



Agenda Item A.7
CONSENT CALENDAR
Meeting Date: June 15, 2021

TO: Mayor and Councilmembers

FROM: Jaime Valdez, Interim Neighborhood Services and Public Safety Director

CONTACT: Shanna Dawson, Management Analyst

SUBJECT: Amendment No. 5 to Agreement with Blackboard for Fiscal Years 2021-22 and 2022-23

RECOMMENDATION:

Authorize the City Manager to execute Amendment No. 5 to Professional Services Agreement No. 2008-028 between Blackboard and the City of Goleta extending the term of the agreement for an additional two years, through June 30, 2023, and increasing the contract amount by \$49,200, for a total not-to-exceed amount of \$353,450, subject to the approval of the Fiscal Year 2021-22 and Fiscal Year 2022-23 Budget.

BACKGROUND:

Blackboard (Formerly “NTI” and “Connect-CTY”) has provided the City with messaging services since March of 2008. This service allows the City to send a recorded message to all land lines in the City or to any targeted segment of the City. Messages can also go to cell phones for people who register them with the system. The agreement includes unlimited messaging to communicate with residents, businesses and other interested parties in the City’s jurisdiction. The service includes, but is not limited to, remote launching capability, messaging features (voice, text, and email functions), and Geographic Information System (GIS) Mapping for targeted messaging.

Blackboard Agreement No. 2008-028 and past Amendments No. 1 through No. 3 (Attachment 2) are detailed in the balance of this paragraph. The original Agreement and subsequent Amendment No. 1 covered just over seven years (March 31, 2008, through June 30, 2015) at a total cost to the City of \$156,650. During that time period, staff used the service for a number of emergency and non-emergency notifications for our residents and businesses. Feedback has been quite positive regarding the ease of use of the system. On June 9, 2015, the City Council authorized the City Manager to execute Amendment No. 2 which extended services with Blackboard to include Fiscal Years 2015-16 and 2016-17 and increased the contract authority by \$49,200 for a for a total not to exceed amount of \$205,850. On June 6, 2017, the City Council authorized the City Manager to execute Amendment No. 3 which extended services with Blackboard to include Fiscal Years 2017-18 and 2018-19 and increased the contract authority by

\$49,200 for a for a total not-to-exceed amount of \$255,050. On June 18, 2019, the City Council authorized the City Manager to execute Amendment No. 4 which extended services with Blackboard to include Fiscal Years 2019-20 and 2020-21 and increased the contract authority by \$49,200 for a for a total not-to-exceed amount of \$304,250.

DISCUSSION:

City staff recommends extending the City's agreement with Blackboard and has requested funding for the service for the next two fiscal years via Amendment No. 5 (Attachment 1). Blackboard has agreed to provide the service at the same rate of \$24,600 per fiscal year for the next two fiscal years as has been their practice in previous years.

ALTERNATIVES:

The Council could request staff consider other service providers or discontinue the service all together.

FISCAL IMPACTS:

An allocation of \$27,000 for FY 2021-22 and \$27,000 for FY 2022-23 to the Emergency Response Services account (101-60-6100-54004) has been requested as part of the new two-year budget. Execution of the Amendment would be subject to the approval of the Fiscal Year 2021-22 and Fiscal Year 2022-23 Budget.

Reviewed By:



Kristine Schmidt
Assistant City Manager

Legal Review By:



Michael Jenkins
City Attorney

Approved By:



Michelle Greene
City Manager

ATTACHMENTS:

1. Fifth Amendment to a Professional Services Agreement between Blackboard and the City of Goleta for Fiscal Years 2021-22 and 2022-23
2. Blackboard Agreement No. 2008-028 and Amendments No. 1 though No. 4 (available online only)

ATTACHMENT 1

Fifth Amendment to a Professional Services Agreement between Blackboard and the City of Goleta for Fiscal Years 2021-22 and 2022-23

Blackboard

This Blackboard Order Form ('Order Form') by and between **Blackboard Inc.** ('Blackboard') and **City of Goleta** ('Customer') details the terms of Customer's use of the products and services set forth below ('Product and Pricing Summary'). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Agreement located at <http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx> and incorporated by this reference, form the entire agreement between the parties in respect to the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by the Customer, any product or service provided by Blackboard to the Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable. In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Software & Services Product and Pricing Summary

Period Number	Total
Period 1	\$24,600.00
Period 2	\$24,600.00
Contract Total	\$49,200.00

Period 1				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	BC-CARE-GOV	CONNECT GOV CARE ANNUAL FEE	01-Jul-2021 to 30-Jun-2022	\$0.00
1	BC-STND-LIC	CONNECT STND UNLTD -FLAT LIC	01-Jul-2021 to 30-Jun-2022	\$24,600.00

Period 1 Total \$24,600.00

Period 2				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	BC-CARE-GOV	CONNECT GOV CARE ANNUAL FEE	01-Jul-2022 to 30-Jun-2023	\$0.00
1	BC-STND-LIC	CONNECT STND UNLTD -FLAT LIC	01-Jul-2022 to 30-Jun-2023	\$24,600.00

Period 2 Total \$24,600.00

B. Terms

1. The Initial Term of this Order Form shall include all Periods included in the Software & Services Product and Pricing Summary above.
2. Following the Initial Term, this Order Form shall renew automatically for successive periods of one (1) year each (each a "Renewal Term"), unless and until Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. Effective Date: 01-Jul-2021

C. Payment Terms

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

D. Special Provisions

In Process

Sales Approved: Megan Magnolia

Initial:



Sales Approved:

Initial:

Customer: City of Goleta

Signature:

Name:

Title:

Date:

Blackboard Inc.

Signature:



Name: Bill Jones

Title:

Date: 02-Jun-2021

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

PO Number:

PO Amount:

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

Attach Tax Exemption (Optional):

Invoicing

Send Invoices via email to:

1. Name:

Email:

2. Name:

Email:

3. Name:

Email:

In Process

ATTACHMENT 2

**Blackboard Agreement No. 2008-028
and Amendments No. 1 through No. 4**

Connect-CTY AGREEMENT

EIN #20-0597724

This **Connect-CTY Agreement** ("**CTY Agreement**") dated March 27, 2008, is entered into by and between the City of Goleta, California (the, "**Client**") and Blackboard Connect Inc. (f/k/a The NTI Group, Inc.), a Delaware corporation ("**NTI**" or "**Company**").

WHEREAS, the Client wishes to subscribe to the **Connect-CTY®** service (the, "**CTY Service**") provided by NTI, in order to send messages to households, businesses, and certain other constituents within the Client's jurisdiction (each, a "**Recipient**").

NOW THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CTY Service.** The CTY Service will include the following features:
 - a. **Unlimited Messaging.** Unlimited any-time messages throughout the Term, enabling the Client to communicate with residents and businesses within its jurisdiction.
 - b. **Database.** NTI will provide the Client with one (1) phone number per physical address to the extent that such numbers are available ("**NTI Data**"). The Client may provide up to two (2) phone numbers and two (2) email addresses per Recipient (the "**Client Data**"), provided, that, for business Recipients, the secondary phone numbers must not tie up more than one phone line of a multi-line business. The Client Data, the NTI Data, and the data input by individuals via the CTY Web Portal, may hereinafter be collectively referred to as the "**Recipient Data**". NTI may add new features and functionality from time-to-time and the Client agrees to comply with all relevant rules and instruction pertaining to the use of such new features and functionality.
 - c. **Training, Customer Support, Maintenance.** Training to educate all Users on how to send messages, receive reports, and other aspects of the operation of the CTY Service. NTI will also provide the Client with unlimited maintenance and support (client care and technical support), on a twenty-four (24) hour, seven (7) days a week basis, throughout the life time of the CTY Agreement. The Client will designate qualified personnel to act as liaisons between the Client and NTI respecting technical, administrative and content matters, and providing accurate and current contact information.
 - d. **Geographic Information System (GIS) Mapping.** A geo-based mapping system that allows a Client-user to create specific call lists for certain areas of the Client's jurisdiction using criteria such as radius, street, zip code.
 - e. **Messaging Features.** Multiple delivery methods via both voice and text, to landline phones, cell phones, e-mail, PDA devices, pager, and TTY/TDD devices. SMS, detailed message reporting, multi-lingual messaging, and interactive polling.
 - f. **Remote Launching Capability.** Access and use of the CTY Service from anywhere in the U.S. via an Internet connection and/or a phone.
 - g. **CTY Web Portal.** A Web interface that enables residents and businesses to update or add to their contact (telephone and email address) information electronically at no charge ("**CTY Web Portal**"). In the event that the Client chooses to utilize the CTY Web Portal, the Client agrees to comply with the supplemental terms contained in Image License and Linking Agreement ("**CTY ILAL Agreement**"), which is attached hereto and incorporated herein by reference, as Exhibit "A".
2. **Term; Termination.** This CTY Agreement will commence on the date which is the later of, the date of full execution or March 31, 2008 ("**Effective Date**"), and will end on June 30, 2011 (the, "**Term**"). Notwithstanding the foregoing, if Client inputs any information or other data into NTI's systems prior to the Effective Date in order to prepare for the commencement of the Service and/or sends any messages prior to the Effective Date, Client expressly accepts that the terms and conditions of this CTY Agreement will also apply during that earlier period.
 - a. **Termination for Convenience.** The Client can terminate the CTY Agreement for convenience on June 30, 2009, and each one year anniversary thereafter during the Term, by giving NTI at least thirty (30) days prior written notice to terminate.
 - b. **Termination with Cause.** Either party may terminate this CTY Agreement in the event of a material breach by the other party, which breach remains uncured for thirty (30) days following written notice to the breaching party. In the event of a termination by Client for an uncured material breach, Client will receive a pro rata refund or credit of any amounts paid but not utilized hereunder.



