. In the event Order Activity fails to comply and continues such failure for 30 days after notice from Blackboard, Blackboard may suspend connectivity under FINANCIAL MATTERS without any further liability or obligation to Order Activity, until such time as Order Activity provides documented evidence of full compliance. Order Activity acknowledges that as a condition of providing connectivity under FINANCIAL MATTERS Blackboard may be obligated by its Processors to pay fines and audit

costs for security breaches that appear to arise from Order Activity and Blackboard's systems. **When the end user is an instrumentality of the US Government, the requirement to pay fines or audit fees shall not apply. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. While a dispute is pending** the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**Financial Privacy.** Blackboard hereby agrees that it shall comply with all reuse, redisclosure or other Order Activity information handling, processing, security, and protection requirements that are specifically required of a non-affiliated third-party processor or servicer (or subcontractor) under the Federal Trade Commission's Privacy of Consumer Financial Information; Final Rule (16 CFR 313) implementing Title V of the Gramm-Leach-Bliley Act, Public Law 106-102 (the "GLB Requirements") and other applicable federal and state consumer privacy laws, rules, and regulations. Without limiting the foregoing, Blackboard agrees that it is prohibited from disclosing or using any nonpublic personal information (as defined in the GLB Requirements) disclosed to it by Order Activity, except solely to carry out the purposes for which it was disclosed, including use under an exception contained in Section 313.14 or

313.15, as applicable, of the GLB Requirements in the ordinary course of business to carry out those purposes.

**Risk Management.** Blackboard provides the ability for Order Activity to effectively manage their electronic transactions. This includes the ability to accept or reject electronic transactions captured and originating from Blackboard licensed software and processed by the Blackboard Payment Gateway. Blackboard does not "own" any electronic transactions processed on the Order Activity's behalf and simply provides a service for the authorization, management, and settlement of transactions destined for the Order Activity's bank (aka merchant acquirer) via the Processor.



**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD BBONE FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BbONE® SERVICES SCHEDULE**

**Blackboard Obligations**

**Merchant Target List Development.** Blackboard will compile a list of prospective off-campus merchants for participation in the card program (the “Campus Program”) which enables participants (the “Cardholders”) to use their cards (each, a “Order Activity Card”) to purchase goods and services from Order Activity operated facilities and/or from other goods or services providers, taking into consideration the merchant’s proximity to campus, the type of service/products offered by the merchant and Cardholder preferences for the Order Activity’s review and consent, subject to Section Merchant Approval (the “Target List”) a template for which is attached hereto as Exhibit A.

**Merchant Recruitment.** Blackboard will recruit merchants to participate in the Campus Program, and will execute a Bb One merchant contract (each, a “Merchant Contract”) with each qualified merchant that elects to participate (each, a “Bb One Merchant”). The Order Activity acknowledges that in connection with the services performed by Blackboard as part of the Merchant Contract, Blackboard may require that the Bb One Merchants pay certain fees, including but not limited to Merchant Discount Fees and other fees associated with the provision of merchant equipment, the processing of Cardholder transactions, Order Activity service, and other bankcard fees.

**Equipment Procurement, Training and Support.** Blackboard will be responsible for providing transaction processing equipment (“TPE”) to each Bb One Merchant and for installing and supporting such equipment. Blackboard will provide in-store signage, such as register and window stickers that indicate Bb One Merchants’ acceptance of the Order Activity Card.

**Transaction Processing.** Blackboard agrees to provide transaction processing services for the Bb One Merchants. During the Term of this Schedule, Cardholders will use their Order Activity Cards to make purchases at Bb One Merchants (each, a “Transaction”) and such Transactions will be logged by the Campus Program Host. Transactions will also be logged by the Bb One Merchant TPE and submitted to the settlement system owned and operated by Blackboard or its subcontractors that handles commission scorekeeping, risk assessment and reporting and which is a MasterCard/Visa certified system used to process bankcard activity for financial institutions nationwide (the “Blackboard Merchant Processor”) for settlement automatically.

**Merchant Reimbursement.** Subject to Section Merchant Dispute Resolution, Blackboard, through its subcontractor, will be responsible for reimbursing Bb One Merchants via an Automated Clearing House (“ACH”) for transactions made with the Order Activity Card as part of the Campus Program (the “Transaction Processing and Funds Transfer”). The Bb One Transaction Processing and Funds Transfer service will include management of ACH funds settlement of all Cardholder transaction activity at the Bb One Merchants in exchange for certain fees to be paid by the Bb One Merchant.

**Funds Transfer.** Blackboard agrees to provide funds settlement services for Bb One Merchants, including automated payment and fee collection through electronic ACH transfers. The Order Activity will be responsible for and will manage all Cardholder accounts and a separate ACH clearing account for use by Blackboard and Blackboard’s subcontractors (the “Order Activity Account”) and will retain all interest income there from. Blackboard, through the Blackboard Merchant Processor, will arrange for funds for Bb One Merchant Transactions to be transferred from the Order Activity Account to the Bb One Merchant accounts on a regular schedule and no less frequently than weekly. Funds sufficient to reimburse the Bb One Merchant Transactions will be transferred by Blackboard’s subcontractor from the Order Activity Account to the Bb One Merchant accounts via ACH. Blackboard, through its subcontractors, will transfer all applicable Merchant Discount Fees via ACH from the Bb One Merchant accounts to a Blackboard account. Blackboard, through its subcontractors, will then deduct from the Merchant Discount Fees, the Royalty owed to the Order Activity and will pay the Order Activity the Royalty via ACH from Blackboard’s account to a Order Activity account.

**Merchant Dispute Resolution.** In the event that a Cardholder disputes a transaction at a Bb One Merchant, Blackboard, or Blackboard’s subcontractor, will contact the Bb One Merchant on behalf of the Cardholder regarding

the disputed transaction and request, when appropriate, a copy of the receipt signed by the Cardholder. In the event that the dispute is resolved in favor of the Cardholder, Blackboard will chargeback the disputed amount to the Bb One Merchant and notify the Order Activity of the corrective procedure. The Order Activity will be responsible for communicating the status of the dispute to the Cardholder and crediting any amounts resolved in favor of the Cardholder to the Cardholder's account. Blackboard will maintain a record of all disputes and the resolution thereof.

**Marketing Plan.** If selected by the Order Activity, Blackboard will execute a marketing and communications plan to promote the Campus Program. The elements and cost to the Order Activity for such Marketing Plan will be set forth in an attached Exhibit B.

**OPTIONAL Merchant Promotions Package.** Blackboard will recruit promotional offers and advertising messaging from Bb One merchants to be marketed to Cardholders using a promotional web page linked to the card program web site, as well as closed-loop email campaigns sent on behalf of the Order Activity and consistent with the Campus Program branding policies, as determined by the Order Activity. E-mails to Cardholders are to be sent weekly during each semester. Order Activity is responsible for providing e-mail addresses to Blackboard in the specified file format. In the event the Order Activity cannot provide e-mail addresses to Blackboard, Blackboard will deliver to the Order Activity e-mail copy weekly that will be distributed to Cardholders by the Order Activity. If executed by Blackboard, the Company will provide Cardholders with the right to opt-in/out of the Email Campaign Service and ensure that Cardholders are able to express their communication preferences in a manner consistent with standard Order Activity policies.

### **Order Activity Obligations**

To enable Blackboard to perform the Bb One Services and to complete all Transaction Processing and Funds Transfers, the Order Activity agrees that it will:

Be responsible for all hardware, software, communication and licensing costs associated with providing a Campus Program host capable of supporting Bb One Services transaction processing in a reliable and accurate manner (the "Campus Program Host");

Include new Bb One Merchants on the Campus Program Host and generate a merchant ID number within three (3) business days of receiving merchant data from Blackboard and provide Blackboard with the merchant ID number for all Bb One Merchants;

Provide the Bb One Merchant TPEs with access to the Campus Program Host to enable Bb One Merchant transactions to be authorized at all times; provided that, if in order to enable Bb One Merchants to complete transactions through the Campus Program, Blackboard is required to provide such Bb One Merchants with TPEs that are incompatible with the standard Blackboard methodology, the Order Activity will: (a) provide Blackboard or its authorized subcontractor with access to the Campus Program Host to enable Blackboard or such subcontractor to extract transaction data related to Bb One Merchants; or (b) provide such transaction data to Blackboard in a mutually agreed upon electronic format no less often than weekly. In the event that the Order Activity is required under this Section to provide Blackboard with transaction data, the Order Activity agrees to use its best efforts to ensure that such data is accurate;

Enable Blackboard or its subcontractor to reimburse the Bb One Merchants, including the ability to transfer funds via ACH directly from a selected Order Activity account to such Bb One Merchants; and Notify Blackboard within one (1) hour if the Campus Program Host is not operational of the estimated time of system recovery and the time of actual system recovery.

**Merchant Approval.** The Order Activity agrees that it shall not request the omission of any merchant submitted by Blackboard as part of the Target List without good reason and in any event shall not request the omission of more than twenty percent (20%) of all merchants submitted by Blackboard from the Target List. The Order Activity may not request the omission of any Target List merchants based solely on the proximity of such merchant to campus or the category of product/service offered by such merchant, except as expressly stated in Section Merchant Target List Development.

**Funds Availability.** The Order Activity will make sufficient funds available to Blackboard through a selected Order Activity bank account to enable Blackboard or its authorized subcontractor (through ACH transfers or otherwise) to complete all Transaction Processing and Funds Transfers with Bb One Merchants for all Cardholder transactions.

**Campus Program Policies.** In the event that this Schedule is executed after July 1 of any year, the first Academic Year shall be considered the period from the Effective Date through June 30 of the following calendar year. Other than as set forth in Section Merchant Target List Development, the Order Activity agrees that it will not include any restrictions in the Campus Program policies (e.g., transactions surcharges, minimum amounts, etc.) on transactions with Bb One Merchants without the prior consent of Blackboard.

**Branding.** The Order Activity agrees that Blackboard may include the Order Activity Licensed Indicia on all collateral materials provided to Bb One Merchants and all other Campus Program collateral after the Effective Date. The Order Activity also agrees that Blackboard may include the "Bb One" name and/or logo (the "Brand") on all collateral materials provided to Bb One Merchants and, as approved by the Order Activity, on all other Campus Program collateral. The Order Activity and the Member Intuitions will not distribute any materials which bear any connection to Blackboard, Bb One or Blackboard's trademarks or trade names without the prior consent of Blackboard.

**Access.** The Order Activity agrees that the success of the Campus Program will depend upon the active knowledge and use of the program by Cardholders. To disseminate information about the Campus Program and to encourage the depositing of funds by Cardholders as contemplated and agreed to in the Marketing Package, the Order Activity agrees to provide Blackboard with Directory Data for Cardholders. "Directory Data" will be defined to include: Cardholder name, ID number and/or account number, home addresses, campus and email addresses as appropriate.

## **Fees and Payments**

### **Definitions.**

For the purposes of Section Fees and Payments, the following terms shall have the following meanings:

**"Merchant Discount Fees"** shall mean an amount calculated by applying the then applicable Merchant Discount Rate to the gross Sales made by such Bb One Merchant.

**"Merchant Discount Rate"** shall mean the percentage of a participating Bb One Merchant's total Sales charged by Blackboard to the Bb One Merchant in exchange for such Bb One Merchant's participation in the Campus Program.

**"Sales"** shall mean the aggregate sale amount paid by Cardholders to Bb One Merchants at the time of Transactions for goods or services.

**Program Management Fee.** In exchange for Bb One Services, the Order Activity shall pay Blackboard an annual Bb One Services program management fee (the "Program Management Fee") to be priced each year based upon the Blackboard Active Cardholders. Order Activity agrees that the Active Cardholders provided to Blackboard is correct and accurate to the best of its knowledge. For the Bb One Service, Order Activity's license on this Schedule shall be expanded in increments and Blackboard will assess increases to the Program Management Fee based on increases in Order Activity's Active Cardholders which will be in accordance with the GSA Schedule contract pricelist.

The initial Program Management Fee shall be paid to Blackboard by the Order Activity within thirty (30) days after the Effective Date. Subsequent annual Program Management Fees shall be paid on each year anniversary of the Effective Date during the Term, and the Order Activity will issue a purchase order in an amount equal to the annual Program Management Fee no less than forty-five (45) days prior to each anniversary of the Effective Date.

**Royalty.** In connection with the Bb One Services, Blackboard agrees that it shall pay the Order Activity a royalty payment (the “Royalty”) equal to a percent of the aggregate Merchant Discount Fees collected by Blackboard from Bb One Merchants participating in the Campus Program. The Royalty Rate for the term of this agreement shall be as set forth above.

**Per Transaction Fee.** Order Activity agrees that it shall pay Blackboard a fee per transaction that is processed for payment to merchants. The Per Transaction Fee is to be collected no less than monthly, and is set forth above.

**Excluded Amounts.** The Royalty shall not include any other commission or fees, including but not limited to any amounts charged to Bb One Merchants by Blackboard (a) calculated by applying a fixed per Transaction rate to the number of Transactions presented by the Bb One Merchant to Blackboard for settlement (“Transaction Fees”), (b) in connection with the provision of Bb One Merchant equipment required to participate in the Campus Program, including, without limitation, TPE’s (“Terminal Fees”), or (c) to cover other operational merchant support costs, including, without limitation, monthly statements, monthly help desk, network access fee, terminal replacement, transaction dispute handling and bank card fees, including those for transaction processing (“Other Fees”). Nothing in this Schedule shall impact the amounts collected by the Order Activity with respect to non-Bb One Merchants participating in the Campus Program. Blackboard or its subcontractors shall pay the Royalty to the Order Activity on a periodic basis and in a manner consistent with Section Marketing Fee.

**Marketing Fee.** In exchange for the items selected as part of the Marketing Plan, the Order Activity will issue a purchase order in an amount equal to the Marketing Plan total set forth in the Marketing Quote within (30) days after the Effective Date.

**OPTIONAL Merchant Promotions Package.** If selected, Order Activity shall pay \$1,000 in exchange for the Merchant Promotions Package.

**Failure to Make Payments.** If either Blackboard or the Order Activity fails to make full payment when due of any Payments, the non-paying party shall pay, upon demand, all costs, including reasonable attorney’s fees expended by the other party in collecting overdue Payments, as well as interest on all unpaid Payments at the lesser of (a) 1.5% per month or (b) the maximum allowed under applicable law. Notwithstanding any other provision in this Schedule, in the event that the Order Activity fails to provide Blackboard with access to funds sufficient to reimburse the Bb One Merchants pursuant to Section Blackboard Obligations, Blackboard may within thirty-six (36) hours of notice to Order Activity suspend Bb One Services (including but not limited to terminating all links, content or services provided as part of the Web Site development and Hosting Services, if applicable) until such time as Payment is made and, if paid by check, duly honored and paid by the applicable financial institution.

**Audit.** Blackboard shall maintain detailed, accurate and complete financial and other records of all its activity under this Schedule in accordance with generally accepted accounting principles. Upon ten (10) days’ prior written notice, the Order Activity may conduct an audit of Blackboard during normal business hours within thirty (30) days following the end of each academic term, at the Order Activity’s expense, for purposes of reviewing the calculation of any Payments.

**License of Indicia.** The Order Activity grants to Blackboard the non-exclusive, non-assignable right and license to use the Licensed Indicia (as defined below) in connection with its performance of the Campus Card Services as set forth in this Schedule and the applicable Exhibits hereto. “Licensed Indicia” shall mean the current and future names, symbols, designs and colors of the Order Activity, the Member Institution and the Campus Program, including without limitation, the trademarks, service marks, designs, nicknames, abbreviations, city/state names in the appropriate context, slogans, logo graphics, mascots, seals and other symbols associated with or referring to the Order Activity and the Member Institution. Order Activity agrees to provide Blackboard with samples of the Licensed Indicia no later than ten (10) days after the Effective Date. Notwithstanding the foregoing, in the event that the Order Activity or another authorized licensor (if any) of the Licensed Indicia has agreed or does agree to permit Blackboard or any Blackboard subsidiary to use any Licensed Indicia in connection with a program other than the Campus Program, Blackboard or such subsidiary, respectively, will be free to use such Licensed Indicia to the extent permitted by the terms of use of such program. Notwithstanding any other provision herein, the Order Activity agrees that Blackboard may identify the Order Activity and the Member

Institution as Order Activitys and describe the Campus Card Services (and use Licensed Indicia in connection with such identifications and descriptions) in any marketing materials prepared by Blackboard, as long as such marketing materials do not otherwise divulge the terms of this Schedule.

### **Term; Program Termination**

**Term.** This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the “Schedule Effective Date”); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue in effect for a period of one (1) year (the “Initial Term”). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for additional one (1) year terms (“Renewal Term”) Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Order Activity will: (i) immediately discontinue all use of the product licensed under this Schedule (ii) pay to Blackboard all amounts due and payable hereunder; and (iii) return all Documentation and related training materials to Blackboard within a reasonable time at Order Activity’s cost.

**Termination.** Either party may terminate this Schedule as provided in Section TERM; TERMINATION of the GSA Schedule GS-35F-0554M or immediately pursuant to Section Compliance Modification of this Schedule. Blackboard may terminate this Schedule immediately if the Order Activity fails to make sufficient funds available to Blackboard for the reimbursement of Bb One Merchants consistent with Section Blackboard Obligations. In the event that (a) the Order Activity terminates the Schedule during the Term for failure to cure a material breach pursuant to Section Termination for Breach of the GSA Schedule GS-35F-0554M or decides to give Blackboard notice of its decision not to renew under Section Term of this Schedule, or (b) Blackboard terminates the Schedule during the Term pursuant to Section TERM; TERMINATION of the GSA Schedule GS-35F-0554M or Section Compliance Modification of this Schedule, the Order Activity agrees that Blackboard shall cease to perform any and all of the Campus Card Services under this Schedule on the effective date of such termination. Blackboard shall not be responsible for providing any transition services to the Order Activity or any third party in order to enable the Order Activity or such third party to provide services similar to the Campus Card Services. In addition, the Order Activity agrees that the contracts entered into between Blackboard and the Bb One Merchants (the “Merchant Contracts”) are valuable assets of Blackboard and the Order Activity will not attempt to directly or indirectly interfere with, disrupt or encourage the termination of any Merchant Contract. In the event that the Order Activity terminates this Schedule during the Term for failure to cure a material breach pursuant to Section Termination for Breach of the GSA Schedule GS-35F-0554M or Section Compliance Modification of this Schedule or Blackboard decides to give the Order Activity notice of its decision not to renew under Section Term, Blackboard agrees that, if requested by the Order Activity, it will continue to perform Bb One Services under this Schedule for a period not to exceed sixty (60) days (the “Transition Period”). During the Transition Period, Blackboard will cooperate with the Order Activity or any third party designated by the Order Activity to transfer Order Activity property or Order Activity Confidential Information (as defined in the GSA Schedule GS-35F-0554M) related to the Bb One Services to the Order Activity or third party. Nothing in this Section shall obligate Blackboard to transfer property or confidential information of Blackboard to the Order Activity or any third party.

### **Federal and State Financial Services Regulations**

Blackboard makes no representations or warranties of any kind, express or implied, as to whether the Campus Program or Blackboard’s activities are subject to the Electronic Fund Transfer Act or its implementing regulation (collectively, “Regulation E”) or other state or federal financial services laws or regulations.

**Compliance Modification.** If and to the extent that the Campus Program is determined by a federal or state agency to be subject to and not in compliance with any federal or state regulation (including, but not limited to Regulation E), Blackboard and the Order Activity will undertake to: (a) modify the Campus Program so as to make it exempt from such regulations; or (b) undertake to comply with all such regulations so as to allow the Campus Program to continue to operate in compliance with such regulations. If this Section applies, the parties shall work together in good faith to resolve all regulatory matters, provided, however, that any such resolution shall incorporate but not be limited to sufficient additional fees payable by the Order Activity to Blackboard to cover the reasonable costs of such compliance by Blackboard. To the extent that the Campus Program is found to be subject to and not in compliance with a federal or state regulation and the Order Activity or Blackboard is unwilling or unable to modify

the Campus Program or comply with the regulations within ninety (90) days or within such other timeframe, if any, as the parties may mutually agree upon in writing, this Schedule may be terminated by Blackboard or the Order Activity upon (30) thirty days' notice.