- c. **Effect of Termination.** Any termination of this CTY Agreement will not affect any rights or liabilities of either party that accrued prior to such termination. Provisions of this CTY Agreement which, either expressly or by their nature contemplates continued performance or application following the Term, will survive the expiration or termination for any reason of this CTY Agreement.
3. **CTY Service Fee.** In consideration for the use of the CTY Service during the Term, the Client will pay NTI a one-time support fee of one thousand five hundred dollars (\$1,500) and the following message fee:
- a. **Period 1.** For the period March 31, 2008 to June 30, 2008, the message fee will be \$6,150. Accordingly, the total fee for Period 1 will be \$7,650 (including Support Fee); and
- b. **Period 2.** For the period July 1, 2008 to June 30, 2011, the annual message fee will be twenty-four thousand six hundred dollars (\$24,600) per year.
- c. The fee for Period 1 will be invoiced on execution of this Agreement. The fee for Period 2 will be invoiced annually on or around July 1st of each year. All payments due hereunder are on net 30 terms.
4. **Representations and Obligations.**
- a. **Authority to Bind.** Client and NTI each represent and warrant that the person signing this CTY Agreement on their behalf is authorized to do so, and upon such execution, this CTY Agreement is the legal obligation of each party.
- b. **Privacy.** The Client agrees to comply with the then current Acceptable Use Policy and Privacy Policy (collectively, the "**Policies**") (which can be found at the NTI Website located at www.ntigroup.com ("**NTI Website**"), as amended from time to time. In the event of an express conflict between the terms of the Policies and the terms of this CTY Agreement, the terms of this CTY Agreement will prevail. The Client will be notified by means of an email to the Client contact if specified on the signatory page, and/or a written announcement on the home page and member sign-in page on the NTI Website, if there are any material changes to the Policies. NTI does not rent, trade, or sell data to third parties, and will only disclose information as necessary to comply with applicable laws and government orders or to operate or maintain the CTY Service.
- c. **Compliance with Laws.** Each party will seek to comply with all relevant laws and regulations in the conduct of its actions regarding the subject-matter of this CTY Agreement and the use of the CTY Service. The Client represents that it and its representatives ("**Users**") will use the CTY Service only for lawful purposes and in compliance with privacy laws and this CTY Agreement, including the Policies.
- d. **Security.** All passwords and user names (collectively, "**Account Information**"), provided by NTI are deemed *Confidential Information*. The Client is responsible for (i) knowing who has access to its applications and servers; (ii) keeping track of login accounts; (iii) Client-side security with respect to Account Information; and (iv) for activities that occur under its account. The Client will provide Users and other staff with appropriate notice of the terms and conditions under which access to the CTY Service is granted. The Client agrees to (i) immediately notify NTI of any unauthorized use of Account Information or breach of security pertaining to the CTY Service, and (ii) ensure that Users exit from their accounts at the end of each session. NTI is responsible for implementing adequate security precautions for matters under its direct control.
- e. **Transmission of Messages; Data.** Client will be responsible for the content of the messages transmitted by Users using the CTY Service and agrees not to send communications to a Recipient who "opts-out", i.e., who has indicated that he/she does not wish to receive a communication from the Client. The Client will only use the NTI Data to contact individuals pursuant to the use of the CTY Service and is prohibited from downloading or making copies of NTI Data. Any search and on-screen display functionality is restricted to resolving incidents or assisting an individual or business entity inquiring about the use of its information pursuant to the CTY Service. The Client represents that it has the authority to acquire, provide, and use the Client Data. The Client acknowledges that NTI is not responsible for and does not give any assurance to Client, any User, or any other person or entity with respect to validity or accuracy of data including, the NTI Data and data input by any individuals on the CTY Web Portal. NTI uses best efforts to provide the NTI Data in accordance with generally accepted professional standard.
- f. **Confidentiality.** NTI will maintain the confidentiality of the Client Data unless disclosure is mandated by law. The Client will maintain the confidentiality of NTI Data, the CTY Service, Account Information, User Guide, materials identified as confidential, and the member pages of the NTI Website (collectively, "**Confidential Information**") with the same degree of care that it uses to protect its own confidential information, but in no event less than a reasonable degree of care, provided, however, that, the Client may disclose Confidential Information to the extent required by law or in response to a written Public Records Request under California Law. In the event that disclosure is mandated, each party agrees to provide notice to the other prior to such disclosure together with a list and copies of, all documents that will be disclosed. The Client agrees to limit access to the Confidential Information to those of its personnel with a legitimate need for access and who have entered into appropriate confidentiality agreements with the Client. Either party may seek injunctive relief to

prevent disclosure or seek a protective order. Upon the termination of this CTY Agreement or the expiration of the Term, whichever is earlier, each party will return to the other the latter party's Confidential Information (without retaining copies, in any medium).

5. **Warranty.** NTI represents and warrants that the CTY Service will perform in a commercially reasonable and professional manner and will conform substantially to the description of the service as described in Section 1. The Client accepts that the CTY Service is not intended to replace notification to, or interoperate directly with, First Responder services (such as, for example purposes only, 911, fire, police, emergency medical, and public health), which should have already been notified and deployed. Moreover, the Client accepts that the CTY Service is not designed for use in any situation where failure of the CTY Service could lead to death, personal injury, or damage to property. NTI will use commercially reasonable efforts to assure that the CTY Service remains available for access by Client twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, excluding scheduled maintenance. In the event that the CTY Service fails to comply with the above warranty, the Client shall promptly inform NTI of such fact, and NTI, upon receipt of such notice and at its expense, will use commercially reasonable efforts to correct any verifiable errors (by repair, replacement or re-performance) so that the CTY Service complies with such warranty as soon as possible, but not more than thirty (30) days after written notice from the Client ("**Cure Period**"). In the event that such repair or replacement cannot be done within the Cure Period, then the Client, at its sole option, may either: (i) extend the time for NTI to correct such breach, if correction is commercially reasonable; or (ii) terminate the CTY Agreement, in which case, in addition to any other right or remedy the Client may have, NTI shall refund to the Client the prorated sum of monies paid but not utilized hereunder.
- a. NTI will have no obligation with respect to the foregoing limited warranty to the extent the error or noncompliance was caused, in whole or in part, by the negligence or improper use of the CTY Service by the Client or a third party, or a breach by the Client of its obligations under this CTY Agreement. Nor will NTI be responsible for delays, errors, failures to perform, interruptions or disruptions in the services contemplated under this CTY Agreement caused by or resulting from any act, omission or condition beyond NTI's reasonable control, whether or not foreseeable or identified, including without limitation, the loss of, or improper access to Recipient Data, unauthorized access or interception of such data, transmission errors or corruption or security of information carried over telecommunication lines, failure of digital transmission links, hostile network attacks or network congestion, or acts of God, strikes, lockouts, riots, acts of war, governmental regulations, shortage of equipment, materials or supplies, fire, power failure, earthquakes, severe weather, floods or other natural disaster or the Client's, a User's or any third party's applications, hardware, software or communications equipment or facilities.
- b. **Except as expressly stated otherwise** in this CTY Agreement, the CTY Service is provided "AS IS" with no guarantee that it is error free, will perform or be uninterrupted, or that defects can or will be corrected. NTI makes no warranties, express or implied, with respect to the CTY Service, including without limitation, in connection with third party applications, and NTI specifically disclaims all other warranties regarding the CTY Service including any implied warranties of merchantability or fitness for a particular purpose, or any warranties arising from a course of dealing, course of performance, usage of the trade or trade practice.
6. **Limitation of Liability.** If the Client suffers damages arising from or relating the CTY Service and a court of competent jurisdiction determines that NTI's conduct was a proximate cause of such damages, then NTI's aggregate liability to the Client will be as follows: (a) For intentional misconduct on the part of NTI, NTI's liability will not be limited. (b) For all other misconduct, NTI's aggregate liability will be limited to the lesser of (i) actual direct damages or (ii) the total fees paid by the Client to NTI under this CTY Agreement. The existence of multiple claims will not enlarge the limits. In no event will NTI, its officers, or employees, be liable for any indirect, punitive, reliance, special, consequential, or other damages of any kind or nature whatsoever, suffered by the Client or any third party arising out of this CTY Agreement or the transactions contemplated hereby, even if NTI has been advised of the possibilities of such damages or should have foreseen such damages.
7. **Miscellaneous.** (a) **Ownership.** Client acknowledges and agrees that the Confidential Information and all other materials pertaining to the use of the CTY Service are not purchased or developed with Client funds. Accordingly, nothing in this CTY Agreement grants or transfers to the Client any ownership rights in the foregoing materials. Client is expressly prohibited from reproducing, modifying, duplicating, copying, making derivative works, publicly displaying, or otherwise exploiting, in whole or in part, the member pages of the Confidential Information, without the express written permission of NTI's Legal Department. (b) **Governing Law; Attorney Fees.** This CTY Agreement will be governed and interpreted in accordance with California State Law. In addition to any other relief awarded, the prevailing party in any action arising out of this CTY Agreement shall be entitled to its reasonable attorneys' fees and costs. (c) **Waiver; Severability.** Failure by either party to enforce any provision of this CTY Agreement will not be deemed a waiver of future enforcement. In the event that any provision of this CTY Agreement is invalid under applicable law, the remainder of this CTY Agreement will continue in full force and

effect. In such a case and subject to the last sentence of the preamble, the parties will replace the invalid provision with one that, as much as possible, reflects the original intentions of the parties and is valid under applicable law. (d) Relationship of Parties. NTI is providing a service to Client as an independent contractor. (e) No Third Party Beneficiaries. No provisions of this CTY Agreement are intended or shall be construed to confer upon or give to any person or entity other than NTI or Client, any rights, remedies or other benefits under or by reason of this CTY Agreement. (f) Notices. All notices under this CTY Agreement shall be in writing and shall be delivered by personal delivery, nationally recognized overnight courier (e.g., FedEx), confirmed facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, upon receipt if delivered by overnight courier, upon acknowledgment of confirmed receipt of electronic transmission, or three (3) days after deposit in the mail. Notices shall be sent to the Contacts for Notices at the address set forth at the end of this CTY Agreement or such other address as either party may specify in writing. (g) Counterparts. The CTY Agreement may be executed in counterparts. A signature on a copy of this CTY Agreement received by either party by facsimile is binding upon the other party as an original. Both parties agree that a photocopy of such facsimile may also be treated by the parties as a duplicate original. (h) Mutual Indemnification. To the extent authorized by California law and subject to Section 6, each party will defend, indemnify and hold harmless the other party and the other party's successors and assigns, officers, directors, employees, and agents, from and against any and all liability, judgment, loss, damages, fines and expenses (including legal fees and costs), which any or all of them may later suffer themselves or pay out to another, because of any claim, action, or right of action of a third party or governmental authority, at law or in equity, or otherwise, based on or in any way arising out of, and which are proximately caused in whole or in part, by a breach by the indemnifying party of any provision of this CTY Agreement. *The Client's indemnification obligation shall not serve as a waiver of its sovereign immunity.* A party seeking indemnification hereunder (an "Indemnified Party") shall give the party from whom indemnification is sought (the, "Indemnifying Party"): (i) reasonably prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; (ii) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim; and (iii) the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense. (i) Entire Agreement. This CTY Agreement and all Exhibits and Schedules attached hereto, completely and exclusively state the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior or contemporaneous proposals, agreements or other communications between the parties, oral or written, regarding its subject matter, and may be amended or supplemented only by a subsequently dated writing that refers explicitly to this CTY Agreement and that is signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have executed this CTY Agreement as of the Effective Date.

<p>CLIENT: CITY OF GOLETA</p> <p>Authorized Signatory: </p> <p>Print Name & Title: <u>Dan Singer, City Manager</u></p> <p>Address: City of Goleta 130 Cremona Drive, Suite B, Goleta, CA 93117</p> <p>Contact for Notices: Dan Singer, City Manager Tel: 805-961-7501 Email: dsinger@cityofgoleta.org</p> <p>Fax: _____</p>	<p>NTI: BLACKBOARD CONNECT INC. (F/K/A THE NTI GROUP, INC.)</p> <p>Authorized Signatory: </p> <p>Print Name & Title: <u>Bruce Worman, CFO</u></p> <p>Address: Blackboard Connect Inc. 15301 Ventura Blvd., Building B, Suite 300 Sherman Oaks, CA 91403 NTI Contact for Notices: Bruce Worman, CFO Email: bworman@ntigroup.com Tel: (818) 808-1716; Fax: (818) 450-0425</p>
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Contract Processing Instructions

1. Fax a signed copy of the contract to (818) 450-0425
2. If you have any questions, please contact:
Susan Kim, Contracts Administrator
Tel: 818-808-1725; Email: skim@ntigroup.com

EXHIBIT "A"
IMAGE LICENSE AND LINKING (ILAL) AGREEMENT

A. LINK AND GRANT OF LICENSE

- a. Subject to the terms of this CTY ILAL Agreement, NTI grants to Client a limited non-exclusive, worldwide, royalty-free license to place one of the digital images of the NTI **Connect-CTY** Sign-up Logo (attached hereto as Schedule "A") (the "**Image**"), on an appropriate page of the Client's Internet site, located at <http://www.cityofgoleta.org> ("**Client Site**"), with a hyperlink to NTI's CTY Web Portal ("**Link**").
- b. Subject to the terms of this CTY ILAL Agreement, the Client may create the Link to NTI's CTY Web Portal site located at <https://portal.nticonnectcty.com/338623> (the "**CTY Web Portal**"). The sole purpose of the Link is to provide intended Recipients with quick access to the CTY Web Portal by transferring the user out of the Client Site to the CTY Web Portal, where Intended Recipients can insert and/or update their contact information ("**Recipient Data**"). The term of such license will be for a term contemporaneous with this CTY ILAL Agreement and terminate when this CTY ILAL Agreement terminates or expires. Without limiting the foregoing, the Link may not be used in any manner to provide a user with access to the CTY Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the CTY Web Portal with any materials posted by Client or any party other than NTI. Client may not allow the Image to be linked to any other web site.
- c. Client will not (i) use the Image in any manner not permitted hereunder, (ii) modify the Image, or (iii) in any manner copy, or create a derivative work from, the "look and feel" of the Image. NTI 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. Client acknowledges that the Image and the goodwill associated therewith are valuable properties belonging to NTI and that all rights thereto are and shall remain the sole and exclusive property of NTI. Client agrees that it will do nothing inconsistent with NTI's ownership and that all uses of the same shall inure to the benefit of and be on behalf of NTI. NTI shall at all times, anywhere in the world, and whether or not in competition with Client, have the right to use and/or authorize the use of the Image in any way NTI may desire. NTI reserves the right to modify permission to use the Image and/or the Link at any time.

B. PRESENTATION. Client's use of the Image shall be limited to the style and format of the Image represented in Schedule "A". Client agrees not to use any other trademark or service mark in connection with the Image without the prior written approval of NTI.

C. DATA. The Client acknowledges that NTI is not responsible for and does not give any assurance to Client with respect to the accuracy of data input via the CTY Web Portal.

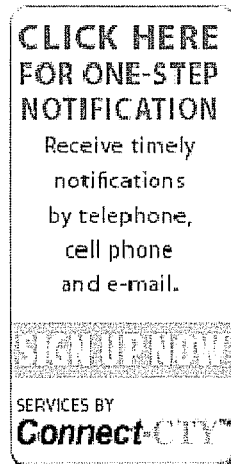
D. TERMINATION. The term of this CTY ILAL Agreement will commence upon the later of (i) the date on which the CTY Agreement is executed in full, or (ii) on or after April 1, 2008 ("**Effective Date**"), and will continue until the date of termination or expiration of the CTY Agreement (the, "**Term**"). Upon termination of the CTY Agreement, Client agrees to discontinue immediately all use of the Image and disable any embedded link(s) to the CTY Web Portal. All rights in the Image and the goodwill connected therewith shall remain the property of NTI.

E. WARRANTY. NTI represents and warrants that it has the right to grant Client a license to use the Image in accordance with the terms of this CTY ILAL Agreement

F. DISCLAIMER. EACH PARTY DISCLAIMS ANY WARRANTIES THAT MAY BE EXPRESS OR IMPLIED BY LAW REGARDING THE CONTENT, AVAILABILITY OR OPERATION OF EITHER PARTY'S SITE, INCLUDING WARRANTIES AGAINST INFRINGEMENT AND WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATED TO THE IMAGE OR THE CONTENT, AVAILABILITY OR OPERATION OF EITHER PARTY'S SITE. WITHOUT LIMITING THE FOREGOING, CLIENT ACKNOWLEDGES THAT THE NTI'S SERVICES ARE OPERATED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT NTI MAKES NO WARRANTY THAT THE CTY WEB PORTAL WILL BE ERROR-FREE OR THAT ACCESS THERETO WILL BE UNINTERRUPTED.

SCHEDULE "A" - IMAGE

Client may choose one of the three Images below





AMENDMENT NO. 1 AGREEMENT TO SERVICES AGREEMENT

This Amendment No. 1 Agreement ("**Amendment No. 1 Agreement**"), is made to the Connect CTY-Agreement ("**Agreement**"), dated March 27, 2008 ("**Effective Date**"), by and between Blackboard Connect, Inc. (f/k/a The NTI Group, Inc.), a Delaware corporation ("**NTI**" or "**Company**"), and the City of Goleta, California ("**Client**"). Client and NTI may hereinafter be collectively referred to as the "Parties" or individually, as the "Party".

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged by the Parties, on this date, June 25, 2010 ("**Amendment No. 1 Date**"), NTI and the Client agree to modify the Agreement in the manner specified below.

1. Section 1(a) of the Agreement is hereby revised in its entirety to read as follows:
 - a. Unlimited Messaging.
 - i. From the Effective Date until June 30, 2010, Client shall have the right to send unlimited emergency and non-emergency (community outreach) messages to communicate with residents and business in its jurisdiction.
 - ii. From July 1, 2010, through June 30, 2012, Client shall have the right to send unlimited emergency messages and five (5) non-emergency (community outreach) messages per year, to communicate with residents and business in its jurisdiction.
 - iii. From July 1, 2012 through June 30, 2015, Client shall have the right to send unlimited emergency and non-emergency (community outreach) messages to communicate with residents and business in its jurisdiction.

2. Section 2 of the Agreement is hereby revised such that the Term end date is June 30, 2015, and Section 2(a) is deleted.

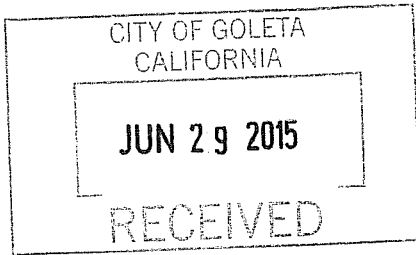
3. Section 3 of the Agreement is hereby revised in its entirety to read as follows:

CTY Service Fee. In consideration for the use of the CTY Service during the Term, the Client will pay NTI a one-time support fee of \$1,500, and the following message fee:

- a. For the period March 31, 2008 to June 30, 2008 ("Period 1"), the message fee will be \$6,150. Accordingly, the total fee for Period 1 will be \$7,650 (including Support Fee);
 - b. For the period July 1, 2008 to June 30, 2010 ("Period 2"), the annual message fee will be \$24,600;
 - c. For the period July 1, 2010 to June 30, 2011 ("Period 3"), the annual message fee will be \$10,000;
 - d. For the period July 1, 2011 to June 30, 2012 ("Period 4"), the annual message fee will be \$16,000;
 - e. For the period July 1, 2012 to June 30, 2015 ("Period 5"), the annual message fee will be \$24,600;
 - f. The fee for Period 1 will be invoiced on execution of the Agreement and is due within 30 days of invoicing; thereafter, the applicable annual service fees for Periods 2-5 will be due at the beginning of each annual period and is due within thirty (30) days after the date of an invoice.
4. Unless otherwise defined herein, capitalized terms used shall have the same meaning as set forth in the Agreement. Except as otherwise set forth herein, all terms and conditions of the Agreement will continue in full force and effect as set forth therein and amended hereby.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 Agreement as of the Amendment No. 1 Date.