### **Intellectual Property**

Blackboard. As between the parties, Blackboard retains all right, title and interest in and to the content provided by Blackboard, the Blackboard network of web sites, the Campus Card Services and any Blackboard Confidential Information associated with any of the foregoing, including the "look and feel" and templates (including, without limitation, any and all content, data, technology, software, code, user interfaces, trademarks and other items posted thereon or used in connection or associated therewith; but excluding any Order Activity Confidential Information) for the Campus Program Site to the extent it is developed and provided by Blackboard as part of Web Site Development and Hosting Services and not constituting Order Activity Confidential Information. All goodwill arising out of the Order Activity's use of any of the Blackboard Confidential Information shall inure solely to the benefit of Blackboard. The Order Activity will not distribute any materials that bear any connection to Blackboard or Bb One or Blackboard's trademarks or trade names without the permission of Blackboard.

Order Activity. As between the parties, the Order Activity retains all right, title and interest in and to the Licensed Indicia, the Campus Program Site domain name and the Order Activity Confidential Information associated with any of the foregoing. All goodwill arising out of Blackboard's use of any of the Order Activity's Confidential Information shall inure solely to the benefit of the Order Activity. Blackboard will not distribute any materials which bear any connection to the Order Activity or the Campus Program or the Order Activity's trademarks or trade names without the permission of the Order Activity.

EXHIBIT A  
TARGET LIST TEMPLATE

**Qualified Merchant Categories - Services**

The Order Activity agrees that Blackboard is permitted to recruit service related merchants in the categories below. Merchants are to be approved in writing by the Order Activity and Blackboard.

- Grocery
- Gas/Convenience
- Bookstore
- School Supply
- Clothing/Apparel
- Sporting Goods
- Gift Shops
- Automotive
- Fitness Centers
- Furniture
- Jewelry
- Electronics / Computer
- Travel Agency
- Music / Video Games
- Hotels
- Packing & Shipping
- Hardware
- Pharmacy
- Entertainment
- Photo
- Personal Care
- Laundry/Dry Cleaner
- Flower

### **Qualified Merchant Categories - Food**

The Order Activity agrees Blackboard is permitted to recruit food related merchants in the categories below. Merchants are to be approved in writing by the Order Activity and Blackboard.

- Fast Food
- Pizza
- Deli
- Bakery/Bagels
- Ice Cream
- Coffee
- Sit-down / Full-Service
- Food Delivery

### **Merchant Restrictions**

Blackboard will not solicit or enroll merchants that principally sell the following items or are in conflict with the Order Activity's Mission Statement:

- Tobacco
- Alcohol
- Firearms
- Obscene material



**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD CONNECT FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD CONNECT™ SERVICE SCHEDULE**

**Recipient Definition (applicable only to notification services):**

**(CTY: households, businesses, and other related individuals within the Order Activity's jurisdiction)**

**Payment and Term.** In consideration for the use of the SaaS, notification and/or support services (as applicable) during the Initial Term, the Order Activity will pay to Blackboard the fee(s) set forth above (the "Fee"). The total Fee will be invoiced on execution of the Agreement and is due within 30 days of invoicing. Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for additional one (1) year terms ("Renewal Term"). . Each Renewal Term shall incorporate and be in accordance with the GSA Schedule contract pricelist. The applicable Fee for which will be due at the beginning of each Renewal Term, and payable within thirty (30) days after the date of an invoice from Blackboard.

**Additional Notification Terms of Service.** The additional notification terms of service attached hereto as Exhibit A ("Terms of Service") are incorporated herein by reference. The individual executing this Service Schedule on Order Activity's behalf represents and warrants that he or she has the authority to execute this Service Schedule and bind the Order Activity to all of its terms and conditions as of the date indicated below. Notwithstanding anything to the contrary in any purchase order or any other document provided by Order Activity, any service provided or license granted by Blackboard to Order Activity in connection with a purchase order related to this Service Schedule is conditioned upon Order Activity's acceptance of this Service Schedule and the Terms of Service incorporated by reference herein. Any additional, conflicting or different terms proffered by Order Activity in a purchase order or otherwise shall be deemed null and void.

## Exhibit A

### Blackboard Connect Service Schedule Additional Notification Terms of Service

The Blackboard Connect Service(s). In consideration for the payment by the Order Activity of all fees set forth in the Service Schedule, Blackboard shall provide the Order Activity with the Service(s) set forth therein.

**Term and Termination.** The Service Schedule will be effective during the term set forth in the Service Schedule. If Order Activity inputs any information or other data into Blackboard's systems and/or sends any messages prior to the term, the terms and conditions of this Service Schedule also apply to such use.

- a. **Termination with Cause.** When the end user is an instrumentality of the US Government, recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. During any dispute under the disputes clause the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Effect of Termination. In the event of termination or expiration of this Service Schedule, the Order Activity will: (i) immediately discontinue access to and/or use of the Service under this Service Schedule; (ii) pay to Blackboard all amounts due and payable under this Service Schedule; (iii) return all documentation and related training materials to Blackboard within a reasonable time at the Order Activity's cost; (iv) immediately cease any use of Blackboard's Confidential Information (as defined below); (v) delete any of Blackboard's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries or databases; and (vi) return to Blackboard or, at Blackboard's option, destroy, all copies of Blackboard's Confidential Information then in its possession. Any termination of this Service Schedule will not affect any rights or liabilities of either Party that accrued prior to such termination. Term, Payment Terms, Privacy Policy and Acceptable Use Policy, Representations and Obligations, and Miscellaneous sections will survive the expiration or termination of this Service Schedule for any reason.

**Payment Terms.** Except as specifically set forth the Service Schedule, each applicable service fee will be invoiced on execution of the Service Schedule and is due within 30 days of invoicing; thereafter, the service fee will be due at the beginning of each annual period and is due within thirty (30) days after the date of an invoice from Blackboard. Late payments may be assessed at the lesser of 1.5% per month or the maximum allowable rate under applicable law.

**Purchase Orders.** Order Activity agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Blackboard, it will timely issue such purchase order and inform Blackboard of the number and amount thereof. Order Activity agrees that the absence of a purchase order, or other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Order Activity's obligations under the Service Schedule, including payment of amounts owed to Blackboard. Any additional term, condition, requirement or obligation set forth in a purchase order or other ordering document shall not be binding upon Blackboard absent Blackboard's express written consent in each instance.

**Privacy Policy and Acceptable Use Policy.** The Order Activity agrees to comply with the then current Acceptable Use Policy and Privacy Policy (collectively, the "Policies"), which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified Policies are posted at the relevant link (which can be found at the Blackboard Website located at [www.blackboardconnect.com](http://www.blackboardconnect.com)), such posting to constitute effective notice of changes. In the event of an express conflict between the terms of the Agreement and the terms of the Policies, the terms of the Agreement will prevail.

**Representations and Obligations.** The Order Activity represents and warrants that: (a) it will comply with all applicable laws, regulations and contracts in use of the Service and with respect to the content and transmission of its messages sent using the Service; (b) it will use best efforts in providing accurate and complete Recipient Data (as defined in the applicable Service Schedule); (c) it has met all legal, regulatory and contractual requirements in providing, and using, the Recipient Data, in connection with the Service, including, but not limited

to, obtaining and maintaining a record of explicit consent to call a Recipient for the stated purpose(s); (d) it will maintain the confidentiality of its password and account information, and agrees to notify Blackboard in the event of an actual or suspected unauthorized access to its account, or if it loses its account information; (e) it will have in place primary safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical, and public health, collectively, "First Responder Services") which do not utilize the Service; (f) it will not subject Blackboard to any regulations or laws due to the import of certain Recipient Data; (g) it will provide a means for Recipients to rescind consent to receive calls and will not send messages to Recipients who have opted out of receiving messages from the Order Activity; (h) if Order Activity purchases data from Blackboard, it will only use such data purchased from Blackboard to contact individuals pursuant to the use of the Service and is prohibited from downloading or making copies of such data purchased from Blackboard if such activity would violate an applicable law, regulation or contract; (i) it will not use the Service in combination with products or services not provided by Blackboard or in a manner for which the Service was not designed, which would cause the Service to infringe on a third party intellectual property right; and (j) where Order Activity is providing a recipient count or other data for the purposes of Blackboard's Service pricing quotations, such information shall be true and correct. The Order Activity will designate qualified personnel to act as liaisons between the Order Activity and Blackboard respecting technical, administrative and content matters, and providing accurate and current contact information. **When the end user is an instrumentality of the US Government, the general indemnity requirement shall not apply. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. While a dispute is pending** the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**Miscellaneous.** In the event of the Service's failure to comply with this Schedule, the Order Activity's sole remedy shall be to terminate the Schedule. The Order Activity acknowledges and agrees that the Service is not intended, nor designed, for use in high risk activities, or in any situation where failure of the Service could lead to death, personal injury, or damage to property, or where other damage could result if an error occurred and the parties further agree that, to the extent not prohibited by applicable law, Blackboard shall not be liable for any death, personal injury or damage to property. The Order Activity also acknowledges and agrees that the primary recourse of the Order Activity in the event of any actual or potential threat to person or property should be to contact First Responder Services and that the Service is not intended to replace First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, First Responder Services, which should have already been notified and deployed prior to using the Service. The Order Activity acknowledges and agrees that Confidential Information and all other materials pertaining to the use of the Service are not purchased or developed with Order Activity funds. Accordingly, nothing in this Service Schedule grants or transfers to the Order Activity any ownership rights in the foregoing materials or the Service. Any additional charges incurred by a Recipient in connection with the Recipient's telephony or data plan for messages, including but not limited to text message fees or data fees, shall be payable by the Order Activity or Recipient. The Service Schedule may be executed in counterparts and a signature on a copy of this Service Schedule received by either Party by facsimile is binding upon the other Party as an original.

**Weather Alerts.** If Order Activity is purchasing Blackboard's weather alerts service, the following also shall apply. Order Activity acknowledges and agrees that Blackboard is delivering weather information created and provided by a third-party public service, and not Blackboard. Weather forecasting is an inexact science. Blackboard makes no express or implied warranties, guarantees or affirmations that weather will occur or has occurred as the public alerts, reports, forecasts, data, or information state, represent or depict and it shall have no responsibility or liability whatsoever to Order Activity or any other person or entity, parties and non-parties alike, for any inconsistency, inaccuracy, or omission for weather or events predicted or depicted, reported, occurring or occurred. **ORDER ACTIVITY AND THIRD PARTIES ARE SOLELY RESPONSIBLE FOR ACTION OR LACK OF ACTION TAKEN TO PRESERVE LIFE OR PROPERTY.**

**Portal Access.** If Order Activity is purchasing portal access, the following also shall apply. Order Activity agrees that the portal is for the sole purpose of enabling Recipients to update and add their contact information. If the Order Activity elects to use the portal, Blackboard grants for the Term of such use to Order Activity a limited non-exclusive, worldwide, royalty-free license to place a digital image of the Blackboard "sign-up" logo, which will be presented

to Order Activity (the “Image”), on an appropriate page of the Order Activity’s internet site, located at a URL to be provided by the Order Activity, with a hyperlink to Blackboard’s portal site (the “Link”). The Order Activity may not use any other trademark or service mark in connection with the Image without the prior written approval of Blackboard. The Link may not be used in any manner to provide a user with access to the portal via any framing, layering or other techniques now known or hereafter developed that permit display of the portal with any materials posted by Order Activity or any party other than Blackboard. Order Activity may not allow the Image to be linked to any other web site. The Order Activity may not use the Image in any manner not permitted hereunder, modify the Image, or copy, or create a derivative work from, the “look and feel” of the Image. Blackboard will have the right to review all uses of the Image for quality control purposes and proper compliance with guidelines, as they may be modified from time to time. The Image and the goodwill associated therewith are valuable properties belonging to Blackboard and all rights thereto are and shall remain Blackboard’s sole and exclusive property. Blackboard reserves the right to modify permission to use the Image and/or the Link at any time.

**API License.** If Order Activity is purchasing an application programming interface (“API”) license, the following also shall apply. Blackboard grants to the Order Activity a limited, non-exclusive, revocable, non-sublicensable, non-transferable license, to access the API’s set forth in the Service Schedule. The API(s) is provided in the form of a web service that enables a “connection” into Blackboard’s servers. Blackboard will provide the Order Activity with a URL for the connection, instructions to create a unique token to authenticate the Order Activity’s servers, an API key, password, and basic testing of connectivity. Order Activity may not use or install the API(s) for any other purpose without the written consent of Blackboard, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. Blackboard reserves the right to limit the number and/or frequency of API requests.

**Emergency & Outreach Messaging.** If Order Activity is purchasing messaging restricted by use-case, the following also shall apply. An “Emergency” is an incident, situation or natural phenomenon that: (i) is immediately threatening to life, health, property or the environment; or (ii) has caused loss of life, health detriments, property damage or environmental damage; or (iii) has a high probability of escalating to cause immediate danger to life, health, property or environment. An “Emergency Message” is a message sent to all Recipients in connection with an Emergency. An “Outreach Message” is a message sent to one or more Recipients for general outreach and informational purposes that is not an Emergency Message.

Messaging Outside the US & Canada. If Order Activity is purchasing messaging for initiation or delivery outside the United States and Canada, the following also shall apply. Order Activity acknowledges and agrees that territories outside the United States and Canada may have territorial restrictions resulting from applicable law in the territory, telecommunication or internet infrastructure limitations, telecommunication or internet service provider policies, or communication device customizations that inhibit or prevent the delivery of SMS, text or other messaging, or restrict the ability to place or receive certain calls (e.g., outbound toll-free calls). Such restrictions may impede certain aspects of the Service. Blackboard shall not be responsible for such impediments.

**GSA APPROVED END USER LICENSE AGREEMENT APPLICABLE TO PURCHASE OF BLACKBOARD ANALYTICS FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 511210)**

**BLACKBOARD ANALYTICS SOFTWARE SCHEDULE ADDITIONAL**

**DEFINITIONS**

**“Authorized End User”** means any individual who uses the Software for Order Activity’s internal business purposes only.

**“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 the issuance of Updates, designated by AP#, and/or later incorporated into Updates or Upgrades.

**“Corrections”** means a change (e.g. a fix, workaround or other modification) 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.

**“Consulting Support”** means consulting, advising, training or answering questions from an Authorized End User, remotely via telephone, email or other remote methods, regarding Software use, design, operation or customization. Consulting Support does not include any custom software development or obligations to design custom enhancements for any Authorized End User.

**“Designated Server Site”** means the physical location where the Software will be installed, as identified in Exhibit A to this Schedule.

**“Enhanced Software Support”** means optional enhanced support services as described in Exhibit B to this Schedule, which may, if selected, be provided in addition to those services provided through the Standard Software Support option.

**“Software”** means, for purposes of this Schedule only, the Blackboard Analytics Software proprietary software, as identified in Exhibit A to this Schedule.

**“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) Order Activity’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; (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than as expressly authorized in this Schedule.

**“Standard Software Support”** means standard services as described in Exhibit B to this Schedule, including access to general release versions of the Software and help desk support for problem resolution related to Software operation. Standard Software Support does not include Consulting Support.

**“Support Times”** means the hours of each day and the days of each week set forth in Attachment 2 hereto.

**“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.

**“Third-Party Software”** means the software or content manufactured or created by third parties that has been incorporated by Blackboard into the Software

**“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.

**“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.

## **LICENSE**

**Grant of License.** Subject to the terms and conditions of this Schedule and the GSA Schedule GS-35F-0554M, Blackboard grants Order Activity a limited, non-exclusive, non-transferable, non-sublicenseable right and license (i) to install and use one (1) production copy and one (1) unsupported Test Copy of the Software for one (1) installation at Order Activity’s Designated Server Site, solely in the form of machine-readable, executable, object code or byte code, as applicable, and solely in connection with providing access to Order Activity Content to Order Activity’s Authorized End Users (unless otherwise expressly stated in the special provisions of Exhibit A) 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, (a) 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 (b) on multiple managed nodes that are configured and deployed on a single physical host that manages the self-contained nodes. Order Activity acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Order Activity’s Authorized End Users, Order Activity will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.

**General Usage Restrictions.** Order Activity agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in the Grant of License Section or, if applicable, any special provisions set forth on Exhibit A. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Order Activity shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Order Activity shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Order Activity 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 the Software is compiled or interpreted, and Order Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Order Activity any right to obtain or use such source code; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Order Activity from configuring the Software to the extent permitted by the Software’s standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Order Activity’s rights under the license granted in the Grant of License Section; or (vi) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Order Activity will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Order Activity add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Order Activity shall not use the Software in violation of Blackboard’s obligations to any third party incurred prior to the Schedule Effective Date, provided that Blackboard has notified Order Activity of such obligation. Order Activity shall not provide access to the Software to anyone other than Authorized End Users without Blackboard’s prior written consent; provided. Order Activity shall ensure that its use of the Software complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Order Activity shall ensure that its Authorized End Users will

comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section. Order Activity 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. Under no circumstances shall Order Activity permit any third party to host the Software.

**Expansion of Licensed Use.** Blackboard Software is priced annually based upon the number of FTE. If the number of Order Activity's FTE expands, additional fees may apply. A contract modification or separate purchase order will be required to document Order Activity's expanded number of FTEs, before additional fees may apply, and all additional fees will be in accordance with the GSA Schedule contract pricelist.

## **FEES**

In consideration for the services provided and license(s) granted in this Schedule, Order Activity shall pay to Blackboard all fees specified in Exhibit A or otherwise required in this Schedule, which fees shall be non-cancelable and non-refundable. With respect to each Renewal Term, if any, Order Activity shall pay to Blackboard the then - current fees for such services and licenses, which amounts shall be due and payable within thirty (30) days of the date of Blackboard's invoice for such Renewal Term. Order Activity further agrees to reimburse Blackboard for: (i) reasonable travel and living expenses incurred by Blackboard's employees and subcontractors in connection with the performance of maintenance and support services under this Schedule which are approved by Contracting Officer and; (ii) any other expenses described in this Schedule, provided that Blackboard will receive Order Activity's prior approval for single expenses greater than \$250, and further provided that, upon Order Activity's request, Blackboard will provide reasonable documentation indicating that Blackboard incurred such expenses. Except as otherwise required by this paragraph, all amounts payable under this Schedule shall be subject to applicable provisions of GSA Schedule GS-35F-0554M.

## **TERM**

This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the "Schedule Effective Date"); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue and shall continue for one (1) year ("Initial Term"). Upon completion of the Initial Term, this Schedule shall expire and may be renewed with a Contract modification or a purchase order for additional one (1) year terms ("Renewal Term"). Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Order Activity will: (i) immediately discontinue all use of Software licensed under this Schedule; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) remove the Software from its server and provide to Blackboard proof of the destruction of the original copy and any other copies of the Software; and (iv) return all Documentation and related training materials to Blackboard within a reasonable time at Order Activity's cost.