<p>Authorized Signatory: <u>Dan Singer</u></p> <p>Name & Title: <u>Dan Singer, City Manager</u></p> <p>Execution Date: <u>6/30/10</u></p> <p>Address: <u>130 cremona Drive, Suite B</u> <u>Goleta, CA 93117</u></p> <p>Contact for Notices: <u>Michelle Greene</u></p> <p>Tel: <u>(805) 961-7500</u></p> <p>Email: <u>mgreene@cityofgoleta.org</u></p> <p>Fax: <u>(805) 685-2635</u></p>	<p>BLACKBOARD CONNECT INC.</p> <p>Authorized Signatory: <u>Tess Frezza</u></p> <p>Name & Title: <u>Tess Frezza, VP</u></p> <p>Execution Date: <u>6/30/10</u></p> <p>Address: Blackboard Inc. 650 Massachusetts Ave NW, 6th floor Washington DC 20001-3796 Tel: (202) 463-4860 ext 2463 or ext 2574 Fax: 8184500425</p> <p>Email: <u>Ozie.Malikyar@blackboard.com</u></p>
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Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and City of Goleta ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Table"). This Order Form shall become effective on the later of: (i) the last signature date indicated below; or (ii) the date specified in the Product and Pricing Table ("Effective Date"). This Order Form, together with the Connect CTY-Agreement, dated March 27, 2008 and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Exhibit. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Product and Pricing Summary

Product Name	Description	Units	Period 6 Renewal Term Fee (USD) 7-1-15 to 6-30-16	Period 7 Renewal Term Fee (USD) 7-1-16 to 6-30-17
CONNECT STND UNLTD -FLAT LIC	Blackboard Connect Unlimited Emergency and Outreach Messaging Service License Fee	Unlimited	\$24,600.00	\$24,600.00
CONNECT CARE ANNUAL FEE	Blackboard Connect Care Annual Fee - 4999	1	Waived	Waived
Sales Order Total Fee (Initial Term):			\$24,600.00	\$24,600.00

B. Term

1. **Renewal Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be two (2) year following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. **Effective Date:** Upon execution of this Order Form unless otherwise indicated in the Pricing Summary above.

C. Payment Terms

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

D. Special Provisions

1. The terms and conditions the Connect CTY-Agreement, dated March 27, 2008 are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the final signature date below.

Customer: City of Goleta
Signature
Name (printed) Michelle Greve
Title (printed) City Manager
Date 6/11/15

Blackboard ("Blackboard")
Signature
Name TESS FRAZIER
Title VICE PRESIDENT
Date 6-11-15

Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard Inc. ("Blackboard") and City of Goleta ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Table"). This Order Form shall become effective on the later of: (i) the last signature date indicated below; or (ii) the date specified in the Product and Pricing Table ("Effective Date"). This Order Form, together with the Connect CTY-Agreement, dated March 27, 2008 ("Connect CTY-Agreement") and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Exhibit. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Connect CTY-Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute this Order Form on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Product and Pricing Summary

QTY	Product Name	Description	Period 8 Fees (USD) 7/1/17 to 6/30/18	Period 9 Fees (USD) 7/1/18 to 6/30/19
1	BC-STND-LIC	Blackboard Connect Unlimited Emergency and Outreach Messaging Service License Fee – Unlimited users	\$24,600.00	\$24,600.00
1	BC-CARE-GOV	Blackboard Connect for Government Care Annual Fee – up to 4999 recipients	Waived	Waived
Sales Order Total Fee (Initial Term):			\$24,600.00	\$24,600.00

B. Term

1. **Renewal Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be two (2) year following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. **Effective Date:** July 1, 2017.

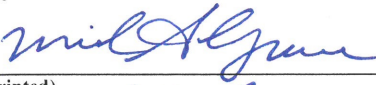
C. Payment Terms


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

D. Special Provisions

1. The terms and conditions the Connect CTY-Agreement, dated March 27, 2008 are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the final signature date below.

Customer: City of Goleta	
Signature	
Name (printed)	Michelle Greene
Title (printed)	City Manager
Date	6/9/17

Blackboard ("Blackboard")	
Signature	
Name	BILL JONES
Title	DEPUTY GENERAL COUNSEL
Date	June 15, 2017

Blackboard

This Blackboard Order Form ("Order Form") by and between **Blackboard Inc.** ("Blackboard") and **City of Goleta** ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form, the Connect CTY-Agreement, dated March 27, 2008 (Connect-CTY Agreement) and incorporated by this reference along with Blackboard Master Agreement located at <http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx>, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form, the Connect-CTY Agreement, and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Software & Services Product and Pricing Summary

Qty	Product Code	Product or Service	Period #10 Fees (USD) 07-01-2019 to 06-30-2020	Period #11 Fees (USD) 07/01/2020 to 06/30/2021
1	BC-STND-LIC	CONNECT STANDARD LICENSE UNLIMITED -FLAT LIC	\$24,600.00	\$24,600.00
1	BC-CARE-GOV	CONNECT GOVERNMENT CARE ANNUAL FEE	\$0.00	\$0.00
Total			\$24,600.00	\$24,600.00

B. Terms

1. **Renewal Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be two (2) years following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. **Effective Date:** July 1, 2019

C. Payment Terms

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

Sales Approved: Russ Hefner

Initial:

DS
RH

Customer: City of Goleta

Signature:



Name:

Michelle Greene

Title:

City Manager

Date:

6/26/2019

Is a Purchase Order (PO) required for the purchase or payment of the products on this Order Form?

No

Yes - Please complete below

PO Number: 20NS001 for Period #10

PO Amount: \$24,600.00 for Period #10

Attach PO :

Attach Tax Exemption:

Blackboard Inc.

Signature:



Name: Bill Jones

Title: Deputy General Counsel

Date: May 30, 2019

BLACKBOARD® Master Agreement for All Products and Services

The terms contained herein (the "**Master Agreement**") and any accompanying Blackboard ordering document (an "**Order Form**"), or the acceptance by Blackboard of an acknowledgement form or purchase order form referencing an Order Form incorporating these terms form the entire agreement ("**Agreement**") between the entity listed in any Order Form (hereafter, "**Customer**" or "**you**") and the Blackboard entity listed in any Order Form (hereafter, "**we**", "**us**" or "**Blackboard**"), with respect to the products and/or services listed in any Order Form ("**Products and Services**").¹

1. APPLICABILITY OF THIS MASTER AGREEMENT

This Agreement governs: (a) your rights to access and use software licensed on a term or perpetual basis ("**Software**"); (b) your rights to access and use software made available under a software-as-a-service delivery model for a term ("**SaaS Services**"); (c) your rights to support and/or maintenance services which you purchase or are otherwise entitled to receive other than Student Support Services ("**Support**"); (d) any professional services ("**Professional Services**"); (e) any managed hosting services, cloud hosting services or other hosting services ("**Hosting Services**"); (f) any hardware and/or firmware ("**Equipment**"); and (g) any student support services ("**Student Support Services**").

2. RIGHTS OF ACCESS AND USE.

2.1 License to Use SaaS Services or Hosting Services. With respect to SaaS Services or Hosting Services, for the Term (as defined in Section 10.1), we grant you a non-exclusive, non-transferable, non-sublicenseable license to access and use the SaaS Services (or, as applicable, Hosting Services) made available by Blackboard to you on a remote-access, subscription basis via the Internet solely in support of your operations.

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

2.3 Evaluation License. If Customer is provided an Evaluation License, Blackboard grants you a limited, non-exclusive, non-transferable non-sublicenseable license to install and use one (1) Evaluation copy of the Software, SaaS Services or Hosting Services, as applicable, ("**Evaluation License**") subject to the obligations herein and solely in connection with your internal evaluation of the Software, SaaS Service or Hosting Services and not for any production or commercial purpose.

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

2.5 Authorized Users. You agree to only grant access to the SaaS Services, Hosting Services, and/or Software to those individuals defined in the Terms Applicable to Specific Products and Services, below ("**Authorized Users**").

2.6 License Restrictions. You may not use the Software, Hosting Services, or SaaS Services beyond the usage, storage or other applicable 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, Hosting Services, or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the SaaS Services, Hosting Services, or Software except as expressly permitted by applicable law, rule or regulation ("**Law**"); (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the SaaS Services, Hosting Services, or Software; (iv) use the SaaS Services, Hosting Services, or Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the SaaS Services, Hosting Services, or Software; or (vi) use the SaaS Services, Hosting Services, or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the SaaS Services, Hosting Services, or Software are hosted (including where such use interferes with any other customer's use thereof).

2.7 Delivery. Delivery shall be deemed complete when Blackboard notifies you that you have the ability to access the Software, Hosting Services, or SaaS Services.

3. SUPPORT AND SERVICE LEVEL AGREEMENTS

If you license or are otherwise eligible to receive Support, or are eligible for service level agreements, such Support (or service level, as applicable) will be provided as described in the Blackboard Customer Support Services Guide ("**Services Guide**") located at <https://blackboard.secure.force.com/publicbarticleview?id=kA57000000PBOq> for the relevant Products and Services. With respect to SaaS Services, you will receive, or we will make available for you to receive, all applicable updates, application packs, and releases that we make generally available during the Term. If we discontinue any Product or Service during the Term (removing from general availability), we shall notify you and, as Customer's sole and exclusive remedy, Blackboard shall provide a pro rata refund for any unused portion of the Products and Services, as applicable.

4. PROPRIETARY RIGHTS

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

4.2 Blackboard Property. Subject to the limited rights expressly granted hereunder, we and our licensors or suppliers own all right, title and interest in and to each of the Products and Services, along with all related documentation, materials, content, and specifications, and all modifications, enhancements, improvements, and all derivative works thereto. We also retain all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with our provision of any services or the performance of any obligations hereunder. Any intellectual property rights that we do not expressly grant to you are expressly reserved by us.

4.3 Blackboard Use of Customer Property. During the term of the Agreement, you grant to us, our affiliates, and our third-party service providers, solely to perform our obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use the Customer Property. You authorize, subject to the terms of the Agreement and to the extent permitted by Law, Customer Property to be accessed and processed by us, our affiliates, and/or our third-party service providers in countries other than the jurisdiction from which the Customer Property was originally collected.

4.4 Content Restrictions. You agree not to use any Product or Service to store, display, or transmit content that is deceptive, libelous, defamatory, obscene, racist, hateful, infringing or illegal, and to the extent Authorized Users exercise the rights granted to you under this Agreement, you represent and agree that you will

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

ensure that such Authorized Users will also comply with the obligations applicable to such exercise set forth in this Agreement. We take no responsibility and assume no liability for any Customer Property that you, an Authorized User, or third party out of our control posts, submits, displays, or otherwise makes available via the Products or Services, and you agree that we are acting only as a passive conduit for the online distribution and publications of such Customer Property.

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

4.6. Other Rights. You hereby grant to us the limited right to use your name, 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 unless and until you provide us a written request to discontinue such use.

4.7. DMCA Notice and Takedown Policy. It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent: DMCA Notice, General Counsel, Blackboard Inc., 1111 19th Street NW, 9th Floor, Washington, D.C. 20036, Email: GeneralCounsel@blackboard.com, +1-202-463-4860.

5. PROTECTION OF PERSONAL INFORMATION

5.1. "Personal Information" is information collected from you or your Authorized Users under the Agreement that identifies a specific individual. Personal Information may include student data that is directly related to an identifiable student that is maintained by a school, school district, or related entity or organization, or by us. In the United States, student data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

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

5.3. Personal Information Access. To the extent necessary to provide you with the Products and Services, you authorize us, our affiliates and subsidiaries to collect, access, use, transmit and/or otherwise process (together, "Process") Personal Information and shall facilitate a reasonable method for us to obtain such information, for example via secure transfer from and/or authorized access to your student information systems. Unless otherwise expressly indicated, if you are subject to regulations in the United States, we Process Personal Information as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). When you authorize us to Process Personal Information on your behalf, you remain in control of and own that Personal Information.

5.4. Personal Information Consents and Authority. You represent and warrant that you have the authority to provide Personal Information to Blackboard for its use in accordance with the Agreement, and that you have obtained and provided all required consents and/or disclosures to Authorized Users regarding your sharing such Personal Information with Blackboard, including the collection of Personal Information directly from students under age 13, as permitted under the Children's Online Privacy and Protection Act ("COPPA"). Both parties agree to uphold their responsibilities under Laws governing Personal Information, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. You agree to Blackboard's fulfillment of any legally satisfactory request and consent by an Authorized User to download, export, save, maintain or transfer their own Personal Information.

5.5. Use of Personal Information. By submitting or providing us access to Personal Information, you agree that Blackboard, its affiliates, and subsidiaries, may Process the Personal Information solely for the purposes of (i) providing Products and Services to you, (ii) maintaining, supporting, evaluating, improving and/or developing our Products and Services and developing new Products and Services, (iii) enforcing our rights under the Agreement, and (iv) as permitted with the Authorized User's consent solely with respect to their own Personal Information. We shall not use Personal Information for targeted advertising.

5.6. Use of De-identified Data. You agree that we may Process, both during and after the Term (defined below), data derived from Personal Information that has been de-identified and/or aggregated to reasonably avoid identification of a specific Authorized User or individual for research, development, analytics, and similar purposes.

5.7. Personal Information Deletion, Access, Correction, and Retrieval Requests. You may request that we delete, access, correct, or retrieve your Authorized User's Personal Information in our possession at any time by providing such a request in writing, and we shall comply with such request in a commercially reasonable time unless a shorter time is required by Law, and then in such shorter time. Any request received by Blackboard directly from an Authorized User to delete, access, correct, or retrieve their Personal Information shall be redirected to you, and such request shall only be accommodated at your direction. We will otherwise delete Personal Information within a commercially reasonable time following the end of the Term (defined below).

5.8. Blackboard's Third-Party Service Providers. You agree that Blackboard may provide access to Personal Information to certain third-party service providers, which have a legitimate need to access such information in order to provide their services to us as part of our provision of the Products and Services to you. You agree that Blackboard may only share Personal Information with third parties (i) in support of Blackboard's use of Personal Information as described in Section 5.5 above, (ii) to ensure legal and regulatory compliance, and (iii) to respond or participate in judicial process or to protect the safety of Blackboard or our users. All third-party service providers involved in the Processing of Personal Information will be subject to contractual terms related to data use, disclosure, retention and data security, that are materially similar to the relevant terms of the Agreement.

5.9. Customer-Requested Third-Party Access. If authorized by you or your Authorized User who is eligible to provide such consent under applicable law, you consent to allow us to provide access to Personal Information to Customer-requested third parties through the provision of our Products and Services under the Agreement. You agree that we are not responsible for the data practices of third parties with whom you or your Authorized User elects to share Personal Information, and that you are solely responsible for meeting any applicable requirements and the consequences of providing or transmitting Personal Information to such third parties, or authorizing those third parties to access Personal Information through the Products and Services.

5.10. Data Localization. You acknowledge and agree that your Personal Information may be stored or Processed in countries other than the country in which it was collected unless and except to the extent required by Law. Blackboard shall only transfer Personal Information outside the country in which you are located by means of legally recognized data transfer mechanisms or safeguards.

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 in the Agreement expressly conflicts with any term in the DPA, the conflicting term in the DPA shall control.

6. DATA SECURITY

6.1. Data Security. We will implement commercially reasonable administrative, physical and technical safeguards designed to secure Personal Information from unauthorized access, disclosure, or use, which may include where commercially reasonable or to the extent required by Law, data encryption, firewalls, and physical access controls to buildings and files.

6.2. Notification. If we have a reasonable, good faith belief that an unauthorized party has acquired, accessed, or been disclosed Personal Information that you have provided us or that we have collected on your behalf under the Agreement, in a manner which compromises the security or privacy of such Personal Information ("Security Incident"), we will promptly, or if required by Law in such other time required by such Law, notify you and will use reasonable efforts to cooperate with your investigation of such Security Incident. You shall be responsible for the timing, content, and delivery of any legally required notification to your Authorized Users who are impacted by such Security Incident and to any regulator or third party in accordance with applicable law. If, due to a Security Incident which is caused by Blackboard or our agents' acts or omissions, any third-party notification is required under Law, we shall be responsible for the cost of such notifications. With respect to any Security

Incident which is not due to the acts or omissions of Blackboard or our agents, any third-party notifications, if any, shall be at your expense.

7. PROFESSIONAL SERVICES

7.1. If you purchase Professional Services, they shall be provided as described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form and must be used within one (1) year of the annual Term in which they were purchased. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace employees and subcontractors in our sole discretion with other suitably qualified employees or subcontractors.

7.2. **Security.** While on Customer's premises, our employees and subcontractors will comply with all reasonable security practices prescribed by Customer to the extent that we have been notified in advance of such practices in writing. To the extent any employee or subcontractor is required to sign any waivers, releases or other documents as part of these security practices the terms thereof shall be invalid and have no effect against Blackboard, its employees or subcontractors.

8. FEES AND TAXES

8.1. Fees. In consideration for our performance under the Agreement, you agree to pay all fees required by the Order Form. We expressly reserve the right to change the fees payable under any Order Form with respect to any renewal of Products or Services by providing you with 30 days' advance notice of such change prior to the expiration of the then-current term or your right to decline to renew, whichever is earlier.

8.2. Overage Fees. Your storage capacity and bandwidth ("Storage Capacity") and your number of Authorized Users and Active Users licenses may be limited as specified in the applicable Order Form or the support terms of the Agreement and you agree that any additional Storage Capacity Authorized End User and Active Users in excess of what is contemplated in the applicable Order Form or the support terms of the Agreement may be subject to additional fees. Any failure by Blackboard to timely invoice for any overages due under this paragraph shall not constitute a waiver of your obligation to pay such fees.

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

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

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

9. TERM AND TERMINATION.

9.1. Term. The term ("Term") is defined in the applicable Order Form referencing the Agreement.

9.2. Termination for Breach. If either party materially breaches any obligation under the Agreement, the non-breaching party may terminate the Agreement in its entirety, or, at the non-breaching party's option, it may terminate solely the relevant Product or Service pursuant to which such breach relates, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Notwithstanding the foregoing, Blackboard may terminate the Agreement immediately upon written notice to you if you materially breach the provisions of the license usage restrictions set forth in the Agreement. Except for termination rights in this section, the parties have no other right of early termination.

9.3. Effect of Termination. Upon termination of the Agreement or termination or expiration of any individual license, you and your Authorized Users will immediately cease access to the applicable Products and Services, and, unless such termination is due to Blackboard's uncured material breach, you will immediately pay us all amounts due and payable for such Products and Services. Upon termination or expiration, unless expressly stated otherwise herein, each party shall promptly cease any use of and permanently delete, or upon the other parties' request, return the other party's Confidential Information and any copies to the extent commercially reasonable.

9.4. Survival. The termination or expiration of the Agreement shall not relieve either party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting the foregoing, the provisions of Sections 4, 5, 8, 9.3, 9.4, 10.4, 11, 12, 13, 17.5, 24.7, and 27.2 shall survive the termination of the Agreement for any reason.

10. GENERAL WARRANTIES.

10.1. By Blackboard. We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined below) for one year from delivery of the Software or for the term of the SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly notify us of in writing, we will exert commercially reasonable efforts to repair or otherwise remedy the non-conformity so that the warranty is materially complied with. With regard to breaches of subsections (a) or (b) above, our remedy may include a code fix, a work around, or other modification. If we are unable to remedy the non-conformity after a reasonable period of time, then YOUR SOLE AND EXCLUSIVE REMEDY shall be: (i) for Professional Services or Hosting Services, to seek a refund of the fees paid for the un-remedied services; and (ii) for licensed Software or SaaS Services, to seek recovery of direct damages caused by the breach, subject to the limitation of liability below. These warranties by us shall not apply if you materially breach the Agreement. "Software Error" means a failure of any Software or SaaS Services to materially conform to its applicable standard end user documentation provided by us ("Documentation"), provided that such failure can be reproduced and verified by us using the most recent version (including all available updates, application packs, and releases) of such Software or SaaS Service made available to you, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by your material breach of the Agreement, or your unauthorized modification or misuse of the Software or SaaS Services.