## **LIMITED SOFTWARE WARRANTY**

Blackboard warrants, solely for the benefit of Order Activity, 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 delivery, provided that: (i) Blackboard has received all amounts owed under this Agreement; (ii) Order Activity is not in material breach of this Agreement; (iii) Order Activity has installed any Corrections, Upgrades and Updates made available to Order Activity; and (iv) Order Activity has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. **ORDER ACTIVITY ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES BY BLACKBOARD, AND THAT BLACKBOARD'S SOLE OBLIGATION, AND ORDER ACTIVITY'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.**

## EXHIBIT: SOFTWARE SUPPORT

### 1. Software Support.

- 1.1. **Software Support Services.** During the Initial Term and any Renewal Term, Blackboard shall render the software support services set forth in this section to Customer subject to: (i) Customer's selected support specified in Attachment 1 (Standard or Enhanced); (ii) Customer's payment of the support fees described in Section 3; and (iii) Customer's compliance with its obligations set forth in Section 2 and elsewhere in this Agreement. For any future renewal period, Customer may change the support option (Standard vs. Enhanced) by requesting such change in writing within thirty (30) days of the start of the then-current Renewal Term.
- 1.2. **Standard Software Support Option Services.** The standard software support services to be provided by Blackboard pursuant to this Exhibit are as follows:
  - 1.2.1. **Help Desk for Problem Resolution.** Blackboard will provide Customer with help desk assistance during the Support Times regarding the diagnosis and correction of Software Errors. Customer agrees to follow Blackboard's current policies and procedures for communicating problems and Software Errors. Subject to this Section 1.2.1, Blackboard will attempt to resolve any support problems communicated by Customer. If the problem is determined by Blackboard to be the result of configuration or actions by Customer, Blackboard will communicate such determination to Customer along with a recommendation for resolution. In such case where Customer is determined to have caused the problem or condition, Customer may request in writing for Blackboard to provide time and materials support to be billed at Blackboard's then standard billing rates. Standard Software Support does not include any Consulting Support.
  - 1.2.2. **Access to Software Upgrades.** Blackboard periodically develops new releases to Software, which may include enhancements, bug fixes and optimization. New releases to Software shall be provided to Customer at no additional cost. Blackboard agrees to provide support for at minimum the latest commercially available version and one (1) prior version of the Software. Blackboard will provide Customer with (i) the most recent general release version of the Software; (ii) installation instructions; and (iii) automated installation scripts for some or all of the new release components. Customer is responsible for the installation, testing and deployment of all new releases. During the development of Software releases, Blackboard, in Blackboard's sole and absolute discretion, may decide to incorporate new third party technologies (including Third-Party Software), new versions and/or features of existing technologies, or discontinue using previously used third party technologies due to obsolescence or vendor support issues regarding such third party products that prevent or make it commercially unreasonable for Blackboard to provide an automated upgrade path for one (1) or more components of such product releases (a "Technology Platform Decision"). In the event of a Technology Platform Decision, Blackboard will notify Customer of any re-installation requirements, service options and additional installation fees for the reinstallation of the new version of the Software, and notwithstanding anything to the contrary contained in this Agreement, in the event of a Technology Platform Decision, Blackboard shall not be required to reinstall any new version of the Software on Customer's system unless Customer pays Blackboard the additional installation fees charged by Blackboard for such reinstallation.
  - 1.2.3. **Software Error Correction.**
    - 1.2.3.1. **Notification.** To obtain Software Error correction services, Customer must notify Blackboard promptly of any suspected Software Error and must provide Blackboard with reasonable detail of the nature of and circumstances surrounding the Software Error.
    - 1.2.3.2. **Software Error Correction.** Blackboard will use commercially reasonable efforts to correct and resolve Software Errors that Customer reports to Blackboard and which Blackboard is able to reproduce. Customer will promptly provide Blackboard with all information requested by Blackboard to reproduce such Software Errors. For



each such Software Error, Blackboard will use commercially reasonable efforts to provide Customer with a software patch, a work-around, or, if Blackboard is unable to provide Customer with either of the foregoing, a specific action plan for addressing the Software Error, including a good faith estimate of the time required to correct and resolve such Software Error.

- 1.2.4. **Response Times.** Blackboard will use commercially reasonable efforts to respond to Customer, by telephone or e-mail, within the same business day or by the end of the next business day, regarding Software Errors that Customer reports to Blackboard during the Support Times. For purposes of this Exhibit, “respond” means Blackboard's acknowledgment of a Software Error, and does not necessarily mean that a resolution will be achieved.
- 1.2.5. **Limitations on Blackboard's Support Obligations.** Notwithstanding anything to the contrary elsewhere in this Agreement, Blackboard will have no obligation to provide any support services to Customer if:
  - 1.2.5.1. Such support is related to the use or operation of any third party reporting tools not directly provided by Blackboard;
  - 1.2.5.2. Such support relates to or involves any software, hardware products or data not provided or approved by Blackboard, including performance problems that cannot be specifically attributed to Software;
  - 1.2.5.3. Such support directly relates to problems inherent with third party software licensed from other vendors;
  - 1.2.5.4. Such support directly relates to problems associated with alterations or modifications of the Software by Customer or a third party;
  - 1.2.5.5. Customer has not installed or used the Software in accordance with instructions provided by Blackboard;
  - 1.2.5.6. Customer has failed to replace earlier versions of the Software with a newer release or patch made available to Customer;
  - 1.2.5.7. Blackboard agrees to provide support for at minimum the latest commercially available version and one (1) prior version of the Software;
  - 1.2.5.8. A party other than Blackboard (or a party authorized by Blackboard) has serviced the Software and the Software no longer conforms to its Blackboard Software specifications; or
  - 1.2.5.9. Customer is not in full compliance with the terms of this Agreement or is not in material compliance with the terms of any other agreement between Blackboard and Customer.
- 1.3. **Enhanced Software Support Option Services.** If such option is selected in Attachment 1, the Enhanced Software Support services to be provided by Blackboard pursuant to this Exhibit include those Standard Software Support services described in Section 1.2 above, plus the following additional services:
  - 1.3.1. **Consulting Support.** Blackboard will provide Customer with remote advisory consulting services related to the Software. Consulting Support services will be limited to a maximum of two (2) hours per day per module, and twelve (12) hours per month per module.
    - 1.3.1.1. **Consulting Support Scheduling.** Customer agrees to follow Blackboard’s current policies and procedures for requesting Consulting Support services. Blackboard will use commercially reasonable efforts to respond to Customer, by telephone or e-mail, within the same business day or by the end of the next business day, to either provide an initial consultation with respect to Consulting Support or schedule a mutually agreeable time to meet with Customer regarding Customer’s request for Consulting Support services. For purposes of this Exhibit, “respond” means Blackboard’s acknowledgment of a request for Consulting Support services, and does not necessarily mean that Consulting Support will be performed or completed.
  - 1.3.2. **Upgrade Installation Services.** Blackboard will perform up to one (1) upgrade installation per year for each Software product licensed under this Schedule. Customer shall provide

Blackboard with remote access to Customer's computer infrastructure or on-site access at Customer's premises, should Blackboard prefer to provide the support on-site.

1.3.2.1. **Upgrade Installation Services.** Customer agrees to follow Blackboard's current policies and procedures for requesting Upgrade installation services. Blackboard and Customer will schedule a mutually agreeable time to perform the Upgrade. Blackboard agrees to complete any Upgrade installation request within eight (8) weeks of receiving the request.

1.4. **Additional Services.** Upon mutual agreement and written request from Customer (and subject to a Professional Services Agreement Statement of Work) Blackboard may provide Customer with additional support services for the Software not otherwise covered under this section, provided that Customer pays Blackboard for such service at Blackboard's then standard hourly and expense reimbursement rates. Except to the extent specifically otherwise provided in this Exhibit, such support service is not included within the terms of this Agreement.

2. **Customer's Obligations.**

2.1. **Documentation of Problem.** During the Initial Term or any Renewal Term, Customer will provide Blackboard with detailed information regarding the problem and assist Blackboard as requested in performing problem resolution actions. All problems will be logged by Customer on the designated web- based support system.

2.2. **Access.** During the Initial Term or any Renewal Term, Customer will provide Blackboard with reasonable access (via remote telecommunications or on-site access at Customer's premises should Blackboard prefer to provide the support on-site) to Customer's copies of the Software to the extent necessary, in Blackboard's discretion, to enable Blackboard to meet its support obligations as set forth in this Exhibit.

2.3. **Support Contact.** Customer shall designate one (1) employee and one (1) alternate as its "Support Contacts" to be generally available during the Support Times to confer with Blackboard regarding Software Errors and other support-related issues. Customer's Support Contacts are identified in Attachment 2. Customer shall notify Blackboard promptly of any changes in the persons designated as Support Contacts. Blackboard will provide technical support only to Customer's Support Contacts.

2.4. **Product Upgrades.** Customer is responsible for the installation of all Upgrades, except for those Upgrade services provided through the Enhanced Software Support option if such option is selected. Blackboard will provide Upgrade installation support services on a time and materials basis subject to a Professional Services Agreement Statement of Work Consulting Services Worker Order or existing services agreement.

3. **Fees and Charges.**

3.1 **General Fees and Charges.** Customer shall pay Blackboard the fees and charges set forth in Attachment 1. Blackboard may make adjustments to fees and charges at the beginning of any Renewal Term.

3.2 **Payment Procedures.** On an annual basis at the start of the Initial Term and any Renewal Term, Blackboard will invoice Customer for all fees and charges incurred by Customer pursuant to this Exhibit.

3.3 **Payment Terms.** Customer shall pay all invoiced amounts in U.S. dollars within thirty (30) days of the date of invoice.

4. **Term and Termination**

4.1 **Term.** The term of this Exhibit will commence on the Schedule Effective Date, and continue in effect during the Initial Term. This Exhibit will automatically renew for successive, one (1) year Renewal Term unless terminated by either Blackboard or Customer in accordance with Section 4.2.

4.2 **Termination at End of Term.** If at any point either Party decides not to renew this Exhibit, it shall provide the other Party written notice of its intention not to renew at least thirty (30) days prior to the end of the Initial Term or the then-current Renewal Term, as the case may be. In such case, Customer shall pay any outstanding fees pursuant to Section 3 above.

4.3 **Termination Upon Termination of Schedule.** This Exhibit shall immediately and automatically terminate upon the termination of the Schedule.

**Attachment 1**  
**Support Service Option Election and Fees**

Support Option Election (check one):

\_\_\_\_\_ Standard Software Support:

- Included with payment of License Amount in Exhibit A

\_\_\_\_\_ Enhanced Software Support:

- Annual fee shall be 35% of License Amount in Exhibit A

Note: If neither of the above support options is checked, the Standard Software Support option shall apply.

## **Attachment 2**

### **Support Times and Contacts**

#### *Support Times*

The Support Times are as follows:

- Online Support – 24 hour access for Customer to log support cases.
- Support Staff Office Hours:  
Monday through Friday, 8:00 a.m. through 6:00 p.m. (Eastern Daylight Time), excluding official Blackboard company holidays.

#### *Support Contacts*

Customer's Support Contacts (as required by Section 2.3), and his/her address, telephone number, fax number, and e- mail address

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND  
SOFTWARE (SPECIAL ITEM NUMBER 611420)**

**1. SCOPE**

a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.

b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

**2. ORDER**

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

**3. TIME OF DELIVERY**

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

**4. CANCELLATION AND RESCHEDULING**

a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class. d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

**5. FOLLOW-UP SUPPORT**

The Contractor agrees to provide each student with unlimited telephone support or online support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

**6. PRICE FOR TRAINING**

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

**7. INVOICES AND PAYMENT**

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**8. FORMAT AND CONTENT OF TRAINING**

- a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.
- b. **\*\*If applicable\*\*** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Contractor shall provide the following information for each training course offered:
  - (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
  - (2) The length of the course;
  - (3) Mandatory and desirable prerequisites for student enrollment;
  - (4) The minimum and maximum number of students per class;
  - (5) The locations where the course is offered;
  - (6) Class schedules; and
  - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the ordering activity’s location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

**9. “NO CHARGE” TRAINING**

The Contractor shall describe any training provided with equipment and/or software provided under this contract, free of charge, in the space provided below.

None

---

**GSA APPROVED ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF BLACKBOARD PRODUCTS FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE (SPECIAL ITEM NUMBER 611420)**

***Grant of License Provision***

***For Blackboard Materials License Purchases***

Subject to the terms and conditions of this Order Activity and the Federal Supply Schedule contract, Contractor grants to Order Activity an annual, non-exclusive, non-transferable, limited, Version-specific, internal use license to (i) use and copy the Blackboard Materials (means the Contractor training materials, instructor's manuals, product documentation and all other instructional materials and delivered to Order Activity) and (ii) to conduct the Contractor courses related thereto, if applicable. Order Activity is authorized hereunder to use the Blackboard Materials on an internal basis only for the sole benefit of Order Activity, solely for purposes of training its employees, contractors, and/or students on the use of the Contractor software and for conducting development sessions for its faculty that are sponsored and delivered by Order Activity. In addition and not by way of limiting the application of the foregoing, Blackboard Materials that relate to a particular Software program, including any Derivative Works, may be used only for internal courses conducted by Order Activity's employees (and/or contractors) who have been certified by the Contractor Certified Trainer program applicable to such Software program. Except as expressly permitted herein, Order Activity shall not, and shall make all commercially reasonable efforts so that its employees, contractors, and/or students do not, (i) transfer or otherwise distribute the Blackboard Materials to any third party, (ii) use the Blackboard Materials for the benefit of any third party, (iii) charge a direct or indirect fee for use of the Blackboard Materials or (iv) post the Blackboard Materials to any website or make the Blackboard Materials available for download in any location which is not restricted to only persons who are authorized under this Ordering Activity to access the Blackboard Materials. Further, without limiting the foregoing, Order Activity agrees to include a statement in any Blackboard Materials or Derivative Works distributed internally by Order Activity as permitted hereunder, expressly stating that such materials are for Order Activity's internal training purposes only and may not be distributed to or used for the benefit of any third party or used for any other purpose. Order Activity shall not alter, remove or conceal any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the Blackboard Materials and shall reproduce all such notices on any copies made by Order Activity. Unless otherwise expressly stated, the license granted hereunder applies to the latest Version of the applicable Blackboard Materials made generally available by Contractor as of the date on which delivery is made by Contractor and nothing herein shall be deemed to grant to Order Activity a license to any prior or subsequent Version of the Blackboard Materials unless a separate license for such Version has been acquired by Order Activity. Further, nothing herein shall be construed to grant to Order Activity or any other party any license with respect to any Contractor products or services (including without limitation Contractor's software products and services), except as expressly stated herein. Contractor and its licensors shall be deemed to own and hold all right, title and interest in and to the Blackboard Materials, and Order Activity acknowledges that it neither owns nor acquires any additional rights in and to the Blackboard Materials not expressly granted by this Ordering Activity and the Federal Supply Schedule, and Order Activity further acknowledges that Contractor hereby reserves and retains all rights not expressly granted in this Ordering Activity or the Federal Supply Schedule, including, without limitation, the right to use the Blackboard Materials for any purpose in Contractor's sole discretion.

***For Blackboard Course Materials Purchases***

Subject to the terms and conditions of this Order Activity and the Federal Supply Schedule contract, Contractor grants Order Activity a limited, non-exclusive, non-transferable non-sublicenseable right and license to (i) install and use the Blackboard Course Materials ("means the Blackboard course materials, course documentation and all other instructional materials specified") and delivered by Contractor solely in connection with providing access to Order Activity's Authorized End Users. Order Activity is authorized hereunder to use the Blackboard Course Materials on an internal basis only for the sole benefit of Order Activity, solely for purposes of training its Authorized End Users on the use of the Contractor software. Except as expressly permitted herein, Order Activity shall not, and shall make all commercially reasonable efforts so that its employees, contractors, and/or students do not, (i) transfer

or otherwise distribute the Blackboard Course Materials to any third party, (ii) use the Blackboard Course Materials for the benefit of any third party, (iii) charge a direct or indirect fee for use of the Blackboard Course Materials or (iv) post the Blackboard Course Materials to any website or make the Blackboard Course Materials available for download in any location which is not restricted to only persons who are authorized under this Ordering Activity to access the Blackboard Course Materials. Further, without limiting the foregoing, Order Activity agrees to include a statement in any Blackboard Course Materials or Derivative Works distributed internally by Order Activity as permitted hereunder, expressly stating that such materials are for Order Activity's internal training purposes only and may not be distributed to or used for the benefit of any third party or used for any other purpose. Order Activity shall not alter, remove or conceal any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the Blackboard Course Materials and shall reproduce all such notices on any copies made by Order Activity. Unless otherwise expressly stated, the license granted hereunder applies to the latest Version of the applicable Blackboard Course Materials made generally available by Contractor as of the date on which delivery is made by Contractor and any subsequent Version of the licensed Blackboard Course Materials that Contractor may, in its discretion, make generally available during the term of the Ordering Activity. However, nothing herein shall be deemed to grant to Order Activity a license to any Version of the Blackboard Course Materials made generally available prior to the Ordering Activity Effective Date or after termination of this Ordering Activity. Further, nothing in this Ordering Activity shall be construed to grant to Order Activity or any other party any license with respect to any Contractor products or services (including without limitation Contractor's software products and services), except as expressly stated herein. Contractor and its licensors shall be deemed to own and hold all right, title and interest in and to the Blackboard Course Materials, and Order Activity acknowledges that it neither owns nor acquires any additional rights in and to the Blackboard Course Materials not expressly granted by this Ordering Activity and the Federal Supply Schedule, and Order Activity further acknowledges that Contractor hereby reserves and retains all rights not expressly granted in this Ordering Activity or the Federal Supply Schedule, including, without limitation, the right to use the Blackboard Course Materials for any purpose in Contractor's sole discretion.

### **3. *License to create Derivative Works***

#### ***For Blackboard Materials License Purchases***

Subject to the terms and conditions and payment by Order Activity of the applicable license fees for the

Blackboard Materials, Contractor grants to Order Activity a perpetual, non-exclusive, non-transferable, limited, Version-specific, internal use license to create, develop, copy and use Derivative Works (shall mean a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which the preexisting work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work"). The term Derivative Works shall not include and Contractor shall not obtain any rights with respect to any Confidential Information of the Order Activity or any Order Activity-developed content or other Order Activity materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof) of the Blackboard Materials licensed hereunder solely for Order Activity's internal training purposes, subject to the use restrictions set forth above. Order Activity agrees that Contractor shall own all right, title and interest in and to any and all Derivative Works developed by Order Activity or Order Activity's employees, contractors, agents and other related parties ("Order Activity Derivative Works"). Order Activity agrees to, and does hereby, assign to Contractor all right, title and interest, including, without limitation, worldwide copyrights, patents and other intellectual property rights, in and to any and all Order Activity Derivative Works, and agrees to execute and deliver to Contractor all documentation reasonably requested by Contractor to reflect such assignment. Except for the license rights expressly set forth herein, Contractor does not hereby convey and Order Activity shall not obtain any right, title or interest in or to all or any part of the Blackboard Materials or the Derivative Works. Notwithstanding anything to the contrary contained herein, Contractor shall not obtain any rights with respect to any Confidential Information of the Order Activity or any Order Activity-



developed content or other Order Activity materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof.

***For Blackboard Course Materials Purchases***

Subject to the terms and conditions of this Ordering Activity and the Federal Supply Schedule and payment by Order Activity of the applicable license fees for the Blackboard Course Materials, Contractor grants to Order Activity a non-exclusive, non-transferable, limited, internal use license to create, develop, copy and use Derivative Works (“means any materials and other works in any media now known or hereafter developed that are based upon or derived from the Blackboard Course Materials or any portion thereof, including, without limitation, revisions, modifications, translations, abridgments, condensations, expansions, enhancements and any other form in which the Blackboard Course Materials may be incorporated, recast, transformed or adapted and any other work that if prepared without authorization would constitute a copyright infringement or other infringement of proprietary or intellectual property rights in the Blackboard Course Materials; provided, however, that the term Derivative Works shall not include and Contractor shall not obtain any rights with respect to any Confidential Information of the Order Activity or any Order Activity- developed content or other Order Activity materials that are used in conjunction with the Blackboard Course Materials but that are not based upon or derived from the Blackboard Course Materials or any portion thereof”) of the Blackboard Course Materials licensed hereunder solely for Order Activity’s internal training purposes, subject to the use restrictions set forth above. Order Activity agrees that Contractor shall own all right, title and interest in and to any and all Derivative Works developed by Order Activity or Order Activity’s employees, contractors, agents and other related parties (“Order Activity Derivative Works”). Order Activity agrees to, and does hereby, assign to Contractor all right, title and interest, including, without limitation, worldwide copyrights, patents and other intellectual property rights, in and to any and all Order Activity Derivative Works, and agrees to execute and deliver to Contractor all documentation reasonably requested by Contractor to reflect such assignment. Except for the license rights expressly set forth herein, Contractor does not hereby convey and Order Activity shall not obtain any right, title or interest in or to all or any part of the Contractor Course Materials or the Derivative Works. Notwithstanding anything to the contrary contained herein, Contractor shall not obtain any rights with respect to any Confidential Information (“means, for purposes of this Ordering Activity only, any trade secrets or confidential information disclosed to the receiving party by the disclosing party concerning the organization, business or finances of the disclosing party or of any third party which the disclosing party is under an obligation to keep confidential. Confidential Information shall not include any information that the receiving party can demonstrate was (i) publicly known at the time of disclosure to it, or becomes publicly known through no act of the receiving party, (ii) rightfully received from a third party without a duty of confidentiality, or (iii) developed by it on a completely independent basis”) the Order Activity or any Order Activity-developed content or other Order Activity materials that are used in conjunction with the Blackboard Course Materials but that are not based upon or derived from the Blackboard Course Materials or any portion thereof.