10.2. Australian Consumer Law. To the extent you are located in Australia: The supply of the Products or Services under this Agreement may be subject to the Australian Consumer Law, Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) ("Australian Consumer Law"). Where this is the case, the following statement applies in respect of any failure to comply with the consumer guarantees under the Australian Consumer Law: Our Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Laws apply, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, subject to the limitation of liability below. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

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

10.4. Disclaimer of Other Warranties. EXCEPT FOR WARRANTIES EXPRESSLY MADE HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED “AS IS” AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

11. MUTUAL LIMITATIONS OF LIABILITY.

11.1. Consequential Damages Limitation. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, AND YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT WILL EITHER PARTY OR SUCH PARTY’S LICENSORS’ BE LIABLE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY, FOR: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA, OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES).

11.2. Mutual Limitations of Liability. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND YOUR PAYMENT OBLIGATIONS, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, 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.

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

11.4. Australia Consumer Law. To the extent you are located in Australia: THE LIMITATIONS AND EXCLUSIONS IN SECTION 12 APPLY ONLY TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY CONSUMER GUARANTEE, RIGHT OR REMEDY CONFERRED ON A PARTY BY THE AUSTRALIAN CONSUMER LAW OR ANY OTHER APPLICABLE LAW THAT CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR LIABILITY FOR ANY BREACH OF A NON-EXCLUDABLE GUARANTEE REFERRED TO ABOVE IS LIMITED, AT THE OUR OPTION, TO:

(I) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (1) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (2) THE REPAIR OF THE GOODS; (3) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (4) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR (II) IN THE CASE OF SERVICES: (1) THE SUPPLYING OF THE APPLICABLE SERVICES AGAIN; OR (2) THE PAYMENT OF THE COST OF HAVING THE APPLICABLE SERVICES PERFORMED AGAIN.

12. INDEMNITIES.

12.1. Our Indemnity Obligations. If a third party brings a claim, suit, or proceeding against you, your affiliates, or your respective employees, contractors, agents, or assigns (a “Customer Indemnitee”) resulting from our gross negligence or willful misconduct, or alleging that any Products and Services infringe a U.S. or European patent or a copyright under Law of any jurisdiction in which you are using the applicable Products and Services, you must promptly notify us in writing and make no admission in relation to such claims. Provided that you have fulfilled all of the foregoing obligations, we shall at our own expense indemnify, defend, and hold harmless 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 assistance as we may reasonably request, at our expense, provided that we will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

12.2. Exceptions. Where infringement of a patent is caused by the combination of the Products and Services with other hardware, software, communications equipment, or other materials not provided by us (or, in the case of a method claim, additional steps in addition to those performed by the Products and Services), we shall only be obligated to indemnify you if the Products and Services constitute a “material part of the invention” of the asserted patent claim and “not a staple article or commodity of commerce suitable for substantial non-infringing use” as those phrases are used in 35 U.S.C. § 271(c).

12.3. Your Indemnity Obligations. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, if a third party brings a claim, suit, or proceeding against us, our affiliates, or our respective employees, contractors, agents, or assigns (a “Blackboard Indemnitee”) resulting from (a) any use of the Products and Services beyond the scope of the license restrictions set forth in the Agreement, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; or (d) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us, you shall at your own expense indemnify, defend, and hold harmless such Blackboard Indemnitee. Blackboard shall have no liability (including indemnification obligations) to you for any claim to the extent arising out of (a) – (d) above.

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

13. CONFIDENTIALITY.

13.1. Confidential Information. “Confidential Information” means any non-public information disclosed by either party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, the terms of the Agreement, account and login credentials, information about a party’s business, operations, vendors or customers, and all Blackboard Property and all Customer Property.

13.2. Nondisclosure and Nonuse. Each party shall treat Confidential Information as strictly confidential and use the same care a reasonable person would under similar circumstances. The parties agree not to use such Confidential Information except for the purposes set forth in the Agreement and shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. The receiving party will promptly notify the disclosing party if the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party’s expense, in any litigation against any third parties to protect the disclosing party’s rights with respect to the Confidential Information.

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

14. MISCELLANEOUS MATTERS.

- 14.1. Severability.** If a court holds any provision of the Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and the Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- 14.2. Conflict Resolution.** If any claim arising out of or relating to the Agreement, or a breach thereof, the parties will consult with each other to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by either party to the other, such claim will be referred to arbitration for full and final settlement by a panel of three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). All arbitration proceedings will be conducted pursuant to the ICC rules and in the English language. The cost of the arbitration will be borne equally by the Parties. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.
- The applicable governing Law and place of the arbitration will be as follows: (a) if you acquired the applicable Product or Service in North America or South America, the governing Law is New York unless you are located in the United States and you are legally required to be bound by the state in which you are domiciled, and in such case, the governing law shall be such state and the place of arbitration is Washington, D.C.; (b) if you acquired the applicable Product or Service in Europe, the Middle East, or Africa, the governing Law is England and Wales and the place of arbitration is London, England; (c) if you acquired the applicable Product or Service in Australia or New Zealand, the governing Law is South Australia and the place of arbitration is Adelaide, South Australia; and (d) if you acquired the applicable Product or Service in a region not otherwise mentioned above, the governing Law is Singapore and the place of arbitration is Singapore.
- 14.3. Modification and Waiver.** No modification or supplement to the Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. A waiver of any breach of the Agreement is not a waiver of any other breach. Any waiver must be in writing to be effective.
- 14.4. Assignment.** Neither party shall be entitled to assign the Agreement or its rights or obligations under the Agreement, whether voluntarily or by operation of law, except with the written consent of the other party; provided, however, that either party may assign the Agreement without the consent of the other party to any affiliate, or any entity that is the successor corporation in any merger or consolidation of either party, or any entity that purchases a majority of the voting securities of either party, or all or substantially all of the assets of either party, or of a specific division or group of such party. The Agreement shall bind each party and its successors and permitted assigns.
- 14.5. Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to us, sent to Blackboard Inc., Attn: General Counsel, 1111 19th Street NW, Washington DC, 20036 or to such other address as shall be given in accordance with this section with a copy to GeneralCounsel@blackboard.com, and, in the case of you, to the address listed on your invoice, and shall in each case be effective upon receipt.
- 14.6. Export Control.** You shall not export or allow the export or re-export the Products and Services, any components thereof or any Confidential Information of ours without our express, prior, written consent and except in compliance with all export Laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, and, if applicable, relevant foreign Laws and regulations.
- 14.7. Force Majeure.** During a Force Majeure Event, 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 authorization of any government authority ("Force Majeure Event").
- 14.8. Relationship.** Blackboard and Customer are independent contracting parties. The Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.
- 14.9. Entire Agreement.** The Agreement, including any Order Forms, constitutes the entire, full and complete agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and the Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. If a conflict arises between the terms of this Master Agreement and the provisions of the Order Form, Services Guide, or statement of work, the terms of this Master Agreement will govern unless an Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of the Agreement.
- 14.10. Audit.** Upon reasonable notice, we shall have the right to audit, at our expense, your use of the Products and Services not more than once per calendar year solely to ensure past and ongoing compliance with the Agreement.

Terms Applicable to Specific Products and Services

In addition to the terms and conditions above, the following terms and conditions apply only to the extent that you purchase the below-referenced Products and Services as specified in an Order Form.

15. BLACKBOARD LEARN™

15.1. Grant of License and Test Copies for Self-Hosted Software. Subject to your obligations under the Agreement, Blackboard grants you a non-exclusive, non-transferable, non-sublicensable license to install and use one (1) production copy and one (1) Test Copy (as defined below) of the Software for one installation at Customer's Designated Server Site (as defined below) solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Property, including content, to your Authorized Users and to use the Documentation in support of your authorized use of the Software. You agree not to install or use any Software on any computer, network, system or equipment other than on a Designated Configuration at the physical location where the Software will be installed, as identified in the Order Form (the "Designated Server Site"), except with our prior written consent. The Software may access, use or integrate Java Software. Such Java Software is licensed to you under the terms of Oracle's Standard Binary Code License Agreement currently found at: <http://www.oracle.com/technetwork/java/javase/terms/license/index.html>.

15.2. Test Copies of Software or SaaS Services. Self-hosted Software and SaaS Services licensees are provided one (1) Test Copy of the Software or SaaS Services. If you purchase the Blackboard Managed Hosting Non-Production Test Environment, we will host the Test Copy of the Software for you. A "Test Copy" is a copy of the Software or a sandbox environment for the SaaS Services used solely for non-production testing purposes and is not supported or warranted.

15.3. Grant of Learn API License. We grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access our public Learn-related API's ("Learn API"). The Learn API(s) are provided in the form of one of the following: a Building Block API, a REST API or a web service, that enables a "connection" into our servers. We will provide you with the information necessary to enable your use of the Learn API(s). You may not use or install the Learn API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Learn API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our Services.

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

15.5. Higher Education Authorized Users. If you are a higher education institution, an Authorized User means any individual who is a student resident in a degree- or certificate-granting program of yours, prospective student, consortia student registered to take one of your regularly offered courses of instruction, employee (solely to the extent any such employees use the Product and Service for your internal training purposes), trustee, or collaborating researcher of yours or one of such employees. Authorized Users shall also include non-traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses, not exceeding ten percent (10%) of the number of total FTEs specified in the Order Form; provided, however, that Authorized Users shall not include any third party commercial providers without our prior written approval.

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

15.7. Corporate/Government Authorized Users. If you are a corporate or governmental entity, Authorized User means any individual who is your employee or enrolled in a course of yours or your corporate affiliate (solely to the extent any such individual and employees use the Product and Service for your internal training purposes).

16. BLACKBOARD COLLABORATE

16.1. 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.

16.2. 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).

16.3. 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.

16.4. Use Limitations. Your license is solely for the purposes of creating, presenting, hosting, analyzing, viewing and delivering Events (as defined below) to Authorized Users, subject to any limitation of Seats (as defined below) specified in the Order Form. "Event" means a single live broadcast event transmitted over the SaaS Service created and/or sponsored in whole or substantial part by Customer or Customer's employees that is branded under Customer's name. The term "Events" shall include both live and archived Events. "Seat" means each Authorized User served by a stream of digitally encoded data that delivers an Event to such Authorized User in the SaaS Service and shall include an Authorized User's access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of unique Authorized Users of the Service.