**4. *License to use Trademarks***

***For Blackboard Materials License Purchases***

During the term of this Ordering Activity, Contractor grants to Order Activity a license to use Contractor’s trademarks and trade names only for the purpose of identifying Contractor’s rights in and to the Blackboard Materials and the Order Activity Derivative Works. Order Activity agrees that it will reproduce Contractor’s name, trademark, trade name and copyright notices on all copies of the Blackboard Materials and any Order Activity Derivative Works. Order Activity shall acquire no rights to Contractor’s copyrights, trademarks or trade names by virtue of their use. Order Activity shall not use any trade name, trademark or other marks that are confusingly similar to those used by Contractor or use Contractor’s trademarks or trade names in connection with any goods or services other than the Blackboard Materials and the Order Activity Derivative Works. Order Activity acknowledges that all copyrights, trademark, trade name, or any other proprietary mark applied to or used by Contractor in reference to the Blackboard Materials, the Order Activity Derivative Works or other Contractor products or services are the sole and exclusive property of Contractor, whether registered or not.

***For Blackboard Course Materials Purchases***

During the term of this Ordering Activity, Contractor grants to Order Activity a license to use Contractor's trademarks and trade names only for the purpose of identifying Contractor's rights in and to the Blackboard Course Materials and the Order Activity Derivative Works. Order Activity agrees that it will reproduce Contractor's name, trademark, trade name and copyright notices on all copies of the Blackboard Course Materials and any Order Activity Derivative Works. Order Activity shall acquire no rights to Contractor's copyrights, trademarks or trade names by virtue of their use. Order Activity shall not use any trade name, trademark or other marks that are confusingly similar to those used by Contractor or use Contractor's trademarks or trade names in connection with any goods or services other than the Blackboard Course Materials and the Order Activity Derivative Works. Order Activity acknowledges that all copyrights, trademark, trade name, or any other proprietary mark applied to or used by Contractor in reference to the Blackboard Course Materials, the Order Activity Derivative Works or other Contractor products or services are the sole and exclusive property of Contractor, whether registered or not.

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)  
PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S)**

**1. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number **54151S** Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

**2. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)**

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

**3. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

#### **4. PERFORMANCE OF SERVICES**

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

#### **5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **6. INSPECTION OF SERVICES**

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS □ COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I □ □ OCT 2008) (DEVIATION I – FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts orders placed under this contract.

## **7. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Dec 2007) Rights in Data – General, may apply.

## **8. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.

## **9. INDEPENDENT CONTRACTOR**

All IT Professional Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## **10. ORGANIZATIONAL CONFLICTS OF INTEREST**

- a. Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the

---

schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

**11. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

**12. PAYMENTS**

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

- a. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- b. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
  - (1) The offeror;
  - (2) Subcontractors; and/or
  - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

**13. RESUMES**

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

**14. INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

**15. APPROVAL OF SUBCONTRACTS**

---

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

## 16. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING

### BLACKBOARD PLATFORM SERVICES LABOR DESCRIPTIONS

#### CONSULTING SERVICES

For the Consulting Services classification, general experience and functional responsibility represent the minimum qualifications for each category. In regard to Consulting Services general experience, an Advanced Degree in Information Technology or a related field equals up to two years of experience, a Bachelor's Degree equals three years of experience.

#### I. DIRECTOR

**General Experience.** Director has at least 10 years of experience in information technology (IT) system implementation, change management efforts or business process redesign.

**Functional Responsibility.** Directors apply their broad management skills and specialized functional and technical expertise to lead complex, large IT projects in leading delivery of solutions involving Blackboard's software or other client IT systems. Directors provide subject matter expertise in industry, process or technology areas. The Directors have significant impact on the department and the overall business. A Director is qualified to perform such tasks as:

- Oversee a portfolio of projects related to the Blackboard technology solutions or other client IT systems
- Manage the design and implementation of new or custom Blackboard software modules or platforms
- Work with client executives to facilitate organizational change programs and realize business goals associated with IT projects
- Ensure consistency of quality across multiple IT projects
- Develop and implement project success targets, quality standards, metrics, processes and procedures to ensure success
- Manage client contracts

**Minimum Education:** Bachelor's Degree in technology, engineering, or business-related field or 3 years related experience.

#### II. SENIOR PROJECT MANAGER

**General Experience.** Senior Project Managers possess at least 8 years of experience in information technology systems implementation, change management efforts or business process redesign.

**Functional Responsibility.** Senior Project Managers apply their broad management skills, mature project management skillset, and specialized functional and technical expertise to guide project teams in delivering client information technology solutions or to manage the day-to-day operations of projects. Senior Project Managers provide subject matter expertise in industry, process or technology areas including software implementation. A Senior Project Manager is qualified to perform such tasks as:

- Lead the planning and execution of complex IT programs or projects related to Blackboard software or other client IT systems
- Mentor junior consultants in the effective execution of IT project methodologies and practices
- Assist an organization in translating its Information Technology vision and strategy into actionable technology implementation plans
- Lead clients through streamlining, reengineering and transforming IT related business processes and information systems
- Develop and manage project budgets for services engagements related to Blackboard software or other client IT systems

**Minimum Education:** Bachelor's Degree in technology, engineering, or business-related field or 3 years related experience.

#### III. PROJECT MANAGER

**General Experience.** Project Managers possess at least 5 years of experience in information technology systems implementation, change management efforts or business process redesign.

**Functional Responsibility.** Project Managers apply their broad information technology management skills and specialized functional and technical expertise to guide project teams in delivering client information technology solutions and to manage the day-to-day operations of projects. Project Managers provide subject matter expertise in industry, process or technology areas including software implementation. A Project Manager is qualified to perform such tasks as:

- Plan and manage the work of implementing Blackboard software or other client IT systems
- Communicate project status and mitigate project risks
- Develop and manage project budgets for services engagements related to Blackboard software or other client IT systems

**Minimum Education:** Bachelor's Degree in technology, engineering, or business-related field or 3 years related experience.

#### IV. PRINCIPAL CONSULTANT

**General Experience.** Principal Consultants possess at least 8 years of experience in software implementation, change management efforts or business process redesign.

**Functional Responsibility.** Principal Consultants apply their advanced skills and experience in information systems development, detailed knowledge of business processes, technical background and supervisory skills to implement technology solutions. On projects, Principal Consultants provide direction to project teams and interact with clients at the supervisory level. A Principal Consultant is qualified to perform tasks such as:

- Lead clients through strategic planning, use case development, risk analysis, and tactical planning exercises to ensure successful deployment of Blackboard software or other client IT systems
- Lead business process redesign teams in the development of new business process architectures in support of IT projects
- Architect the design and implementation of Blackboard software solutions
- Design training and change management programs for the successful execution of Blackboard software or other client IT projects
- Participate in quality reviews to ensure work complies with specified information technology standards
- Mentoring of junior consultants

**Minimum Education:** Bachelor's Degree in technology, engineering, or business-related field or 3 years related experience.

#### V. SENIOR CONSULTANT

**General Experience.** Senior Consultants possess at least 5 years of experience in information systems implementation, change management efforts or business process redesign.

**Functional Responsibility.** Senior Consultants apply their advanced skills and experience in information systems development, detailed knowledge of business processes, technical background and supervisory skills to implement technology solutions. On projects, Senior Consultants provide direction to project teams and interact with clients at the supervisory level. A Senior Consultant is qualified to perform tasks such as:

- Supervise business integration analysts in the development of software designs, computer programming, system testing or training curricula in support of Blackboard software implementations or other client IT projects
- Lead business process redesign teams in the development of new business process architectures in support of Blackboard software implementations or other client IT projects
- Implement technical designs or develop custom software associated with Blackboard software implementations or other client IT projects
- Design and deliver training programs in support of Blackboard software implementations or other client IT projects
- Participate in quality reviews to ensure work complies with specified technical standards
- Define information technology systems requirements



**Minimum Education:** Bachelor’s Degree in technology, engineering, or business-related field or 3 years related experience.

## VI. CONSULTANT

**General Experience.** Consultants possess at least 3 years of experience in information systems implementation, change management efforts or business process redesign.

**Functional Responsibility** Consultants apply their advanced skills and experience in information systems development, detailed knowledge of business processes, technical background and supervisory skills to implement technology solutions. On projects, Consultants provide direction to project teams and interact with clients at the supervisory level. A Consultant is qualified to perform tasks such as:

- Implement technical designs or develop custom software associated with Blackboard software implementations or other client IT projects
- Participate in quality reviews to ensure work complies with specified technical standards
- Perform workflow analysis and/or document information technology system requirements
- Deliver training programs in support of Blackboard software implementations or other client IT projects

**Minimum Education:** Bachelor’s Degree in technology, engineering, or business-related field or 3 years related experience.

### TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES (SPECIAL ITEM NUMBER 54151ECOM)

#### 1. SCOPE

The prices, terms and conditions stated under Special Item Number **54151ECOM** Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

#### 2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE

**The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.**

#### 3. INFORMATION ASSURANCE

- a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)
- b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, “Standards for Security Categorization of Federal Information and Information Systems”) (FIPS 200, “Minimum Security Requirements for Federal Information and Information Systems”) prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN **54151ECOM** is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).
- c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

#### 4. DELIVERY SCHEDULE.

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Information for Ordering Activities Applicable to All Special Item Numbers, paragraph 6. Delivery Schedule.

## **5. INTEROPERABILITY.**

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

## **6. ORDER**

a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

## **7. PERFORMANCE OF ELECTRONIC SERVICES**

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

## **8. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

## **9. RIGHTS IN DATA**

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

## **10. ACCEPTANCE TESTING**

If requested by the ordering activity the Contractor shall provide acceptance test plans and procedures for ordering activity approval. The Contractor shall perform acceptance testing of the systems for ordering activity approval in accordance with the approved test procedures.

## **11. WARRANTY**

The Contractor shall provide a warranty covering each Contractor-provided electronic commerce service. The minimum duration of the warranty shall be the duration of the manufacturer's commercial warranty for the item listed below: Standard Commercial Warranty.

The warranty shall commence upon the later of the following:

- a. Activation of the user's service
- b. Installation/delivery of the equipment

The Contractor, by repair or replacement of the defective item, shall complete all warranty services within five working days of notification of the defect. Warranty service shall be deemed complete when the user has possession of the repaired or replaced item. If the Contractor renders warranty service by replacement, the user shall return the defective item(s) to the Contractor as soon as possible but not later than ten (10) working days after notification.

## 12. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

## 13. TRAINING

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, indicate below: Not Applicable.

## 14. MONTHLY REPORTS

In accordance with commercial practices, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.

## 15. ELECTRONIC COMMERCE SERVICE PLAN

- (a) Describe the electronic service plan and eligibility requirements.
- (b) Describe charges, if any, for additional usage guidelines.
- (c) Describe corporate volume discounts and eligibility requirements, if any.

Contact Contractor for additional information.

PRODUCT ID	PRODUCT DESCRIPTION	CAMELEON BAND	GSA PRICE
SAAS-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS STANDARD	1 - 500 users	\$105,026.45
SAAS-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS STANDARD	501 - 1,000 users	\$145,036.53
SAAS-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS STANDARD	1,001 - 2,000 users	\$177,855.32
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	1 - 500 users	\$154,297.80
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	501 - 1,000 users	\$192,871.72
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	1,001 - 2,000 users	\$226,907.67
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	2,001 - 5,000 users	\$292,810.58
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	5,001 - 10,000 users	\$351,052.61
SAAS2-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS PLUS	10,001 - 15,000 users	\$450,839.85
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	1 - 500 users	\$212,910.46
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	501 - 1,000 users	\$266,137.54
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	1,001 - 2,000 users	\$313,103.05
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	2,001 - 5,000 users	\$403,597.43
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	5,001 - 10,000 users	\$482,236.17

<b>PRODUCT ID</b>	<b>PRODUCT DESCRIPTION</b>	<b>CAMELEON BAND</b>	<b>GSA PRICE</b>
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	10,001 - 15,000 users	\$652,664.35
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	15,001 - 20,000 users	\$776,445.53
SAAS3-LPF-PROG-P	GOV LEARNING PERFORMANCE SAAS ADVANTAGE	20,001 - 25,000 users	\$900,226.70
AS-HST-STO500-SAAS	SAAS ADDITIONAL STORAGE 500GB	-	\$7,370.28
AS-HST-STO1TB-SAAS	SAAS ADDITIONAL STORAGE 1TB	-	\$12,634.77
SAAS STAGING ADD-ON	SAAS STAGING ADD-ON	-	\$25,269.52
AS-HST-OPDB-SAAS	SAAS OPEN DATABASE REPTG ADDON	-	\$6,317.38
AS-SAASUPDATESUPP	SAAS UPDATE SUPPORT ADDON	-	\$56,329.98

## APPENDIX I GLOSSARY

**Agreement** – means the License and Services Agreement including, the Cover Page, the Pricing Summary and all Schedules (and exhibits to Schedules) attached to these Master Terms, as amended from time to time.

**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. This is the maximum number of users that the backup site must be able to support during a disaster period.

**Authorized End User** – means any individual who is enrolled in an Order Activity’s course or an Order Activity’s employee or affiliate during an Initial or Renewal Term.

**Available Date** – means, for purposes of this Managed Hosting Business Continuity Schedule, the date upon which Order Activity hosting the primary Blackboard production environment locally (“a locally-hosted Order Activity”) receives notice from Blackboard that the Business Continuity environment is up and ready to support Order Activity during a disaster period. For Order Activity hosting the primary Blackboard production environment with Managed Hosting Services (“Managed Hosting-hosted Order Activity”), this will be the time that the disaster recovery site is up and ready to support a disaster period.

**Available Date** – means, with respect to any particular Software, Equipment, or Support Services, the date upon which the relevant Software or Support Services are made available to Order Activity pursuant to the terms of the relevant Schedule, regardless of whether Order Activity utilizes the Software, Equipment, or Support Services and for Equipment, the date a valid Purchase Order is accepted by Blackboard.

**Blackboard** – means Blackboard Inc., a Delaware corporation with its principal office and place of business at 11720 Plaza America Drive, 11<sup>th</sup> Floor, Reston, VA 20190 U.S.A, including its wholly owned subsidiaries.

**Business Continuity Service** – is a disaster recovery service provided by Blackboard and means network environment and Order Activity-dedicated equipment that come on line within the Service Level specifications described in Exhibit B when Order Activity’s primary hosting environment in a physically separate location – whether hosted by Blackboard or locally hosted by Order Activity – fails. Failure is understood to be a catastrophic failure at the hosted site. Order Activity must have executed a Blackboard Software Schedule to receive this Business Continuity Service.

**Confidential Information** – means any non-public information disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party’s business, vendors, Order Activities, end users, end users’ grades or other educational information, end users’ financial information, transaction data, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literal elements, capabilities and functionality, source code and object code, as well as research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices, computer software programs and other information licensed or otherwise disclosed to a Party in confidence by a third party, and any other non- public information that does or may have economic value by reason of not being generally known.

**Order Activity** – means the Order Activity identified on the cover page to which these Master Terms are attached.

**Order Activity Content** – means any data, information, graphics or other media files or other content, including, but not limited to, course materials, provided by or for Order Activity or any end user of the Software through use of the Software, excluding any portion of the Software or Documentation.

**Designated Server Site** – means the physical location where the Software will be installed, either a location operated by Order Activity, or hosted by Blackboard.

**Documentation** – means, with respect to any particular Software or Equipment, any applicable standard end user specifications and/or operating instructions provided by Blackboard for such Software and/or Equipment, which may be amended from time to time. Documentation does not include any sales or marketing materials.

**Effective Date** – means the date upon which both Parties have executed the cover page to which these Master Terms are attached.

**Equipment** – means any hardware and/or firmware provided by Blackboard to Order Activity pursuant to any Schedule, including, without limitation, hardware and/or firmware related to the stored value card system and security access system. Unless otherwise specified, Equipment shall be provided to Order Activity upon receipt and acceptance by Blackboard of a valid Purchase Order.

**Managed Hosting Services** – means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated in the table above.

**Party** – means either Blackboard or Order Activity.

**Schedule Effective Date** – means the later of (i) the date on which this Managed Hosting Business Continuity Schedule has been executed by authorized representatives of both Parties and (ii) the Effective Date of the Agreement.

**Services** – means any services provided by Blackboard to Order Activity pursuant to any Schedule, including, without limitation, consulting, educational, Managed hosting installation and Managed hosting, system administration, training or maintenance and support services.

**Software** – means the object code version of the Blackboard Learn™, Blackboard, Transact™ or Blackboard Connect™ software as described on the applicable Software Schedule(s).

**Test Copy** – shall mean one (1) copy of the Software for use solely for the purposes of testing the Software. Under no circumstances shall a test copy be used for production purposes. Unless otherwise indicated in an attached Schedule, test copies are unsupported.

**Blackboard Learn Course Delivery**

		<u><b>GSA Price</b></u>
AS-LS-PENA01	1 - 2,000 Users	<b>\$62,222.70</b>
AS-LS-PENA02	2,001 – 4,000 Users	<b>\$80,647.36</b>
AS-LS-PENA03	4,001 – 8,000 Users	<b>\$99,387.86</b>
AS-LS-PENA04	8,001 – 15,000 Users	<b>\$117,812.52</b>
AS-LS-PENA05	15,001 – 25,000 Users	<b>\$136,658.31</b>
AS-LS-PENA06	25,001 – 50,000 Users	<b>\$155,082.96</b>
AS-LS-PENA99	Additional bands of 25,000	<b>\$62,117.42</b>

**Blackboard Community Engagement**

		<u><b>GSA Price</b></u>
AS-CM-PENA01	1 - 2,000 Users	<b>\$43,482.19</b>
AS-CM-PENA02	2,001 – 4,000 Users	<b>\$56,432.09</b>
AS-CM-PENA03	4,001 – 8,000 Users	<b>\$69,487.28</b>
AS-CM-PENA04	8,001 – 15,000 Users	<b>\$82,647.74</b>
AS-CM-PENA05	15,001 – 25,000 Users	<b>\$95,597.65</b>
AS-CM-PENA06	25,001 – 50,000 Users	<b>\$108,547.55</b>
AS-CM-PENA99	Additional bands of 25,000	<b>\$43,587.48</b>

**Blackboard Content Management**

		<u><b>GSA Price</b></u>
AS-CS-PENA01	1 - 2,000 Users	<b>\$53,589.43</b>
AS-CS-PENA02	2,001 – 4,000 Users	<b>\$70,540.12</b>
AS-CS-PENA03	4,001 – 8,000 Users	<b>\$87,385.52</b>
AS-CS-PENA04	8,001 – 15,000 Users	<b>\$104,230.92</b>
AS-CS-PENA05	15,001 – 25,000 Users	<b>\$148,660.66</b>
AS-CS-PENA06	25,001 – 50,000 Users	<b>\$166,980.03</b>
AS-CS-PENA99	Additional bands of 25,000	<b>Custom</b>

**Blackboard Academic Collaboration – Developer Network**

		<u><b>GSA Price</b></u>
AS-LSDEV (CD, CM, CS for limited # of users)	Includes BbDN membership	<b>\$525.37</b>

**Blackboard Non-Production Test Licenses**

		<u><b>GSA Price</b></u>
AS-LSTEST-PENA	Blackboard Learn – Course Delivery Test	<b>\$12,528.77</b>
AS-LSTEST-PENA	Blackboard Learn – Course Delivery and Community Engagement Test	<b>\$12,528.77</b>
AS-CSTEST-NA	Blackboard Learn – Content Management Test	<b>\$10,212.52</b>

\*All test licenses include support services

**Blackboard ProSites™ License**

		<u><b>GSA Price</b></u>
AS-PROSITE-PENA	Prosites - 200 Users	<b>\$10,001.96</b>
AS-PROSITE-PENAINC	Additional 100 Users	<b>\$4,737.77</b>

\*Annual charges; no credits for overages of user increments. Additional Annual Storage Fees are available at \$239.28 per 50MB.

**Blackboard Learn for Outcomes Assessment**

		<b><u>GSA Price</u></b>
AS-OS-PENA01	1 - 2,000 Users	<b>\$285,542.17</b>
AS-OS-PENA02	2,001 – 4,000 Users	<b>\$362,815.17</b>
AS-OS-PENA03	4,001 – 8,000 Users	<b>\$440,088.18</b>
AS-OS-PENA04	8,001 – 15,000 Users	<b>\$517,115.87</b>
AS-OS-PENA05	15,001 – 25,000 Users	<b>\$645,413.60</b>
AS-OS-PENA06	25,001 – 50,000 Users	<b>\$724,894.41</b>
AS-OS-PENA99	50,001 – 75,000 Users	<b>\$1,000,378.93</b>
AS-OS-PENA99	75,001 – 100,000 Users	<b>\$1,275,863.23</b>
AS-OS-PENA99	Additional bands of 25,000 Users	<b>\$275,484.41</b>
plus Blackboard Powersight™		



**Blackboard Learn (or Blackboard Learn & Community Engagement) Hosting  
Non-Recurring Charge Setup Fee**

		<u>GSA Price</u>
AS-SETASPAP-NA	Up to 500 Users	\$11,265.36
AS-SETASPAP-NA	501 to 1,000 Users	\$11,265.36
AS-SETASPAP-NA	1,001 to 1,500 Users	\$11,265.36
AS-SETASPAP-NA	1,501 to 2,000 Users	\$11,265.36
AS-SETASPAP-NA	2,001 to 2,500 Users	\$11,265.36
AS-SETASPLS-NA	Up to 5,000 Users	\$22,530.73
AS-SETASPLS-NA	5,001 – 10,000 Users	\$22,530.73
AS-SETASPLS-NA	10,001 – 15,000 Users	\$22,530.73
AS-SETASPLS-NA		\$22,530.73
AS-SETASPLS-NA		\$0.00

**Annual Recurring Charge**

		<u>GSA Price</u>
AS-ASPLS-PENA01	Up to 500 Users	\$15,476.71
AS-ASPLS-PENA02	501 to 1,000 Users	\$28,216.05
AS-ASPLS-PENA03	1,001 to 1,500 Users	\$38,112.72
AS-ASPLS-PENA04	1,501 to 2,000 Users	\$44,956.16
AS-ASPLS-PENA05	2,001 to 2,500 Users	\$56,221.53

Includes 20GB storage and 512Kbps bandwidth  
 Oracle license includes; Blackboard software license is NOT INCLUDED

**Non-Recurring Charge Setup Fee**

		<u>GSA Price</u>
AS-SETASPLS-NA	Up to 5,000 Users	\$22,530.73
AS-SETASPLS-NA	5,001 – 10,000 Users	\$22,530.73
AS-SETASPLS-NA	10,001 – 15,000 Users	\$22,530.73
AS-SETASPLS-NA	15,001 – 20,000 Users	\$22,530.73
AS-SETASPLS-NA	Additional Bands of 5,000 Users	\$0.00

**Annual Recurring Charge**

		<u>GSA Price</u>
AS-ASPLS-PENA06	Up to 5,000 Users	\$64,328.37
AS-ASPLS-PENA07	5,001 – 10,000 Users	\$83,068.88
AS-ASPLS-PENA08	10,001 – 15,000 Users	\$101,177.68
AS-ASPLS-PENA09	15,001 – 20,000 Users	\$119,497.06
AS-ASPLS-PENA99	Additional Bands of 5,000 Users	\$17,055.97

Includes 50GB storage and 1Mbps bandwidth  
 Oracle license includes; Blackboard software license is NOT INCLUDED

**Blackboard Platinum Package  
Non-Recurring Charge Setup Fee**

		<u>GSA Price</u>
AS-SETASPLP-NA	Up to 8,000 Users	\$22,530.73
	Additional Service Unit (AS)	\$0.00

**Annual Recurring Charge**

		<b><u>GSA Price</u></b>
AS-ASPPLP-NA	Up to 8,000 Users	<b>\$154,030.13</b>
AS-ASPADSU-PENA	Additional Service Unit (AS)	<b>\$46,009.00</b>

\*AS: 250GB storage space (shared file server) / 20 Mbps bandwidth  
\*Additional service unit supports up to 7,500 users; includes 100GB storage and 512Kbps bandwidth (CE/Vista) or 50GB and 512Kbps bandwidth (AS)  
\*Includes T&D System, Staging with a Platinum Project Manager during upgrade periods only  
\*Software license NOT INCLUDED

**Blackboard Content Management/Blackboard Content System Hosting  
Non-Recurring Charge Setup Fee**

		<b><u>GSA Price</u></b>
AS-SETASPCS-NA	All Users	<b>\$16,950.68</b>

**Annual Recurring Charge**

		<b><u>GSA Price</u></b>
AS-ASPCS-PENA	All Users	<b>\$27,689.63</b>

**Initial setup includes:**

- \*50GB storage (shared file server) / 512 kbps bandwidth
- \*Extra storage should be quoted separately

**Note:** Bb Content System Hosting requires that the client have already purchased Bb Learning System Hosting or Bb Learning System and Bb Community System Hosting.

**Blackboard Assessment/Academic Suite (including Outcomes)  
Non-Recurring Charge Setup Fee**

		<b><u>GSA Price</u></b>
	Up to 5,000 Users	<b>\$33,499.38</b>
	Additional Service Unit	<b>\$0.00</b>

**Annual Recurring Charge**

		<b><u>GSA Price</u></b>
	Up to 5,000 Users	<b>\$135,624.61</b>
	Additional Service Unit	<b>\$39,050.70</b>

Standard discounts available from ASQuotes.

- \*50GB storage space (shared file server) / 1 Mbps bandwidth; supports up to 5,000 users
- \*Additional service unit supports up to 7,500 users, includes 50GB storage and 512 kbps bandwidth

**Value-Added MH Services Setup Fees**

		<b><u>GSA Price</u></b>
AS-SETASPTTEST	Test and Development Environment including: 9GB storage and test server environment – no backup Minimum Commitment: 6 months	<b>\$1,052.84</b>
AS-SETASPSTG	Staging Environment including: 20GB storage, 512Kbps and production server environment Minimum Commitment: 6 months	<b>\$5,264.19</b>
AS-SETASPSSL	SSL Service	<b>\$0.00</b>
AS-SETASPVPN	VPN Standard Configuration Service	<b>\$1,579.26</b>

## Value-Added MH Services Annual Charges

		<u>GSA Price</u>
AS-ASPADBW	Additional Bandwidth – in 1 Mbps increments per month	\$526.42
AS-ASPTTEST	Test and Development Environment including: 9GB storage and test server environment – no backup Minimum Commitment: 6 months	\$13,686.89
AS-ASPSTG	Staging Environment including: 20GB storage, 512Kbps and production server environment Minimum Commitment: 6 months	\$34,427.79
AS-ASPSSL	SSL Service	\$526.42
AS-ASPVPN	VPN Standard Configuration Service	\$13,686.89
	Data Restoration Fee (after 4 free restoration incidents Data hard backup and shipping)	\$765.70
AS-ASPDBUBAS	- Basic Client	\$526.42
AS-ASPDBUENT	- Enterprise Client	\$1,052.84
AS-ASPADST-06	Additional Storage - up to 100 GB	\$18,424.66
AS-ASPADST-07	Additional Storage - up to 250 GB	\$26,320.94
AS-ASPADST-08	Additional Storage - up to 500 GB	\$31,585.13
AS-ASPADST-09	Additional Storage - up to 1000 GB (1 TB)	\$41,060.67

**Note: All the above Managed Hosting Solutions – Software is sold separately.**

### Business Continuity Service for Locally or ASP Hosted Clients

Hosted backup environment for any Blackboard Application, including Outcomes System™

Point-in-time database backup and restore capability

Annual disaster recovery simulation test

60 days of production-level service operation once the Business Continuity Service Site is activated

RTO is the time-measured objective to have the Blackboard Business Continuity Service operation up and running from the point in time that Blackboard is made aware of the client's primary Blackboard system failure.

PO is the objective to minimize the loss of the client's database and file storage content by constantly backing up the client's information no less than the time guaranteed under each RPO service level.

**For information on all other service levels (additional user bands, etc.) please consult ASP Services.**

### Non-Recurring Charge Setup Fee

		<u>GSA Price</u>
AS-SETASPCLSCS	<u>Locally Hosted Clients:</u>	
AS-ASPBCLOCAL1	Level 1 Service: 12-hr RPO and 24-hr RTO	Custom Pricing
AS-ASPBCLOCAL2	Level 2 Service: 24-hr RPO and 2-day RTO	Custom Pricing
AS-ASPBCLOCAL3	Level 3 Service: 48-hr RPO and 5-day RTO	Custom Pricing

### Non-Recurring Charge Setup Fee

		<u>GSA Price</u>
AS-SETASPBC	<u>ASP Hosted Clients:</u>	
AS-ASPBCHOST	12-hr RPO and 24-hr RTO	Custom Pricing

### Annual Recurring Charge Setup Fee

		<u>GSA Price</u>
AS-SETASPCLSCS	<u>Locally Hosted Clients:</u>	
AS-ASPBCLOCAL1	Level 1 Service: 12-hr RPO and 24-hr RTO	Custom Pricing
AS-ASPBCLOCAL2	Level 2 Service: 24-hr RPO and 2-day RTO	Custom Pricing
AS-ASPBCLOCAL3	Level 3 Service: 48-hr RPO and 5-day RTO	Custom Pricing

**Annual Recurring Charge Setup Fee**

AS-SETASPBC  
AS-ASPBCHOST

ASP Hosted Clients:  
12-hr RPO and 24-hr RTO

Prices will vary based on individual environments. Please contact ASP Services.

**GSA Price**

**Custom Pricing**

**Note: All the above Managed Hosting Solutions – Software is sold separately.**

**Onsite Training**

		<u><b>GSA Price</b></u>
AS-EDUASADMIN	Academic Collab Administration	<b>\$10,738.95</b>
AS-EDUASESSEN	Academic Collab Essentials	<b>\$10,738.95</b>
AS-EDUASWRKSHPS	Acad Collab Admin & Essentials	<b>\$21,056.75</b>
AS-EDULSEDDEV	Course Delivery EDU Development	<b>\$16,845.40</b>
AS-EDULSADMIN	Course Delivery Administration	<b>\$6,001.17</b>
AS-EDULSESSEN	Course Delivery Essentials	<b>\$8,527.98</b>
AS-EDULSWRKSHPS	Couse Deliv ADM & Essentials	<b>\$12,634.05</b>
AS-EDUPSADMIN	Community Engag Administration	<b>\$8,527.98</b>
AS-EDUCSEDDEV	Content Management EDU Development	<b>\$12,634.05</b>
AS-EDUCSADMIN	Content Manage Administration	<b>\$3,158.52</b>
AS-EDUCSESSEN	Content Management Essentials	<b>\$6,001.17</b>
AS-EDUCSWRKSHPS	Content Manage ADM & Essential	<b>\$8,527.98</b>
AS-EDUBASICTOLS	Basic to Enterprise	<b>\$8,527.98</b>
AS-EDUCSCMTYWRK	Course Delivery to Acad Collab	<b>\$12,634.05</b>
AS-EDULSNEW	Whats New in Course Delivery	<b>\$8,527.98</b>
AS-EDUCMTYNEW	Whats New in CMTY Engagement	<b>\$3,158.52</b>
AS-EDUCSNEW	Whats New in Content Management	<b>\$6,001.17</b>
AS-EDUASNEW	Whats New in Academic Collab	<b>\$12,634.05</b>
AS-EDULSCRSE	Designing Exemplary Courses	<b>\$6,001.17</b>
AS-EDULSCRSE	Designing Exemplary Courses	<b>\$6,001.17</b>

**Online Training**

		<u><b>GSA Price</b></u>
AS-EDULSADMGUI	Learning Sys Admin Cert GUI	<b>\$1,052.84</b>
AS-EDULSADMTECH	Learning Sys Admin Cert Tech	<b>\$2,632.09</b>
AS-EDUTLOSTART	AS TLO Getting Started	<b>\$410.61</b>
AS-EDUTLOBUILD	AS TLO Building Courses	<b>\$410.61</b>
AS-EDUTLOENHANC	AS TLO Enhancing Communication	<b>\$410.61</b>
AS-EDUTLOASSESS	AS TLO Assessing Learners	<b>\$410.61</b>
AS-EDUTLOPD	AS TLO Taking Professional Dev Online	<b>\$410.61</b>
AS-EDUTLODESIGN	TLO Designing Engaging Content	<b>\$410.61</b>
AS-EDUTLOMONITOR	TLO Monitoring Student Performance	<b>\$410.61</b>
AS-EDUTLOEVCRS	TLO Evaluating Courses	<b>\$410.61</b>

**Regional Training**

		<b>Unit Based Pricing</b>	<u><b>GSA Price</b></u>
AS-REGNTRN-AZ	Regional Training per Seat Other Location	(/day)	<b>\$342.18</b>
AS-REGNTRN-DC	Regional Training per Seat DC Location	(/day)	<b>\$342.18</b>
AS-REGNTRN-OTH	Regional Training per Seat AZ Location	(/day)	<b>\$342.18</b>
	AS Building Blocks WKSHP 1 Seat	--	<b>\$1,914.25</b>

**Certified Trainer Program**

		<u><b>GSA Price</b></u>
AS-EDULSCERTTRN	Bb Learn Certified Trainer	<b>\$3,158.52</b>

**Custom Training**

		<u>Unit Based Pricing</u>	<u>GSA Price</u>
	Training - Implementation Planning	--	\$226.36
AS-EDUCONSULT	Training - Consulting Services	--	\$226.36
AS-EDUMATDEV	Training - Materials Develop	--	\$226.36
AS-EDUCOURSEDEV	Training - Custom Course Development	--	\$226.36
AS-TRAINCUSTOM	Training - Custom	(/day)	\$3,790.22
	Training - Travel Expenses	--	\$0.00

**Materials Licensing**

			<u>GSA Price</u>
AS-MATCSDWTMLIC	CS Matlic PK - Single		\$5,264.19
AS-MATLSDWTMLIC	LS Matlic F2FPK - Single		\$5,264.19
AS-MATLSOLSERIES	LS Mat Online Pkg Series		\$8,422.70
AS-MATLSBUNDLE	LS Materials License - Bundle		\$12,318.20

**Course Cartridges**

			<u>GSA Price</u>
AS-MATLSORI-01	LS Student Orientation < 500		\$2,105.68
AS-MATLSORI-02	LS Student Orientation 500 - 2K		\$5,264.19
AS-MATLSORI-03	LS Student Orientation 2K - 4K		\$8,422.70
AS-MATLSORI-04	LS Student Orientation 4K-6K		\$11,054.79
AS-MATLSORI-05	LS Student Orientation 6K - 8K		\$13,686.89
AS-MATLSORI-06	LS Student Orientation 8K - 10K		\$15,792.57
AS-MATLSORI-99	LS Student Orientation Additional 2K		\$2,105.68

**Learn Training**

			<u>GSA Price</u>
AS-TEACHREADY	Learn Teaching Readiness		\$11,371.28
AS-ADMINREADY	Learn Administration Readiness		\$11,371.28
AS-LRNREADY	Learn Administration and Teaching Readiness		\$11,371.28
AS-LRNREADY-FLEX	Learn Administration and Teaching Readiness Flex		\$22,110.84
AS-CERT-ADM	Learn Administration Essentials Certification		\$2,632.25
AS-CERT-TCH-ADV-O	Learn Advanced Teaching Certification for Original		\$1,047.63
AS-CERT-TCH-ESSN-O	Learn Teaching Essentials Certification for Original		\$1,047.63

**Blackboard Transaction System™ – Basic Software License w/embedded Oracle – Higher Education  
Transact/Universal Windows Edition**

		<u>GSA Price</u>
SW-TRANS-BAS1	up to 1,999 cardholders	\$8,243.24
SW-TRANS-BAS2	2,000-3,999 cardholders	\$20,544.69
SW-TRANS-BAS3	4,000-7,999 cardholders	\$39,927.71

**Blackboard Transaction System™ – Basic Software License w/embedded Oracle for POS  
Transact/Universal Windows Edition**

		<u>GSA Price</u>
SW-TRANSPOS-BAS1-P	up to 999 cardholders	\$5,052.47
SW-TRANSPOS-BAS2-P	1,000-1,999 cardholders	\$6,346.03

**Blackboard Transaction System™ – Basic Software License w/embedded Oracle, Universal POS for Unix  
(Secondary License for Clients Utilizing Universal Edition POS (Point of Sale) in conjunction with  
continued use of existing Unix Edition License)**

*Universal/Windows Edition*

		<u>GSA Price</u>
SW-UXUVPOS-01-P	up to 1,999 cardholders	\$5,179.29
SW-UXUVPOS-02-P	2,000-3,999 cardholders	\$6,447.48
SW-UXUVPOS-03-P	4,000-7,999 cardholders	\$9,709.27
SW-UXUVPOS-04-P	8,000-14,999 cardholders	\$12,950.76
SW-UXUVPOS-05-P	15,000-24,999 cardholders	\$16,187.19
SW-UXUVPOS-06-P	25,000+ cardholders	\$19,423.61

**Blackboard Transaction System™ – Basic Software License w/embedded Oracle, Universal Door Access  
for Unix (Secondary License for Clients Utilizing Universal Edition Door Access in conjunction with  
continued use of existing Unix Edition License)**

*Universal/Windows Edition*

		<u>GSA Price</u>
SW-UXUVSEC-BAS01-P	up to 1,999 cardholders	\$1,146.44
SW-UXUVSEC-BAS02-P	2,000-3,999 cardholders	\$2,850.89
SW-UXUVSEC-BAS03-P	4,000-7,999 cardholders	\$5,691.64
SW-UXUVSEC-BAS04-P	8,000-14,999 cardholders	\$8,542.53
SW-UXUVSEC-BAS05-P	15,000-24,999 cardholders	\$11,383.28
SW-UXUVSEC-BAS06-P	25,000-49,999 cardholders	\$13,676.17
SW-UXUVSEC-BAS07-P	50,000-74,999 cardholders	\$14,802.32
SW-UXUVSEC-BAS08-P	75,000-99,999 cardholders	\$15,943.69
SW-UXUVSEC-BAS09-P	100,000-124,999 cardholders	\$17,074.91

**Blackboard Transaction System™ – Software License – Higher Education (Embedded Oracle License is NOT INCLUDED)**

***Transact/Universal Windows Edition***

		<u><b>GSA Price</b></u>
SW-TRANS-01-P	up to 1,999 cardholders	\$7,497.54
SW-TRANS-02-P	2,000-3,999 cardholders	\$18,667.77
SW-TRANS-03-P	4,000-7,999 cardholders	\$36,295.62
SW-TRANS-04-P	8,000-14,999 cardholders	\$54,506.83
SW-TRANS-05-P	15,000-24,999 cardholders	\$71,231.74
SW-TRANS-06-P	25,000-49,999 cardholders	\$85,567.36
SW-TRANS-07-P	50,000-74,999 cardholders	\$92,618.50
SW-TRANS-08-P	75,000-99,999 cardholders	\$99,791.39
SW-TRANS-09-P	100,000-124,999 cardholders	\$106,842.52
SW-TRANS-10-P	125,000-149,999 cardholders	\$114,015.41
SW-TRANS-11-P	150,000-174,999 cardholders	\$121,066.55