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

17. BLACKBOARD CONNECT: MASS NOTIFICATION SERVICES

17.1. Authorized Users; Recipients. Your Authorized Users are your employees. You will only use the Product and Service to send messages to the number and type of Recipient(s) specified in the Order Form, and to the extent not so specified, as defined below. You will provide all contact data for Recipients (the "Recipient Data"). You represent, warrant and covenant that you will not use the Product and Service for the purpose of sending commercial messages, including, without limitation, offers to purchase, sell, barter or lease commercial products, goods, or services. Unless otherwise indicated on an Order Form, telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii, and Canada. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees, shall be payable by you or Recipient. Unless otherwise specified on the Order Form, a "Recipient" shall be the following with respect to each type of customer entity listed:

- **K-12 Institution:** Parents of enrolled students, administrators, students, faculty, staff, and board members of the institution.
- **Higher Education Institution:** Enrolled students, faculty, and staff of the institution.
- **Government:** Households, businesses, and other related individuals within the government entity's jurisdiction.
- **Corporate:** Employees, consultants, contractors, and board members of the corporation.

17.2. Connect with Teacher. Blackboard Connect with Teacher will enable your teachers to send pre-recorded telephone comments to parents of students in a designated language. We will provide support to a designated administrator ("Teacher Champion") at your institution or entity. The Teacher Champion will in turn support the teachers using the Blackboard Connect with Teacher Product and Service.

17.3. Web Portal. If you elect to link to and use the web interface provided by us (the "Web Portal"), you agree that the Web Portal is for the sole purpose of enabling Recipients to update and add their contact information. If you elect to use the Web Portal, we grant for the period of the Term (as defined below) to you a limited non-exclusive, worldwide, royalty-free license to place a digital image of the applicable sign-up Logo, which will be presented to you (the "Image"), on an appropriate page of your Internet site, with a hyperlink to our Web Portal site (the "Link") currently at <https://portal.blackboardconnected.com/>. You may not use any

other trademark or service mark in connection with the Image without our prior written approval. The Link may not be used in any manner to provide an Authorized User with access to the Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by you or anyone other than us. You may not allow the Image to be linked to any other web site. You may not use the Image in any manner not permitted hereunder, modify the Image, or copy, or create a derivative work from, the "look and feel" of the Image. We will have the right to review all uses of the Image for quality control purposes and proper compliance. We reserve the right to modify permission to use the Image and/or the Link at any time.

17.4. Weather Alerts. If you are licensing our weather alerts Service, you agree that we are delivering weather information created and provided by a third-party public service, and not by us. Weather forecasting is an inexact science. We shall have no responsibility or liability whatsoever to you or any other person or entity, parties and non-parties alike, for any inconsistency, inaccuracy, or omission for weather or events predicted or depicted, reported, occurring or occurred. **IN NO EVENT WILL WE BE RESPONSIBLE FOR ACTIONS OR LACK OF ACTION TAKEN TO PRESERVE LIFE OR PROPERTY.**

17.5. Representations, Obligations, and Indemnity. You represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of Recipient Data, the Product and Service, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent using the Product and Service, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"), and where applicable, the legislation commonly referred to as Canada's Anti-Spam Legislation (S.C. 2010, c. 23) ("CASL"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained consents that may be required by the Telemarketing Laws, CASL and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; (e) you will have in place reasonable safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical, and public health, collectively, "First Responder Services") which do not utilize the Product and Service; (f) you will not take actions that will subject Blackboard to any Laws due to the import of Recipient Data; (g) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not send Messages to Recipients who have opted out of receiving Messages from you; (h) if you purchase data from us, you will only use such data purchased from us to contact individuals pursuant to the use of the Product and Service and are prohibited from downloading or making copies of such data purchased from us if such activity would violate a Law or contract; and (i) where you are providing a Recipient count or other data for the purposes of our Product and Service pricing quotations, such information shall be true and correct. You will designate qualified personnel to act as liaisons between you and us respecting technical, administrative and content matters, and providing accurate and current contact information. We shall have the right to require you to provide a legal compliance plan in connection with your use of our mass notification services, and audit your compliance with such plan as well as with subsections (a), (b), (c), (d), and (g) above. Failure to comply with any provision of this Section 17.5 is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

17.6. Emergency & Outreach Messaging. If you are purchasing Messaging restricted by use-case, the following definitions shall apply. An "Emergency" is 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.

17.7. Remedies and Disclaimers. Due to the nature of mass notification services, in the event of the Product and Service's failure to comply with the Agreement, your sole and exclusive remedy shall be to terminate the Service. You agree that the Product and Service is not intended, nor designed, for use in high-risk activities, or in any situation where failure of the Product and Service could lead to death, personal injury, or damage to property, or where other damages could result if an error or outage occurred. The parties further agree that, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, to the extent not prohibited by Law, WE SHALL NOT BE LIABLE FOR ANY DEATH, PERSONAL INJURY, OR DAMAGES ARISING OUT OF OR RELATED TO USE OF THE PRODUCT AND SERVICE. You agree that your primary recourse in the event of any actual or potential threat to person or property should be to contact First Responder Services and that the Product and Service is not intended to replace such First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, such First Responder Services, which should have already been notified and deployed prior to using the Product and Service.

17.8. Training and Testing. Blackboard makes training on the Product and Service available to you, and recommendations for periodic testing of the configurations and operations of the Product and Service for Customer. You acknowledge that taking advantage of such training on a reasonable basis for appropriate personnel and performing such testing is your responsibility, and that failure to do so could result in the Product and Service not functioning as expected.

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

18. SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS

Third-Party Services. You acknowledge that the Products and Services may assist you to access or themselves automatically access, interact with, and/or purchase services from third parties via third-party social media and similar websites or applications (collectively, the "Third-Party Services"). You authorize any such access. Any use of Third-Party Services is governed solely by the terms and conditions of such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, services provided, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Blackboard. Blackboard makes no representation and shall have no liability or obligation whatsoever in relation to the content provided to or available at, use of, or correspondence with, any such Third-Party Services or any transactions completed and any contract entered into by you with any such third party.

19. SCHOOLWIRES, EDLINE & WEBSITE COMMUNITY MANAGEMENT PRODUCTS

19.1. License Grant. You shall have a right to use those website community management SaaS Services purchased under an Order Form. Certain SaaS Services may include use of a website or other web-based learning environment which is hosted by us (a "Site"). A Site which is built upon the designated website community management system is generally used as a client's primary internet website and additional Sites are typically used as one or more related sub-sites (such as an individual school's website or other secondary website). Where your licensing rights are limited by a specified number of Sites, such limit shall be determined by adding up all of your Sites, including both those that are used as primary websites and those used as secondary websites. In this regard, as used in the Order Form to establish licensing limitations, the following definitions shall apply:

"Channels." A group of one or more closely related FlexSites located within a Site. For example, an "Athletics" Channel may contain FlexSites for various teams such as Varsity Football, Varsity Soccer and Varsity Baseball.

"FlexSites." (Also referred to at times as "Sections"). A connected group of web pages devoted to a single topic or several closely related topics located within a Channel. For example, FlexSites can be used to provide online content for an individual class, club, athletic team and/or district policies. A client's rights of use in the SaaS Services are generally limited by a specified number of FlexSites as specified in the Agreement.

19.2. Usage Limitations. Depending on the website community management SaaS Services purchased, your use of the SaaS Services may be limited by bandwidth, storage or other limitations.

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

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

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

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

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

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

19.4. Your Responsibilities. You acknowledge and agree that your use of the website community management SaaS Services does not and will not violate any applicable laws or third party rights. You acknowledge and agree to comply with all applicable privacy laws, including without limitation FERPA, COPPA and state laws relating to student data privacy, regarding your use of the services to provide content to and collect information from your Authorized Users and visitors, including, without limitation, by posting your privacy policy on your Site and for making all required disclosures and obtaining all required consents, if necessary, from such Authorized Users and visitors with respect to your collection, use, and disclosure of personal information.

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

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

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

20. MOODLE CMS AND BLACKBOARD OPEN LMS

Moodle Open Source software ("Moodle CMS") is licensed under a GNU General Public License "GPL" open source license. Your use and distribution of the Moodle CMS is governed by the terms of the GPL license and, notwithstanding any provision to the contrary herein, Blackboard makes no representations or warranties regarding its use other than as provided in Section 3 related to hosting and support services for Moodle CMS, if applicable.

20.1. Authorized Users. Your Authorized Users may not exceed the "Active User" limit specified in the Order Form. For this purpose, "Active User" means an Authorized User who has an account in the 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.

21. MOBILE APPLICATIONS

Blackboard provides software ("Mobile Software") to access many of the Products and Services via a mobile device. The use of Mobile Software is governed by the terms and conditions referenced in the application store (e.g., Apple, Inc. or Google, Inc. app stores) relevant to the Mobile Software except with regard to the collection, use, and deletion of Personal Information on your behalf, which is governed by the Agreement. Blackboard makes no representation regarding the availability of third-party application stores or the Mobile Software's compatibility with mobile devices.

22. SMARTVIEW™

22.1. Authorized Users. Your Authorized Users are your employees. You will only use the Product and Service to provide help-desk guidance (including but not limited to guidance on financial aid, student accounts, registration and records) to current faculty and staff. In addition, if specified on the applicable Order Form, your current and prospective students may access the Self-Help portal of the Product and Service.

22.2. Representations and Obligations. You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Personal Information, in connection with your use of SmartView; (b) you will not store any Personal Information within SmartView; (c) you are responsible for communicating any necessary modifications to the Product and Service that arise due to changes in your internal policies or the Law; (d) in order to facilitate a reasonable method for us to obtain timely and automated access to institutional data, upon the Effective Date, your student information system (SIS) shall be integrated with Smartview, and depending on the scope of services, your learning management system (LMS) system and customer relationship management (CRM) system, may be integrated with Smartview; and (e) following the initial configuration of the Product and Service, you are responsible for any modifications or errors within the workflow routines in the Product and Service. The costs and timelines to complete any requested modifications to the Product and Service must be addressed in a mutually agreed Statement of Work.