**Blackboard Transaction System™ – Software License – Universal for New Market (Embedded Oracle License is NOT INCLUDED)**

***Transact/Universal Windows Edition***

		<u><b>GSA Price</b></u>
SW-TRANS-01-P	up to 1,999 cardholders	\$7,497.54
SW-TRANS-02-P	2,000 to 3,999 cardholders	\$9,273.01
SW-TRANS-03-P	4,000 to 7,999 cardholders	\$18,211.21
SW-TRANS-04-P	8,000 to 14,999 cardholders	\$27,250.88
SW-TRANS-05-P	15,000 to 24,999 cardholders	\$35,610.80
SW-TRANS-06-P	25,000 to 49,999 cardholders	\$42,783.68
SW-TRANS-07-P	50,000 to 74,999 cardholders	\$46,431.00
SW-TRANS-08-P	75,000 to 99,999 cardholders	\$49,956.57
SW-TRANS-09-P	100,000 to 124,999 cardholders	\$53,725.62

**Blackboard Transaction System™ Software License (Embedded Oracle License is NOT INCLUDED)  
(Secondary License for Clients that are currently using the Universal Edition POS (Point of Sale) in conjunction with continued use of existing Unix Edition License)**

***Universal/Windows Edition***

		<u><b>GSA Price</b></u>
SW-UXUVPOS-01-P	up to 1,999 cardholders	\$4,869.85
SW-UXUVPOS-02-P	2,000-3,999 cardholders	\$6,087.32
SW-UXUVPOS-03-P	4,000-7,999 cardholders	\$9,130.98
SW-UXUVPOS-04-P	8,000-14,999 cardholders	\$12,184.77
SW-UXUVPOS-05-P	15,000-24,999 cardholders	\$15,228.44
SW-UXUVPOS-06-P	25,000+ cardholders	\$18,277.17

**Blackboard Facility/Door Access Traditional Software License (for Client with processor-based Oracle or Client-provided Oracle)**

***Transact/Universal Windows Edition***

		<u><b>GSA Price</b></u>
SW-SEC-01-P	up to 1,999 cardholders	\$8,532.39
SW-SEC-02-P	2,000+ cardholders	\$12,184.77

**Blackboard Facility/Door Access Software License w/embedded Oracle for Customer w/BbTS Basic (For Clients who have purchased the Blackboard Transaction System™ Basic Software License)**

***Transact/Universal Windows Edition***

		<u><b>GSA Price</b></u>
SW-SEC-BAS01-P	up to 1,999 cardholders	\$9,374.47
SW-SEC-BAS02-P	2,000+ cardholders	\$13,402.24



**Blackboard Transaction System™ – Software License – Higher Education  
Unix Edition**

		<u><b>GSA Price</b></u>
SW-SYSU01-P	up to 1,999 cardholders	<b>\$7,497.54</b>
SW-SYSU02-P	2,000-3,999 cardholders	<b>\$18,667.77</b>
SW-SYSU03-P	4,000-7,999 cardholders	<b>\$36,295.62</b>
SW-SYSU04-P	8,000-14,999 cardholders	<b>\$54,506.83</b>
SW-SYSU05-P	15,000-24,999 cardholders	<b>\$71,231.74</b>
SW-SYSU06-P	25,000-49,999 cardholders	<b>\$85,567.36</b>
SW-SYSU07-P	50,000-74,999 cardholders	<b>\$92,618.50</b>
SW-SYSU08-P	75,000-99,999 cardholders	<b>\$99,791.39</b>
SW-SYSU09-P	100,000-124,999 cardholders	<b>\$106,842.52</b>
SW-SYSU10-P	125,000 - 149,999 cardholders	<b>\$114,015.41</b>
SW-SYSU11-P	150,000-174,999 cardholders	<b>\$121,066.55</b>
SW-SYSU12-P	175,000-199,999 cardholders	<b>\$128,239.44</b>
SW-SYSU13-P	200,000-224,999 cardholders	<b>\$135,402.17</b>
SW-SYSU14-P	225,000-249,999 cardholders	<b>\$142,453.32</b>
SW-SYSU15-P	250,000-274,999 cardholders	<b>\$149,626.21</b>

**Blackboard Transaction System™ – Software License – Unix for New Market  
Unix Edition**

		<u><b>GSA Price</b></u>
SW-SYSU01	up to 1,999 cardholders	<b>\$7,497.54</b>
SW-SYSU02	2,000-3,999 cardholders	<b>\$9,273.01</b>
SW-SYSU03	4,000-7,999 cardholders	<b>\$18,211.21</b>
SW-SYSU04	8,000-14,999 cardholders	<b>\$27,250.88</b>
SW-SYSU05	15,000-24,999 cardholders	<b>\$35,610.80</b>
SW-SYSU06	25,000-49,999 cardholders	<b>\$42,783.68</b>
SW-SYSU07	50,000-74,999 cardholders	<b>\$46,431.00</b>
SW-SYSU08	75,000-99,999 cardholders	<b>\$49,956.57</b>
SW-SYSU09	100,000-124,999 cardholders	<b>\$53,725.62</b>

**Blackboard Facility/Door Access Software License  
Unix Edition**

		<u><b>GSA Price</b></u>
SW-UX-SEC-P	For all Cardholder bands	<b>\$8,167.15</b>

**Transaction Integration Agents**  
*Unix and Universal/Windows Edition*

		<u><b>GSA Price</b></u>
SW-B2TIA-BNOBLE1	B2 TIA to Barnes & Noble Bookstore	<b>\$3,500.20</b>
SW-B2TIA-BUDG1	B2 TIA to Budgetext	<b>\$3,500.20</b>
SW-B2TIA-FOLLETT1	B2 TIA to Follett Bookstore	<b>\$3,500.20</b>
SW-B2TIA-MBS1	B2 TIA to Missouri Bookstore	<b>\$3,500.20</b>
SW-B2TIA-NEBR1	B2 TIA to Nebraska Bookstore	<b>\$3,500.20</b>
SW-B2TIA-RATE1	B2 TIA to Ratex Bookstore	<b>\$3,500.20</b>
SW-B2TIA-SEQU1	B2 TIA to Sequoia Bookstore	<b>\$3,500.20</b>
SW-B2TIA-THIR1	B2 TIA to Third Party Systems	<b>\$3,500.20</b>
SW-B2TIA-MCRS97-1	B2 TIA to Micros 9700 System	<b>\$3,500.20</b>
SW-B2TIA-MCRS37-1	B2 TIA to Micros 3700 System	<b>\$3,500.20</b>
SW-B2TIA-EQUI1	B2 TIA to Equitrac Print Management System	<b>\$3,500.20</b>
SW-B2TIA-GOPR1	B2 TIA to GoPrint	<b>\$3,500.20</b>
SW-B2TIA-ANDT1	B2 TIA to A.N.D. Technologies - Pcounter	<b>\$3,500.20</b>
SW-B2TIA-VNDPRT1	B2 TIA for VendPrint	<b>\$3,500.20</b>
SW-B2TIA-SCBC1	B2 TIA for Showcase Business Center	<b>\$3,500.20</b>
SW-B2TIA-ENV11	B2 TIA to EnvisionWare	<b>\$3,500.20</b>
SW-B2TIA-CMSD1	B2 TIA to CMS Diginet	<b>\$3,500.20</b>
SW-B2TIA-BBPOST1	B2 TIA for Posting Blackboard Transactions	<b>\$3,500.20</b>
SW-B2TIA-CASH1	B2 TIA to Informed Decisions Inc. - CashNET System	<b>\$3,500.20</b>
SW-B2TIA-MCGANN1	B2 TIA to McGann	<b>\$3,500.20</b>
SW-B2TIA-DIGPMT1	B2 TIA to Digital Payment Technologies (parking system)	<b>\$3,500.20</b>
SW-B2TIA-FEDAPD1	B2 TIA 1-3 Federal APD (parking system)	<b>\$3,500.20</b>
SW-B2TIA-PHAROS1	B2 TIA for Pharos Uniprint, OTG and/or SignUp	<b>\$3,500.20</b>
SW-B2TIA-ESUD1	B2 TIA to USA Technologies - eSuds	<b>\$3,500.20</b>
SW-B2TIA-USAGANG	B2 TIA for USA Technologies Gang Controller	<b>\$1,050.06</b>
SW-B2TIA-RAVE1	B2 TIA for RAVE Wireless TIA	<b>\$3,500.20</b>
SW-B2TIA-GOURMET1	B2 TIA to Gourmet Dining and Bakery	<b>\$3,500.20</b>
SW-B2TIA-ARACPD1	B2 TIA ARAMARK Campus Dish	<b>\$3,500.20</b>
SW-B2TIA-ARACAT	B2 TIA to Catapult(ARAMARK only), (Registers 1-3, one TIA per Register)	<b>\$968.89</b>
SW-B2TIA-ARACAT	B2 TIA to Catapult (ARAMARK only), (Registers 4-9, one TIA per Register)	<b>\$755.84</b>
SW-B2TIA-ARACAT	B2 TIA to Catapult (ARAMARK only), (Registers 10-15, one TIA per Register)	<b>\$644.24</b>
SW-B2TIA-ARACAT	B2 TIA to Catapult (ARAMARK only), (Registers 16-20, one TIA per Register)	<b>\$537.72</b>
SW-B2TIA-ARACAT	B2 TIA to Catapult (ARAMARK only), (Registers 21+, one TIA per Register)	<b>\$431.19</b>
SW-B2TIA-SDXT1	B2 TIA to Sodexho USA - TrakCash Cash Management Software (Registers 4-9, one TIA per Register)	<b>\$755.84</b>
SW-B2TIA-SDXT1	B2 TIA to Sodexho USA - TrakCash Cash Management Software (Registers, 10-15, one TIA per Register)	<b>\$644.24</b>
SW-B2TIA-SDXT1	B2 TIA to Sodexho USA - TrakCash Cash Management Software (Registers, 16-20, one TIA per Register)	<b>\$537.72</b>
SW-B2TIA-SDXT1	B2 TIA to Sodexho USA - TrakCash Cash Management Software (Registers 21+, one TIA per Register)	<b>\$431.19</b>
SW-B2TIA-TCS1	B2 TIA to Total Computing Solutions	<b>\$3,500.20</b>
SW-B2TIA-SECOM1	B2 TIA 1-3 to Secom International, Inc.	<b>\$3,500.20</b>
SW-B2TIA-YELCABLA1	B2 TIA 1-3 to Yellow Cab LA	<b>\$3,500.20</b>
SW-B2TIA-BKLOG1	B2 TIA 1-3 for BOOKLOG CWOFC	<b>\$3,500.20</b>
SW-B2TIA-BOSCO1	B2 TIA 1-3 for BOSCO	<b>\$3,500.20</b>
SW-B2TIA-SEQWR-P	B2 TIA for the Blackboard Wireless Readers	<b>\$3,500.20</b>

SW-B2TIA-SQKIOSK-P	B2 TIA for Sequoia Kiosk	\$3,500.20
SW-B2TIA-SEQU1	B2 TIA to Sequoia Bookstore	\$3,500.20
SW-B2TIA-xxxxxxx	All initial TIA purchases are \$3450. Clients with 4 TIAs or greater will receive a price reduction to \$345 at time of their renewal.	\$350.02

**Transaction Integration Agents (Band Pricing)  
Unix and Transact/Universal Windows Edition**

		<u>GSA Price</u>
SW-INTGRT-BAND1	B2 Integration 1-1,999 Cardholders	<b>\$7,969.58</b>
SW-INTGRT-BAND2	B2 Integration 2,000-3,999 Cardholders	<b>\$7,969.58</b>
SW-INTGRT-BAND3	B2 Integration 4,000-7,999 Cardholders	<b>\$9,563.49</b>
SW-INTGRT-BAND4	B2 Integration 8,000-14,999 Cardholders	<b>\$9,563.49</b>
SW-INTGRT-BAND5	B2 Integration 15,000-24,999 Cardholders	<b>\$11,157.41</b>
SW-INTGRT-BAND6	B2 Integration 25,000-49,999 Cardholders	<b>\$11,157.41</b>
SW-INTGRT-BAND7	B2 Integration 50,000-74,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND8	B2 Integration 75,000-99,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND9	B2 Integration 100,000-124,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND10	B2 Integration 125,000-149,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND11	B2 Integration 150,000-174,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND12	B2 Integration 175,000-199,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND13	B2 Integration 200,000-224,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND14	B2 Integration 225,000-249,999 Cardholders	<b>\$12,751.32</b>
SW-INTGRT-BAND15	B2 Integration 250,000-274,999 Cardholders	<b>\$12,751.32</b>

**Blackboard Building Blocks Developer's Network  
Universal/Windows Edition & Unix Editions**

		<u>GSA Price</u>
TS-BBDA-TIA	Unlimited Annual Membership for Blackboard Building Blocks Academic with Annual license for one (1) <b>Transaction Integration Agent</b> to interface with ____ System (first agent)	<b>\$5,072.77</b>
TS-BBDA-TIA	Blackboard Building Block Academic Annual licensing for one (1) <b>Transaction Integration Agent</b> to interface with ____ System (additional agents after the first)	<b>\$1,217.46</b>
TS-BBDC-TIA	Unlimited Annual Membership for Blackboard Building Blocks Commercial with Annual licensing for one (1) <b>Transaction Integration Agent</b> to interface with ____ System (first agent)	<b>\$7,609.15</b>

**Blackboard Transaction System™ manufactured Hardware Identified for GSA Schedule use  
Universal/Windows & Unix Edition**

	<u>Model Name</u>	<u>GSA Price</u>
AT3000	IP-Capable Activity Reader	\$1,597.92
VR-MDBMP	Multi-Protocol Vending Reader	\$1,119.05
VR-MFI	Multi-Functional Interface	\$266.82
CR3000	Copy Machine Reader	\$1,278.34
LC3000	IP-Capable Laundry Reader Supports up to 60 machines Requires at least one LCM20	\$1,597.92
LCM20	Laundry Center Multiplexer Each Multiplexer will support up to 20 machines per room	\$373.35
LE3-PSENCL	Power Supply and Enclosure for LMC20	\$213.06
LCI3010	Wiring Harness for Maytag Machines Maintenance coverage is not available for this item	\$32.47
LCI3020	Wiring Harness for Speed Queen Machines Maintenance coverage is not available for this item	\$32.47
LCI3030	Wiring Harness for Whirlpool Machines Maintenance coverage is not available for this item	\$53.77
SA3032	SA3032 Model Security Reader - Master Controller and Door Controller (SA3032) 32,000 cardholder database capability	\$1,171.81
SA3000DC	Door Controller Only - Universal System only	\$426.11
SA-SM8	Security Multiplexer	\$1,278.34
SE3-CS	Card Slot with No Pin Pad (for SA30xx series)	\$586.41
SE3-CSPP	Card Slot with PIN Pad (for SA30xx series)(includes Mounting Plate)	\$639.17
AC3000US	Payment Headquarters in Location - PHIL (Account Management Center) withUS Bill acceptor	\$8,623.69
VE-MTG1	Mounting Plate for Vending Reader	\$21.31
COM-CONFIGKIT	Configuration Kit for Unattended Reader (Maintenance coverage is not available for this item)	\$28.15
COM/IPCONV	IP Converter	\$1,171.81
COM/IPCABLES	IP Converter Kit (cables / adapters)	\$213.06
MF4100-OF	Blackboard MF4100 Multi-Function Reader (for Copy/Laundry/Activity)	\$1,562.41
VR4100-OF	VR-4100 Vending Reader	\$1,116.01
PS4100-OF	Felica POS Reader	\$263.78
SE3-RDR100	Felica Door Access Reader	\$264.80

**Blackboard Transaction System™ sole sourced Hardware Identified for GSA Schedule use**

	<u>Model Name</u>	<u>GSA Price</u>
RDR-E-		
NCR70XRT	NCR RealPOS70XRT with 15" Capacative Touch Display (for v3.5/3.6)	<b>\$3,282.08</b>
RDR-E-NCR70D	NCR RealPOS70 Terminal Model 7402 with Capacative Touchscreen	<b>\$3,282.08</b>
RDR-E-CASH70	Cash Drawer for NCR RealPOS70	<b>\$294.22</b>
RDR-E-TRP97USB	Thermal Receipt Printer for NCR RealPOS70 (NCR 7197 with USB Cable)	<b>\$507.27</b>
RDR-E-PD70	External Patron Display, RealPOS70	<b>\$355.09</b>
RDR-E-NCR7892	NCR RealScan 7892 UPC Scanner	<b>\$1,014.56</b>
RDR-E-NCR21	NCR RealPOS21 Terminal	<b>\$2,561.74</b>
RDR-E-CASH20	NCR RealPOS20 Compact Cash Drawer w/Insert	<b>\$294.22</b>
RDR-E-CASH70	NCR RealPOS70 Mid-range Cash Drawer w/Insert and Locking Lid	<b>\$294.22</b>
RDR-E-TRP97	NCR 7197 Thermal Receipt Printer (non-USB)	<b>\$558.01</b>
RDR-E-PD21	2x20 VFD Pole Mount Display Kit for NCR RealPOS21	<b>\$355.09</b>
RDR-E-CASH70	Cash Drawer for Axiohm Printer	<b>\$294.22</b>
BWR-MC70	Wireless Handheld Reader MC70, Mag Stripe Reader with Warranty	<b>\$2,905.68</b>
BWR-MC70A	Wireless Handheld Reader MC70 with GPRS Cellular Support, Mag Stripe Reader with Warranty	<b>\$3,053.81</b>

BWR- MC70ZEBPRTR	Zebra MZ220 Bluetooth-Enabled Printer	<b>\$581.34</b>
BWR- MC70CHARGE	Charging/Hot Sync Cradle for MC70	<b>\$229.29</b>
RMS-KSK-PRIM	Primary Kiosk for RMS Kiosk: NCR EasyPoint 42	<b>\$5,261.47</b>
RMS-KSK-SEC	Secondary Kiosk for RMS Kiosk: NCR EasyPoint 42	<b>\$4,852.61</b>
RMS-KSK-PED	Pedestal - Floor Stand Base and UPS (550VA/300w)	<b>\$590.47</b>
RMS-KSK-PRTSS	Self-Service Printer Integrated 4.5" (black cabinet) with 24V power cable	<b>\$1,458.93</b>
RMS-KSK- PSPACE	Pedestal Printer Blank Spacer	<b>\$167.41</b>
RMS-KSK-WMF	Wall Mount Bracket - Fixed	<b>\$76.09</b>
RMS-KSK-WMT	Wall Mount Bracket - Tilt	<b>\$129.86</b>
RMS-KSK-MBRK	Table/Pedestal Mounting Bracket	<b>\$53.77</b>
RMS-KSK-FMK	Flush Table Mount Kit	<b>\$129.86</b>
RDR-E-TRP97	Remote Order Printer - NCR 7197 Series	<b>\$444.79</b>
RMS-COM-PRTIP	Remote Printer Communications Kit - IP	<b>\$610.76</b>
RMS-COM- PRT232	Remote Printer Communications Kit - RS-232	<b>\$15.22</b>

**Blackboard Software Maintenance Coverage “Platinum”**

**GSA Price**

Twenty percent (20%) of GSA Software License Price or \$1,750.00, whichever is greater for Blackboard Clients up to 1,999 cardholders (core Blackboard system software)

Twenty percent (20%) of GSA Software License Price for Blackboard Clients that exceed 2,000 cardholders or more (on core Blackboard system software)

Twenty percent (20%) of GSA Software License Price for all applicable Software Modules and Interfaces eligible for Blackboard Platinum-level Coverage

**BbOne® Services**

**Blackboard One Management Fee (Requires 3-Year Commitment)**

Less than 7,500 cardholders	<b><u>GSA Price</u></b> <b>\$2,790.02</b>
7,500 and less than 15,000 cardholders	<b>\$3,369.08</b>
Greater than 15,000 cardholders	<b>\$3,948.14</b>
<b>Per Transaction Fee</b>	<b><u>GSA Price</u></b>
All Cardholder bands	<b>TBD</b>

**Remote and Onsite Training**

*Universal/Windows Edition & Unix Edition*

		<u><b>GSA Hourly Rate</b></u>
SC-T-CUSTOMSITE or	Onsite Custom Training Workshops	<b>\$228.27</b>
SC- CRSL-T-CSITE	(Unix/Windows/Universal)	
SC-T-CUSTREMOTE	Remote Custom Training Services – Professional Services	<b>\$228.27</b>
SC-INSTALL	Hardware Installation Assistance and Training	<b>\$187.69</b>

**Note:**

Reflected training fees do not included reimbursable travel expense that are billed at the completion of training. Blackboard will not travel to a client site to delivery with less than 2 full days of training to perform. Purchased training expires one (1) year after date of purchase.



**Blackboard Connect for Government**

BC-STND  
BC-CARE

Per Recipient Fee  
Annual Support Fee

**GSA Price**  
**\$2.10**  
**\$1,052.84**

**MobilEdu**

1 - 500 Users	<b><u>GSA Price</u></b> <b>\$15,792.57</b>
501 - 1000 Users	<b>\$23,162.43</b>
1001 - 2000 Users	<b>\$30,532.29</b>
2001 - 4000 Users	<b>\$37,902.15</b>
4001 - 8000 Users	<b>\$45,272.02</b>
8001 - 15000 Users	<b>\$52,641.88</b>
15001 - 25000 Users	<b>\$60,011.74</b>
25001 - 50000 Users	<b>\$67,381.60</b>
Additional bands of 25000 users	<b>\$74,751.47</b>
	<b><u>GSA Price</u></b>
One Time Setup Fee	<b>\$7,896.28</b>

**Blackboard Analytics™ Enterprise License Fee**

4-modules Annual License

**GSA Price**

Student, Finance, Fin Aid, HR

**\$1,210,763.13**

- The Enterprise License for a bundle of Blackboard Analytics modules includes the following modules: Student, Finance, Financial Aid, and Human Resources
- The Enterprise License for a bundle of Blackboard Analytics modules that includes Student, Finance, Financial Aid, and Human Resources is only available to ordering activities who meets each requirement below:
  1. The customer is a Higher Education System of Education
  2. The System has more than 300,000 students
  3. The customer is utilizing PeopleSoft Campus Solutions, Financial Management & HRMS
  4. Each PeopleSoft module is running on a single instance for all of the campuses

**Annual Remote Application Administrator service. Includes administration, configuration, and support on for the Customer's Blackboard installation. The service model assumes that Customer is hosting with Blackboard and that the remote resource will have full system access.**

AS-SYSADMIN-FFP

**GSA Price**  
**\$343,851.68**

The objective of the Remote Application Administrator service is to provide a dedicated and experienced full-time system administration, configuration, and support resource to Customer for a period of twelve (12) months. This resource will perform day-to-day Blackboard administration and configuration tasks on Customer's Blackboard installation while helping to support longer term initiatives and programs. The service model assumes that Customer is hosting with Blackboard and that the remote resource will have full system access.

The Remote Application Administrator has unlimited access to the rest of the Blackboard Consulting organization which brings years of experience in industry effective best practices around Blackboard Application management, configuration and governance. Resource will also have an inside perspective in the Blackboard product development and Blackboard support organizations.

The remote application administrator is fully trained and supported by Blackboard Consulting. Specifically, this role will provide the following benefits to Customer:

- Provide day-to-day Blackboard Learn and Collaborate GUI administration potentially including tasks such as:
  - Building Block setting management;
  - Create and Manage Users, Roles, and Privileges
  - Create and Manage Courses, Catalogs, and Terms
  - Create and Manage Enrollments
  - Manage System-wide Tools and Utilities, such as
    - Tool Settings
    - My Blackboard Settings
    - Achievements
    - Enterprise Surveys
    - Notification Management
  - Goals Management and Reporting
    - Creating and assigning Goals, Sub-Goals, and Categories for Standards Alignments
    - Running System, Course, and Student Activity Reports
  - Manage Community Settings, Users and Branding (if applicable)
  - Manage Blackboard Content System (if applicable)
- Coordinate upgrades to customizations and integrations with the Customer team and Blackboard Integration and Customization Maintenance (ICM) team;
- Assist client with the planning and testing the application of patches and upgrades to the Blackboard Learn software and Building Blocks;
- Manage troubleshooting of integration exceptions and error handling on day-to-day basis;
- Assist client in making strategic decisions in changes to the system, additional functionality, interfaces, changes in configuration, etc.;
- Be a point of escalation and troubleshooting for product and end user issues;
- Interface with Blackboard consulting, product development, support teams and client management;
- Participate in client meetings to help make Blackboard system related decisions;
- Conduct the knowledge transfer tasks (if required) to client staff on Blackboard administration and configuration.

Artifacts:

- None

Customer Requirements / Assumptions:

- Cost assumption is based on a 12-month commitment
- Blackboard will provide support remotely during normal business hours 9 AM to 5 PM Eastern Time Zone, Monday through Friday
- Blackboard may provide interim staffing while a dedicated resource is recruited
- The Remote Application Administrator will not interface directly with end users (learners, instructors) rather only deal with escalation issues and designated points of contact
- Resource will observe Blackboard holidays and vacation/sick time policies.
- Resource will give 2 weeks' notice to Customer before taking vacation.
- During vacation/holiday/sick time, a full-time alternative resource will not be assigned; however, during this time, Customer will be provided with direct contact and escalation support through Customer's account management team
- Blackboard reserves the right to make staffing changes as necessary to meet the needs of the engagement. In the event of any planned change, the new resource will be fully trained on Customer's solution and operations prior to transition.

## 1 Overview

Blackboard Consulting offers an annual subscription-based maintenance program for each consulting project involving the integration or customization of the Blackboard Learn™ software.

The Integration Customization Maintenance (“ICM”) service provides Order Activitys with Blackboard Consulting assistance, for named consulting projects, to support planned Blackboard upgrades or ad-hoc Order Activity questions.

## 2 Assumptions

- The following basic assumptions also apply to all ICM support agreements:
- For all upgrades, Order Activitys must have a comparable non-production environment installed with the customization. As Blackboard Consulting does not provide server hardware environments to replicate Order Activitys’ solutions for development, ICM will need access to the Order Activity’s non-production environment to test and validate any required changes prior to deployment in the production environment;
- Order Activity will notify ICM four (4) weeks prior to any upgrade with upgrade plans;
- All software developed and provided to the Order Activity by Blackboard Consulting is maintained solely by Blackboard.
- ICM covers support related to planned minor releases from Blackboard such as application packs, service packs and hot fixes, as well as updates and upgrades Blackboard Learn™.

Issue types not covered by ICM include (but are not limited to) the following:

- Issues resulting from changes to the system architecture;
- Issues resulting from changes to the Order Activity’s external environments such as third party tools used for authentication, SIS systems etc.

## 3 Integration and Customization Maintenance

3.1 ICM Program. If purchased by Order Activity, Blackboard may provide ICM Services as part of an annual maintenance program to support Order Activity’s implementation, integration, and use of the Software licensed under this Schedule. All Software developed and provided to the Order Activity by Blackboard is maintained solely by Blackboard. ICM Services are to be provided in accordance with Blackboard’s then-standard ICM policy.

3.2 Nonexclusively. Order Activity acknowledges that it has no right of exclusivity as to any of the services that may be provided by Blackboard under this Agreement or this Schedule, and that Blackboard shall have the right to provide the same or similar services to third parties, and to use or otherwise exploit any Blackboard software in providing such services.

3.3 Program Continuity. If Order Activity purchases the ICM Services for the Initial paid term and then terminates then and Order Activity later desires to reinstate the ICM Services, Order Activity shall be required to pay the total amount of all fees that would have been due had the ICM Services continued, as well as a reinstatement fee of twenty percent (20%) of the total amount of such fees. If Order Activity does not select the ICM Services for the Initial Term and Order Activity later desires to purchase the ICM Services, Order Activity shall be required to pay the total amount of all fees that would have been due had the ICM Services been purchased initially, as well as a late initiation fee of twenty percent (20%) of the total amount of such fees.

3.4 Term This ICM shall commence upon deployment of integration/customization into Order Activity’s Blackboard environment and shall continue in effect for a period of one (1) year (the “Initial Term”) unless earlier terminated, and may renew for successive one (1) year periods (each, a “Renewal Term”), upon written notice to the other party of its intention at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term. For convenience, the Initial Term and Renewal Term may sometimes be referred to collectively as the “Term”. Any renewals shall be at Blackboard’s then current pricing.

3.5 In the event of termination of the Agreement, this Statement of Work or the licenses granted hereunder for any reason, Blackboard shall immediately cease providing any ICM Services purchased by Order Activity. Notwithstanding the perpetual nature of the license granted to Order Activity for use of the Software, in the event of a termination for Order Activity breach, Order Activity shall immediately (i) discontinue all use of the Software including any modifications made during the Term, as well as Blackboard trademarks, trade names and other proprietary rights; (ii) erase or destroy the Software including any modifications made during the Term, contained in the computer memory or on a computer server under control of Order Activity; (iii) return to Blackboard or destroy all copies of the Software in the possession or control of Order Activity or its employees, contractors or other related parties; and (iv) certify in writing to Blackboard, within thirty (30) days of the termination of this Statement of Work, that Order Activity has complied with the foregoing.

		<b><u>GSA PRICE</u></b>
AS-ICMGRADEXSOL	ICM GRADEBOOK EXTRACT SOLUTION	<b>\$5,580.36</b>
AS-ICMGREXT	ICM GRADEBOOK EXTRACT Locally Hosted	<b>\$5,053.91</b>
AS-ICMINTGRB2E	ICM INTEGR BASIC TO ENTPRISE Locally Hosted	<b>\$3,369.27</b>
AS-ICMINTGRFND	ICM SNAPSHOT INTEGRATION FOR FOUNCATIONS	<b>\$6,633.25</b>
AS-ICMSISEVENT	ICM SIS EVENT CONVERTER	<b>\$8,844.33</b>
AS-ICMSIS	ICM SIS FRAMEWORK	<b>\$8,423.17</b>
AS-ICMCRSEMERGE	ICM SECTION MERGE TOOL	<b>\$8,844.33</b>
AS-ICMDATAMGR	ICM DATA MANAGER TOOL	<b>\$3,369.27</b>
AS-ICMENRGR	ICM COURSE MERGE TOOL Locally Hosted	<b>\$4,422.17</b>
AS-ICMPASSMGMT	ICM PASSWORD MANAGEMENT SOLUTION	<b>\$5,580.36</b>
AS-ICMSCT	ICM SCT EVENT INTEGRATION Locally Hosted	<b>\$12,424.18</b>

**GSA Pricing for ALLY SIN 511210**

		<u><b>GSA PRICE</b></u>
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 1 - 2,000 FTE	\$7,920.20
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 2,001 - 4,000 FTE	\$11,880.30
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 4,001 - 8,000 FTE	\$19,800.50
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 8,001 - 15,000 FTE	\$31,185.79
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 15,001 - 25,000 FTE	\$44,551.13
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 25,001 - 50,000 FTE	\$69,301.76
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 50,001 - 75,000 FTE	\$81,677.08
AS-ALY-BBL-P	BLACKBOARD ALLY FOR LEARN 75,001 - 100,000 FTE	\$99,002.52
AS-ALY-OTH-P	BLACKBOARD ALLY 1 - 2,000 FTE	\$11,880.30
AS-ALY-OTH-P	BLACKBOARD ALLY 2,001 - 4,000 FTE	\$17,820.45
AS-ALY-OTH-P	BLACKBOARD ALLY 4,001 - 8,000 FTE	\$29,700.76
AS-ALY-OTH-P	BLACKBOARD ALLY 8,001 - 15,000 FTE	\$46,778.69
AS-ALY-OTH-P	BLACKBOARD ALLY 15,001 - 25,000 FTE	\$66,826.70
AS-ALY-OTH-P	BLACKBOARD ALLY 25,001 - 50,000 FTE	\$103,952.64
AS-ALY-OTH-P	BLACKBOARD ALLY 50,001 - 75,000 FTE	\$122,515.62
AS-ALY-OTH-P	BLACKBOARD ALLY 75,001 - 100,000 FTE	\$148,503.78
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 1 - 2,000 FTE	\$7,920.20
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 2,001 - 4,000 FTE	\$11,880.30
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 4,001 - 8,000 FTE	\$19,800.50
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 8,001 - 15,000 FTE	\$31,185.79
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 15,001 - 25,000 FTE	\$44,551.13
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 25,001 - 50,000 FTE	\$69,301.76
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 50,001 - 75,000 FTE	\$81,677.08
MR-ALY-JLE-P	BLACKBOARD ALLY FOR MOODLEROOMS 75,001 - 100,000 FTE	\$99,002.52
AS-ALY-REMTRN	ALLY REMOTE TRAINING	\$1,980.05
EC-ELN-ACCS-PLAN	E-Learning Accessibility Plan	\$47,521.21

**GSA Pricing for Genius SIS SIN 511210**

		<u><b>GSA PRICE</b></u>
AS-GENIUS	REGISTRATION & MANAGEMENT (GENIUS) 1-500 users	\$19,118.41
	REGISTRATION & MANAGEMENT (GENIUS) 501-1,000 users	\$25,985.52
	REGISTRATION & MANAGEMENT (GENIUS) 1,001-2,000 users	\$29,009.74
	REGISTRATION & MANAGEMENT (GENIUS) 2,001-5,000 users	\$34,399.87
	REGISTRATION & MANAGEMENT (GENIUS) 5,001-10,000 users	\$47,466.88
	REGISTRATION & MANAGEMENT (GENIUS) 10,001-15,000 users	\$57,366.12
	REGISTRATION & MANAGEMENT (GENIUS) 15,001-20,000 users	\$81,359.91
	REGISTRATION & MANAGEMENT (GENIUS) 20,001 - 25,000 users	\$91,160.16



		<b><u>GSA PRICE</u></b>
AS-GENIUS- IMPL	REGISTRATION & MANAGEMENT (GENIUS) 25,001-50,000 users	\$104,635.01
	REGISTRATION & MANAGEMENT (GENIUS) 50,001-100,000 users	\$127,911.11
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 1,001-2,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 2,001-5,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 5,001-10,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 10,001-15,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 15,001-20,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 20,001-25,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 25,001-50,000 users	\$9,899.24
	REGISTRATION & MANAGEMENT (GENIUS) IMPLEMENTATION 50,001-100,000 users	\$9,899.24

**GSA Pricing for SIN 54151S**

SIN	Labor Category	GSA Price
<b>54151S</b>	DIRECTOR	\$335.01
<b>54151S</b>	SENIOR PROJECT MANAGER	\$268.01
<b>54151S</b>	PROJECT MANAGER	\$239.29
<b>54151S</b>	PRINCIPAL CONSULTANT	\$268.01
<b>54151S</b>	SENIOR CONSULTANT	\$239.29
<b>54151S</b>	CONSULTANT	\$205.79

## BLACKBOARD® Master Agreement for All Products and Services

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

### 1. APPLICABILITY OF THIS MASTER AGREEMENT

With respect to Products and Services you purchase, the terms of this Master Agreement govern: (a) your rights to access and use software licensed on a term or perpetual basis (“**Software**”); (b) your rights to access and use software made available under a software-as-a-service delivery model for a term (“**SaaS Services**”); (c) your rights to support and/or maintenance services which you purchase or are otherwise entitled to receive pursuant to the terms hereof (“**Support**”); (d) any professional services (“**Professional Services**”); (e) any managed hosting services, cloud hosting services or other hosting services (“**Hosting Services**”); (f) any hardware and/or firmware that you purchase (“**Equipment**”); and (g) any student support services (“**Student Support Services**”). The terms of this Master Agreement are divided into two parts, with the terms immediately below applying to *all* Products and Services, and the section further below entitled “Terms Applicable to Specific Products and Services” containing additional provisions applicable to *only certain* Products and Services listed therein.

### 2. RIGHTS OF ACCESS AND USE.

**2.1 License to Use SaaS Services.** With respect to SaaS Services, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to access and use the SaaS Services made available by Blackboard to you on a remote-access, subscription basis via the Internet solely in support of your operations.

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

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

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

**2.5 License Restrictions.** You may not use the Software or SaaS Services beyond the usage, storage or other applicable restrictions set forth in the Agreement. In addition, unless otherwise expressly permitted in the Agreement, without our prior written consent, you will not: (i) permit any third-party to install, configure, access, use or copy all or any portion of the Software or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the SaaS Services or Software except as expressly permitted by applicable law, rule or regulation (“**Law**”); (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the SaaS Services or Software; (iv) use the SaaS Services or

---

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

Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the SaaS Services or Software; or (vi) use the SaaS Services or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the SaaS Services or Software are hosted (including where such use interferes with any other party's use thereof).

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

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

### 3. SUPPORT AND SERVICE LEVEL AGREEMENTS

**3.1. In General.** If you purchase or are otherwise eligible to receive Support from us as reflected on an Order Form, we will provide you with the Support described in the Blackboard Customer Support Services Guide ("**Services Guide**") located on our website at <https://blackboard.secure.force.com/publickbarticleview?id=kA57000000PB0o> for the relevant Products and Services.

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

**3.3. Corrections, Updates and Upgrades.** "**Corrections**" means a change (e.g. fixes, workarounds and other modifications) made by or for us which corrects Software Errors, provided in temporary form such as a patch, and later issued in the permanent form of an Update. "**Software Error**" means a failure of any Software or SaaS Services to materially conform to its applicable standard end user documentation provided by us ("**Documentation**"), provided that such failure can be reproduced and verified by us using the most recent version (including all available Corrections, application packs, Updates, and Upgrades) of such Software or SaaS Service made available to you, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by your material breach of the Agreement, or your unauthorized modification or misuse of the Software or SaaS Services. "**Updates**" means the object code versions of the Software or SaaS Services that have been developed by us to correct any Software Error and/or provide additional functionality and that have been commercially released. "**Upgrades**" means the object code versions of the Software or SaaS Services that have been enhanced or otherwise modified by or on our behalf, acting in our sole discretion, to include additional functionality and that have been commercially released and not marketed as a separate product or solution.

### 4. PROPRIETARY RIGHTS

**4.1. Customer Property.** As between you and us, Customer Property is and shall remain your sole and exclusive property. "**Customer Property**" means all graphic user interface, text, content, images, video, music, designs, products, computer programs, drawings, documentation and other materials of any kind posted, submitted, provided or otherwise made available to us by you or an Authorized User in connection with the Products and Services. Customer Property may also contain Personal Information or "PI", which is defined in Section 5 and discussed further below.

**4.2. Blackboard Property.** Subject to the limited rights expressly granted hereunder, we and our licensors or suppliers own all right, title and interest in and to each of the Products and Services, along with all related documentation, materials, content, and specifications, and all modifications, enhancements, improvements, and all derivative works thereto. We also retain all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with our provision of any services or the performance of any obligations hereunder, including any content provided by us or on our behalf in or through the Product and Services.

**4.3. Blackboard Use of Customer Property.** During the term of the Agreement, you grant to us and our affiliates and third party service providers, solely to perform our obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use the Customer Property. You also acknowledge that, subject to the terms of this Agreement and to the extent permitted by Law, Customer Property may be accessed and processed by our, our affiliates' or our third party service providers' support or (if

applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Customer Property was collected, and you hereby authorize such access and processing.