22.3. Remedies and Disclaimers. You acknowledge that: (a) you are solely responsible for the accuracy of Personal Information or content in the Product and Service; (b) the KnowledgeBase in SmartView is for informational purposes only and it is your responsibility to update the content in the KnowledgeBase every twelve (12) months. Blackboard will not be held to any penalties associated with missed One Stop or Help Desk Service Level Agreements during any period where the KnowledgeBase has not been updated in the past twelve (12) months; (c) your Authorized Users will not provide any financial guidance or advice solely based on the Product and Service; (d) you agree that you are responsible for the actions or inactions of your Authorized Users; and (e) Blackboard shall have no liability associated with the guidance or advice provided to Students by such Authorized Users. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity

of government entities, you agree to defend, indemnify and hold us harmless against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys' fees) in connection with any claim or action that arises from the guidance or advice provided to Students using the Product and Service.

22.4. Additional Fees. In the event you do not integrate your system with Smartview as outlined in Section 22.2(d) above, Blackboard shall invoice you at the following specifications: for One Stop Services and Help Desk, you will be billed at the Premium Solution rate for the period of time that Smartview is not integrated with your systems; for Help Desk Services: (1) for per minute-based pricing models, we may charge you an additional 25% per minute; and (2) for per incident-based pricing models, we may charge you an additional 25% per incident.

23. STUDENT SUPPORT SERVICES

23.1. Types and Estimates of Student Support Services. The Order Form will specify whether you have purchased inbound, live outbound, and/or automated outbound Student Support Services. The estimated number of annual Inbound Interactions, monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. If these estimates exceed the actual parameters experienced in the relevant period, we shall be excused from any failure to meet any service levels for such period as outlined in the Statement of Work. The parties shall review the estimates at the end of any term and agree on updated estimates for any renewal term (including the payment of additional fees based on such updates), and update the Order Form accordingly.

23.1.1. Inbound Interactions. You represent that the estimated monthly Inbound Interactions is a reasonable estimate, and at the end of a term we shall be entitled to invoice you in accordance with the terms set forth herein. You acknowledge and agree that, if during any annual term, the actual number of Inbound Interactions exceeds your total Estimated Inbound Interactions ("Excess Inbound Interactions"), then at the end of the then-current annual term, we shall be entitled to charge you for all such Excess Inbound Interactions at a Per Incident Rate, plus a premium, as outlined in the Statement of Work. You may upwardly adjust estimated monthly Inbound Interactions for any future month upon delivery of 60 days' prior written notice to us.

23.1.2. Live Outbound Interactions. If the actual live Outbound Interactions exceeds the quarterly estimate by 15% or more, we will meet to determine whether the estimate for future quarters needs to be upwardly adjusted (and, if so, shall update the Order Form accordingly, including the payment of additional fees).

23.2. Provision of Service Desk Infrastructure. We shall provide the enabling technology, software system, or other designated support procedures/processes and related third party technologies that will provide back-end ticketing, a customer-facing knowledge base and related support modules, including access to self-help resources and live support via phone, chat, and web-based submissions, where applicable ("Service Desk Infrastructure") to Authorized Users designated by you who will become familiar with the Service Desk Infrastructure and work with the Blackboard Service Desk on your behalf to provide the Student Support Services ("Authorized Customer Support Users") to students, faculty or staff members of yours located at or receiving or providing services through your institution ("Authorized Users").

23.3. Implementation. We shall provide an implementation project manager, implementation resources, and requisite tools to develop and implement your Student Support Services. Implementation services, development, and associated go-live dates are assumed to be standard unless otherwise specified in a custom scope. If, during implementation, it is discovered that your business processes necessitate a custom scope after contract signing, go-live dates could be impacted. We will also provide you with a customer service manager. During the implementation phase, the parties shall co-author the call script to be used by our representatives.

23.4. Availability. We shall use commercially reasonable efforts to make the Service Desk Infrastructure available. From time to time, it may be necessary for us to perform scheduled maintenance on and/or deliver upgrades to various components of the Service Desk Infrastructure, as set forth in more detail in the Order Form.

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

23.5.1. Access. You agree to provide us with any reasonable information and training required by us to establish the Service Desk Infrastructure. You will provide reasonable access to your personnel and arrange for us to have suitable access to your facilities (including suitable office space and resources for our personnel working on-site) and systems within your control necessary to perform the Student Support Services.

23.5.2. 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.

23.5.3. 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.

23.6. Authorized Users. You acknowledge that we will rely on information provided by you. You agree to provide such information that is reasonably requested by us from time to time, including (i) a comprehensive list of all current and (to the extent then known) potential Authorized Users, (ii) the email addresses and/or phone numbers of Authorized Users, (iii) student demographic information, and (iv) headcount data.

23.7. Representations and Indemnity. If you request that we contact any Authorized User or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Student Support Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent using the Student Support Services, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

23.8. Changes and Oral Instructions. You shall, to the extent reasonably possible, provide us with no less than 60 days' prior notice of events that you anticipate will increase volume of the Student Support Services. We may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if we receive an oral instruction to proceed from your project manager or another authorized representative and we send a written confirmation of the oral instruction to you.

23.9. Added Definitions.

23.9.1. "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.

23.9.2. "Inbound Interaction" means a single inbound Support Request from an Authorized User to the Service Desk or the Service Desk Infrastructure. An Inbound Interaction does not include (i) live or automated outbound Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

23.9.3. "Outbound Interaction" means an outbound interaction between the Service Desk and an Authorized User (for example, during a live outbound campaign in support of enrollment or financial aid objectives). An Outbound Interaction may be either a live interaction between a Blackboard Service Desk member and an Authorized User or automated (e.g., outbound text messages). An Outbound Interaction does not include (i) inbound Student Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

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

23.9.5. "Support Request" means a request for assistance received by Blackboard's Service Desk and/or Service Desk Infrastructure from an Authorized User, such as any answered phone call, answered email, or answered chat.

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

23.10. Travel. You will reimburse us for all reasonable travel expenses incurred by our employees in connection with the delivery of our services, unless stated otherwise. In the event that you choose to cancel a scheduled on-site visit within two (2) weeks of the scheduled event, Blackboard may invoice you for associated travel change fees.

24. BLACKBOARD ALLY

24.1. Grant of License. With respect to the Blackboard Ally service, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to access and use the Blackboard Ally service made available by Blackboard.

24.2. No advice. We do not guarantee that the use of the Blackboard Ally service will ensure the accessibility of your web content or that your web content will comply with any specific web accessibility standard or law. Any information or guidance accessed through the Blackboard Ally service, including without limitation the results of any website tests conducted or other guidance with respect to compliance with various accessibility standards, including without limitation the web content accessibility guidelines 2.0 (WCAG 2.1), or laws, rules or regulations, including without limitation those commonly known as the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008, applicable sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 251(a), the Rehabilitation Act, the Individuals with Disabilities Education Act, or their international counterparts, any or all as amended from time to time, or related rules or regulations is provided solely as a courtesy and is not legal advice or counsel. Other laws may apply to you or your customers depending on the nature of their goods and services. We expressly disclaim any implied or express warranties and any liability with respect to any information or guidance provided.

25. PROFESSIONAL SERVICES

25.1. Online Training Services. Online Training classes are restricted to a maximum of 20 Authorized Users.

25.2. Onsite Training Services. Onsite Training classes are restricted to a maximum of 15 Authorized Users. You must provide all necessary equipment to facilitate the Onsite Training. If you cancel a scheduled Onsite Training workshop, you shall be charged a cancellation fee as follows: Prior to 21 days before the event: 20%, 15- 21 days before the event: 60%, 8-14 days before the event: 100%, 1-7 days before the event: Fee as referenced in the Order Form.

25.3. On-site Workshops or On-Site Consulting Visits. In the event the Customer chooses to cancel a scheduled on-site training workshop or consulting visit within two (2) weeks of the scheduled event, Blackboard Consulting may invoice the Customer for the following for on-site consulting visits, the cost of all consultant hours scheduled for the site visit plus incurred travel change fees.

25.4. Professional Services Expenses. You shall reimburse us for all reasonable travel expenses incurred by our employees and subcontractors in connection with the performance of Onsite Training Services unless stated otherwise.

25.5. Change Control. Changes to scope, resources, staffing, or timeline may impact this estimate. In the event a change occurs, the Blackboard Consulting Project Manager will capture and assess the impact and relevant implications through the project Change Control Process. This process will yield a Project Change Request (PCR) document for the customer's review and consideration. The PCR requires customer and Blackboard approval to be valid and actionable, if applicable.

25.6. Deliverables sign-off. Customer will complete a review of all submitted draft deliverables, or set of artifacts, in five business days unless otherwise agreed to in writing.

26. MARKETING, ENROLLMENT, AND RECRUITMENT SERVICES

26.1. Marketing Services: Ownership of Marketing Deliverables. Marketing creative deliverables that are created or developed by Blackboard specifically for you pursuant to a Blackboard marketing services Statement of Work ("Marketing SOW"), including all marketing and media plans, and creative content such as slogans, artwork, media content, image files, videos, drawing, photographs, graphic material, film, music and web sites ("Customer Marketing Deliverables") shall be owned by you. You hereby license the Customer Marketing Deliverables to Blackboard during the Term of the Agreement solely to permit Blackboard to carry out its obligations under this Agreement and any associated Marketing SOW's. To the extent that any deliverable created under a Marketing SOW includes Blackboard intellectual property, Blackboard hereby licenses such Blackboard intellectual property to Customer for use solely as part of such deliverable. Such license shall survive expiration of the relevant Marketing SOW. Customer agrees that Blackboard shall have no obligation to host any of the deliverables under a Marketing SOW following the termination of such Marketing SOW.

26.2. Enrollment Services: Representations and Indemnity. If you request that we contact any prospective student, Authorized User, or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Enrollment Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R.).

VOID IF EXECUTED AFTER: July 01, 2019
CUSTOMER: City of Goleta

§ 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections

(a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

In Process