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

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

**4.6. Other Rights.** You hereby grant to us the limited right to use your name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Products and Services in our promotional materials. We agree to discontinue such use within fourteen (14) days of Customer's written request.

**4.7. DMCA Notice and Takedown Policy.** Because we respect content owner rights, it is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"). If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent:

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

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

**5. PERSONAL INFORMATION AND STUDENT DATA**

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

**Confidentiality.** Blackboard agrees to treat Personal Information as confidential and not to share it with third parties other than as described in the terms of this Agreement. When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Blackboard recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

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

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

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

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

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

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

request and consent by an Authorized User for transfer of Personal Information, and Blackboard shall retain records of such consents which shall be available to Customer upon request.

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

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

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

## 6. DATA SECURITY

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

## 7. PROFESSIONAL SERVICES

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

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

## 8. MANAGED HOSTING SERVICES

If you purchase managed hosting services as reflected on an Order Form, the Agreement shall include the terms located on our website at

<https://blackboard.secure.force.com/publicbarticleview?id=kA570000000PB0o>, with such terms governing the managed hosting services.

## 9. FEES, EXPENSES AND PAYMENT TERMS

**9.1 Taxes.** Unless expressly provided in an Order Form, the fees hereunder do not include any sales, use, excise, import or export, value-added (“**VAT**”), goods and services (“**GST**”), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees (“**Taxes**”) levied on the delivery of any Products and Services by us to you. You shall be responsible for payment of all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes, you will be invoiced and you will pay within thirty (30) days after the date of the invoice unless you have provided a valid tax exemption certificate authorized by the appropriate taxing authority. If you are required by Law to withhold any amounts, then you shall timely pay the amount to the relevant tax authority and provide acceptable documentation evidencing your payment. We will be responsible for taxes based on our net income or taxes (such as payroll taxes) due from us on behalf of our employees. Blackboard shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

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

## 10. TERM AND TERMINATION.

**10.1. Term and Renewal.** The Agreement commences as of the date on which purchase order has been signed by both parties, , or as otherwise indicated on an Order Form (the “**Effective Date**”) and shall continue in effect until the expiration or termination of the term indicated in the purchase order. Certain Products and Services (for example, SaaS Services) have license terms subject to renewal beyond their initial term as indicated on the Order Form, and the Agreement shall continue in effect during any such renewal terms. Except for termination rights described herein, the parties have no other right of early termination and are bound and committed to meet their payment and other contractual obligations throughout the entirety of the initial term.

**10.2. Termination for Breach.** In the event that either Party materially breaches any obligation, representation or warranty under the Agreement, the non-breaching Party may terminate the Agreement in its entirety, or, at the non-breaching party’s option, it may terminate solely the relevant Product or Service pursuant to which such breach relates, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach.

**10.3. Effect of Termination.** Upon termination of the Agreement or termination or expiration of any individual license or authorization to use any Products or Services, you and your Authorized Users will immediately cease access to the applicable Products and Services (or all of them in the case of termination of the Agreement), and you will immediately pay us all amounts due and payable for such Products and Services. Also, in the event of any termination prior to the end of any term for a Product or Service due to your breach, you shall immediately pay us all fees which are then due or would become due had no termination occurred. With respect to any such Agreement termination or expiration, each party: (a) will immediately cease any use of the other Party’s Confidential Information, (b) will delete any of the other Party’s Confidential Information from its computer storage or any other media to the extent commercially practicable; and (iii) will return to the other Party or, at the other Party’s option, destroy, all copies of the other Party’s Confidential Information.

**10.4. Survival.** The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting



the foregoing, the provisions of Sections 4, 5, 9, 10.3, 10.4, 11.3, 12, 13, 14, 18.5, and 24.7 of this Master Agreement shall survive the termination of the Agreement for any reason.

## 11. GENERAL WARRANTIES.

**11.1. By Blackboard.** We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined above) for one year from its delivery or for the term of the relevant SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly notify of us of in writing, we will exert commercially reasonable efforts to repair or otherwise remedy the non-conformity so that the warranty is materially complied with. With regard to breaches of subsections (a) or (b) above, our remedy may include a code fix, a work around, or other modification. If we are unable to remedy the non-conformity after a reasonable period of time, then YOUR SOLE AND EXCLUSIVE REMEDY shall be: (i) for Professional Services or Hosting Services, to seek a refund of the fees paid for the deficient, un-remedied services; and (ii) for licensed Software or SaaS Services, to seek recovery of direct damages caused by the breach, subject to the limitation of liability below. These warranties by us shall not apply in the event you materially breach this Agreement.

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

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

## 12. MUTUAL LIMITATIONS OF LIABILITY.

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

**12.2. Mutual Limitations of Liability.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, YOUR PAYMENT OBLIGATIONS, AND EACH PARTY'S INDEMNITIES SET FORTH IN THE AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S OR SUCH PARTY'S LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE AFFECTED PRODUCTS AND SERVICES DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST CLAIM ASSERTED HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR



PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

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

### 13. MUTUAL INDEMNITIES.

**13.1. Our Indemnity Obligations.** If a third party brings a claim, suit, or proceeding against you, your affiliates, or your respective employees, contractors, agents, or assigns (a “**Customer Indemnitee**”) alleging that any Products and Services infringe a U.S. or European patent or a copyright under Law of any jurisdiction in which you are using the applicable Products and Services, or resulting from our gross negligence or willful misconduct, you must promptly notify us in writing and make no admission in relation to such claims. Provided that you have fulfilled all of the foregoing obligations and are not in material breach of the Agreement, we shall at our own expense indemnify, defend, and hold harmless such Customer Indemnitee, and in the above case of alleged infringement, at our own expense and option (a) procure for you the right to use the Products and Services, (b) modify or replace the Products and Services to avoid infringement without materially decreasing the overall functionality of the Products and Services; or (c) refund the applicable fee paid for the applicable Products and Services for the current term and you shall cease using such Products and Services. We shall have the sole and exclusive authority to defend and/or settle any such claim or action and you will provide such assistance as we may reasonably request, at our expense, provided that we will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**13.2. Exceptions.** Where infringement of a patent is caused by the combination of the Products and Services with other hardware, software, communications equipment, or other materials not provided by us (or, in the case of a method claim, additional steps in addition to those performed by the Products and Services), we shall only be obligated to indemnify you if the Products and Services constitute a “material part of the invention” of the asserted patent claim and “not a staple article or commodity of commerce suitable for substantial non-infringing use” as those phrases are used in 35 U.S.C. § 271(c). We shall also have no liability (including indemnification obligations) to you for any claim or action to the extent based upon: (a) any use of the Products and Services in a manner other than as provided in the Documentation or specified by Blackboard, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; (d) any other party’s access or use of the Products or Services with your unique username, password, or other appropriate security code; or (e) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us (any of the foregoing, separately and collectively, “**Customer Matters**”).

**13.3. Your Indemnity Obligations.** Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you shall, at your own expense, indemnify, defend and hold Blackboard and its affiliates, and together their respective employees, contractors, agents, or assigns (“**Blackboard Indemnitee**”) harmless against any losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Blackboard Indemnitee arising out of a Customer Matter (any of the foregoing indemnifiable matters, each a “**Blackboard Claim**”). You shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that you will keep us informed of, and will consult with any independent legal advisors appointed by us at our own expense regarding the progress of such defense. We agree (a) to provide you with prompt written notice of any Blackboard Claim and will make no admission in relation to any such alleged infringement, and (b) to provide such assistance as you may reasonably request, at your expense, in order to settle or defend any such Blackboard Claim.

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

### 14. CONFIDENTIALITY.

**Confidential Information.** “**Confidential Information**” means any non-public information disclosed by either Party to the other that has been identified as confidential or that by the nature

of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, information about a Party's business, operations, vendors or customers, and all Blackboard Property and all Customer Property. When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Blackboard recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**14.1. Nondisclosure and Nonuse.** Each party receiving Confidential Information agrees not to use such Confidential Information except for the purposes set forth in the Agreement, and pursuant to such use shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances. Each party acknowledges that it has all requisite authority under Laws to provide the other party with access to Confidential Information. When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Blackboard recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

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

**14.3. Terms of Agreement.** When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Blackboard recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**14.4. Exceptions to Confidential Treatment.** Confidential Information shall not include information that: (a) is publicly available or in the public domain at the time disclosed, (b) is or becomes publicly available or enters the public domain through no fault of the receiving party, or its employees, contractors or agents, (c) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations with respect thereto, (d) is already in the receiving party's possession free of any confidentiality obligations with respect thereto at the time of disclosure, or (e) is independently developed by the receiving party. Each receiving party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure pursuant to the order will first have given notice to the other party, unless the Party is prohibited by such court or body from providing such notification, (b) to comply with Law requiring such disclosure, or (c) to make such court filings as may be required to establish a party's rights under the Agreement. When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Blackboard recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

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

**14.6. Account Information; Access Rights.** You shall maintain, and shall ensure that your Authorized Users maintain, the confidentiality of all account information (such as login information and passwords) that we provide to you, you provide to us, or you subsequently change to enable access to and use of the SaaS Services or Software or third-party services you access through our SaaS Services or Software. You shall be responsible for preventing any unauthorized disclosure or use of such account information, any ramifications thereof, and for promptly notifying us

of any breach of this obligation. You are solely responsible for applying the appropriate level of access rights to Customer Property, including content, and to communications involving the use of the Products and Services. You and your Authorized Users may be required to provide additional information to register and/or use certain Products and Services. We may deny access to any user if we reasonably believe that the account information has been lost, stolen, or compromised.

## 15. MISCELLANEOUS MATTERS.

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

**15.2. Conflict Resolution.** In the event of any controversy or claim arising out of or relating to this Agreement, or breach thereof, the venue and governing law for such controversy or claim will be as mandated by applicable Federal Law.

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

**15.4. Assignment.** No right or obligation of yours under the Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of Law or otherwise, without our express prior written consent, and any attempt to assign, delegate or otherwise transfer any of your rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, the Agreement shall bind each party and its successors and assigns.

**15.5. Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to us, sent to Blackboard Inc., Attn: General Counsel, 1111 19<sup>th</sup> Street NW, Washington DC, 20036 or to such other address as shall be given in accordance with this section, and, in the case of you, to the address on the applicable Order Form, and shall in each case be effective upon receipt.

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

**15.7. Force Majeure.** Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, internet or other telecommunication delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority. Excusable delays shall be governed by FAR 52.212-4(f).

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

**15.9. Entire Agreement.** The Agreement, including any purchase order, constitutes the entire, full and complete agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and the Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter.

**15.10. Order of Precedence.** In the event a conflict arises between the terms of this Master Agreement and the provisions of the purchase order, Services Guide, or statement of work, the terms of the purchase order will govern. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of the Agreement.

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

## Terms Applicable to Specific Products and Services

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

## **16. BLACKBOARD LEARN™**

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

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

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

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

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

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

## **17. BLACKBOARD COLLABORATE**

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

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

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

**17.4. Use Limitations.** With respect to your license to use the SaaS Services, your license is solely for the purposes of creating, presenting, hosting, analyzing, viewing and delivering Events (as defined below) to Authorized Users, subject to any limitation of Seats (as defined below) specified in the Order Form. "Event" means a single live

broadcast event transmitted over the SaaS Service created and/or sponsored in whole or substantial part by Customer or Customer's employees that is branded under Customer's name. The term "Events" shall include both live and archived Events. "Seat" means each Authorized User served by a stream of digitally encoded data that delivers an Event to such user in the SaaS Service and shall include an Authorized User's access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of unique Authorized Users of the Service.

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

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

**18.1. Authorized Users; Recipients.** Your authorized users are your employees. You will only use the Product and Service to send messages to the number and type of Recipient(s) specified in the Order Form, and to the extent not so specified, as defined below. You will provide all contact data for Recipients (the "**Recipient Data**"). Unless otherwise indicated on an Order Form, telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii, and Canada. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees, shall be payable by you or Recipient. Unless otherwise specified on the Order Form, a "**Recipient**" shall be the following with respect to each type of customer entity listed:

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

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

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

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

**18.5. Representations, Obligations, and Indemnity.** You represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of Recipient Data, the Product and Service, and with respect to the content and transmission of calls, texts, and other messages ("**Messages**") sent using the Product and Service, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "**Telemarketing Laws**"); (b) as to each

Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; (e) you will have in place reasonable safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical, and public health, collectively, "**First Responder Services**") which do not utilize the Product and Service; (f) you will not take actions that will subject Blackboard to any Laws due to the import of Recipient Data; (g) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not send Messages to Recipients who have opted out of receiving Messages from you; (h) if you purchase data from us, you will only use such data purchased from us to contact individuals pursuant to the use of the Product and Service and are prohibited from downloading or making copies of such data purchased from us if such activity would violate a Law or contract; and (i) where you are providing a Recipient count or other data for the purposes of our Product and Service pricing quotations, such information shall be true and correct. You will designate qualified personnel to act as liaisons between you and us respecting technical, administrative and content matters, and providing accurate and current contact information.

We shall have the right to require you to provide a legal compliance plan in connection with your use of our mass notification services, and audit your compliance with such plan as well as with subsections (a), (b), (c), (d), and (g) above. Failure to comply with any provision of this Section 18.5 is a material breach of this Agreement.

Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, **Emergency & Outreach Messaging**. If you are purchasing Messaging restricted by use-case, the following definitions shall apply. An "**Emergency**" is an incident, situation or natural phenomenon that: (i) is immediately threatening to life, health, property or the environment; or (ii) has caused loss of life, health detriments, property damage or environmental damage; or (iii) has a high probability of escalating to cause immediate danger to life, health, property or environment. An "**Emergency Message**" is a Message sent to all Recipients in connection with an Emergency. An "**Outreach Message**" is a Message sent to one or more Recipients for general outreach and informational purposes that is not an Emergency Message.

**18.6. Remedies and Disclaimers.** Due to the nature of mass notification services, in the event of the Product and Service's failure to comply with the Agreement, your sole and exclusive remedy shall be to terminate the Service. You acknowledge and agree that the Product and Service is not intended, nor designed, for use in high-risk activities, or in any situation where failure of the Product and Service could lead to death, personal injury, or damage to property, or where other damages could result if an error or outage occurred. The parties further agree that, **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, to the extent not prohibited by Law, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).** You acknowledge and agree that your primary recourse in the event of any actual or potential threat to person or property should be to contact First Responder Services and that the Product and Service is not intended to replace such First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, such First Responder Services, which should have already been notified and deployed prior to using the Product and Service.

**18.7. Training and Testing.** Blackboard makes training on the Product and Service available to you, and recommendations for periodic testing of the configurations and operations of the Product and Service for Customer. You acknowledge that taking advantage of such training on a reasonable basis for appropriate personnel and



performing such testing is your responsibility, and that failure to do so could result in the Product and Service not functioning as expected.

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

## **19. SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

## **22. MOBILE APPLICATIONS**

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

## **23. SMARTVIEW™**

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

**23.2. Representations and Obligations.** You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Student Data, in connection with your use of SmartView; (b) you will not store any PI within SmartView; (c) you are responsible for communicating any necessary modifications to the Product and Service that arise due to changes in your internal policies or the Law; and (d) following the initial configuration of the Product and Service, you are responsible for any modifications or errors within the workflow routines in the Product and Service. The costs and timelines to complete any requested modifications to the Product and Service must be addressed in a mutually agreed Statement of Work.

**23.3 Remedies and Disclaimers.** You acknowledge that: (a) you are solely responsible for the accuracy of Student Data or content in the Product and Service; (b) the KnowledgeBase in SmartView is for informational purposes only and it is your responsibility to update the KnowledgeBase; (c) your Authorized Users will not provide any financial guidance or advice solely based on the Product and Service; (d) you agree that you are responsible for the actions or inactions of your Authorized Users; and (e) Blackboard shall have no liability associated with the guidance or advice provided to Students by such Authorized End Users. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to defend, indemnify and hold us harmless against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys’ fees) in connection with any claim or action that arises from the guidance or advice provided to Students using the Product and Service.

## **24. STUDENT SUPPORT SERVICES**

**24.1 Types and Estimates of Student Support Services.** The purchase order will specify whether you have purchased inbound, live outbound, and/or automated outbound Student Support Services. The estimated number of monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. In the event that these estimates exceed the actual parameters experienced in the relevant period, we shall be excused from any failure to meet any service levels for such period.

**24.1.1 Inbound Interactions.** You represent that the estimated monthly Inbound Interactions is a reasonable estimate, and at the end of a term we shall be entitled to invoice you in accordance

with the terms set forth herein. You acknowledge and agree that, if during any annual term, the actual number of Inbound Interactions exceeds your total Estimated Inbound Interactions (“Excess Inbound Interactions

#### **24.1.2 Live Outbound Interactions.**

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

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

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

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

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

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

**24.5.3 Usage Limitations.** You shall use best efforts to ensure that only Authorized Customer Support Users are provided access to the Service Desk Infrastructure and Student Support Services, including not causing or permitting third parties to access such infrastructure or services.

**24.6 Authorized End Users.** You acknowledge that we will rely on information provided by you. You agree to provide such information that is reasonably requested by us from time to time, including (i) a comprehensive list of all current and (to the extent then known) potential Authorized End Users, (ii) the email addresses and/or phone numbers of Authorized End Users, (iii) student demographic information, and (iv) headcount data.

**24.7 Representations and Indemnity.** If you request that we contact any Authorized End User or other person on your behalf (“**Recipient**”), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Student Support Services, and with respect to the content and transmission of calls, texts, and other messages (“**Messages**”) sent using the Student Support Services, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC’s implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the “**Telemarketing Laws**”); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient’s contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you.

We shall have the right to audit, subject to applicable Government security requirements your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of this Agreement.

**24.8 Changes and Oral Instructions.** The parties shall participate in monthly change management discussions and will document any agreed changes. You shall, to the extent reasonably possible, provide us with no less than 60 days’ prior notice of events that you anticipate will increase volume of the Student Support Services.

## 24.9 Added Definitions.

**24.9.1 “Average Handle Time”** means, with respect to any period, the average time (including talk time, time on hold, and wrap-up time) taken to handle an Inbound Interaction.

**24.9.2 “Inbound Interaction”** means a single inbound Support Request from an Authorized End User to the Service Desk or the Service Desk Infrastructure. An Inbound Interaction does not include (i) live or automated outbound Support Services or (ii) self-help by an Authorized End User where there is no interaction between the Service Desk and an Authorized End User.

**24.9.3 “Outbound Interaction”** means an outbound interaction between the Service Desk and an Authorized End User (for example, during a live outbound campaign in support of enrollment or financial aid objectives). An Outbound Interaction may be either a live interaction between a Blackboard Service Desk member and an Authorized End User or automated (e.g., outbound text messages). An Outbound Interaction does not include (i) inbound Student Support Services or (ii) self-help by an Authorized End User where there is no interaction between the Service Desk and an Authorized End User.

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

**24.9.5 “Support Request”** means a request for assistance received by Blackboard's Service Desk and/or Service Desk Infrastructure from an Authorized End User, such as any answered phone call, answered email, or answered chat.

## 25. [ALLY](#)

**25.1 Grant of License.** With respect the Ally service, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to access and use the Ally service made available by Blackboard.

**25.2 No advice.** We do not guarantee that the use of the Ally service will ensure the accessibility of your web content or that your web content will comply with any specific web accessibility standard or law. Any information or guidance accessed through the Ally service, including without limitation the results of any website tests conducted or other guidance with respect to compliance with various accessibility standards, including without limitation the web content accessibility guidelines 2.0 (WCAG 2.0), or laws, rules or regulations, including without limitation those commonly known as the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008, applicable sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 251(a), the Rehabilitation Act, the Individuals with Disabilities Education Act, or their international counterparts, any or all as amended from time to time, or related rules or regulations is provided solely as a courtesy and is not legal advice or counsel. Other laws may apply to you or your customers depending on the nature of their goods and services. We expressly disclaim any implied or express warranties and any liability with respect to any information or guidance provided.