

CONTRACT #10

RFS # NA

FA # NA

Edison # NA

**Tennessee Board of Regents
University of Memphis**

VENDOR:

Blackboard, Inc.



THE UNIVERSITY OF
MEMPHIS.

Office of the President

341 Administration Building
Memphis, Tennessee 38152-3370

August 28, 2013

Chancellor John Morgan
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, Tennessee 37217

Dear Chancellor Morgan:

The University of Memphis is requesting Fiscal Review Committee approval to establish a proprietary five-year contract with Blackboard, Inc., effective 2013-2018, not to exceed \$1.6 M. The University has utilized this proprietary system since Blackboard, Inc. successfully bid for the University's campus card (ID card) system resulting in a five year contract beginning in 2003 and followed by a five year Master Term Agreement (MTA).

During our current year review to renew this agreement, we determined that actual requisitions totaling more than the limit of the MTA previously in effect were processed. While each of these items was acquired for appropriate University purposes, the correct action would have been for the University to seek Fiscal Review approval for the amounts exceeding the MTA in force. During this period additional applications were integrated with the ID card including student campus dining balances/meal plans and student housing door access for increased security. This made it more difficult to track usage towards the MTA in force. The Procurement Specialist responsible for monitoring this contract failed to note the overage and take appropriate action. This employee was terminated for cause - not for this specific error; but for other similar performance failures.

Vice President for Business and Finance David Zettergren has reviewed the circumstances of this situation with Procurement Services and further discussed the situation with Vice Chancellor Dale Sims. He has assured me appropriate training and controls are in place to reduce the likelihood of future such occurrences. Specifically:

- Procurement Services staff are now making use of a contract management system to track spend and ensure system-generated notifications (spend to date, expiration, exceed budget, etc.) are received by the buyer and specific departmental users.
- Quarterly reports are being reviewed by the Director of Procurement Services.
- Procurement and Contract Services has been restructured to better align duties and workload to become more familiar with departmental needs and ensure total spend is tracked for a supplier.
- Oversight and performance monitoring of the Blackboard contract have been added to the responsibilities of the University Campus Card Office.

I am assured that adequate controls are in place to prevent similar incidences from occurring in the future. Any future amendments of this contract will be submitted to TBR and Fiscal Review for approval in accordance with policy. Should you have questions or need additional information, please contact David Zettergren or Sheri Lipman.

Sincerely,

R. Brad Martin
Interim President

c: David Zettergren
Sheri Lipman

University of Memphis Blackboard Transact Software

Business Purpose: The Blackboard Transact Software creates, maintains, and manages the UofM ID card used by students/faculty/staff/visitors for access to buildings, events, stored value accounts, activities, and services.

Blackboard Transact System: Software and related hardware that is developed, maintained and licensed by Blackboard Inc.(Bb). The software system is proprietary and solely owned by Bb. Related hardware must be purchased through Bb or its partners to interface properly with the Transact software. The system was initially purchased through the RFP process in 2003.

UofM Campus Card Office Evolution:

2003-2008 – Card system was primarily used by students for access to athletic events, recreation centers, the health center, and meal plans. There was no central campus card office and card creating functions were spread across two divisions.

2009-2013 – Card system features are more fully utilized and integrated into the life of the campus. With the implementation of the Dining Dollars program, all full time undergraduate students have the ability to use their card in dining facilities and vending machines. The University has also added door readers during this period that allows students after-hours access to buildings and labs. This also increases security and campus safety. The Campus Card Office was established to give day to day and administrative oversight managing the use and strategic growth of the campus (ID) card.

Sampling of Card Usage:

- Dining Dollars usage (FY13) by full-time undergraduate students (approximately 14,000)
 - Food Services – 770,000 transactions for a dollar amount of \$4.9 million per year
 - Vending Services- 274,000 transactions for a dollar amount of \$356,000 per year
 - Bookstore – 30,000 transactions for a dollar amount of \$146,000 per year
- Allows students with board plans access to meals (approximately 192,000 meal swipes per year)
- Allows students with proper privileges entry into all Athletic events (approx. 12,200 entry swipes per year)
- Allows all students access to 24 hour areas such as the University Center computer lab
- Downtown Law School has a fully integrated internal and external door reader system
- Allows students with proper privileges access to Student Recreation Center (approx. 206,00 entries per year)
- Allow students with proper privileges access to Residence Halls (approx. 826,000 entry swipes per year)
- In total, approximately 2.5 million individual card swipes per year

University of Memphis Blackboard Hardware

In order to utilize the Bb system throughout campus, cash registers and card readers are deployed in dining halls, at event locations, in offices, and on vending and copy machines. Approximately 240 individual pieces of hardware are utilized. Replacement costs on all hardware would be in excess of \$300,000.



TENNESSEE BOARD OF REGENTS

Office of Business & Finance | Division of Purchasing & Contracts

1415 Murfreesboro Road, Suite 346 | Nashville, TN 37217-2833 | Phone 615.366.4436 | Fax 615.366.2243 | www.tbr.edu

July 31, 2013

Ms. Leni S. Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Ms. Chick:

Enclosed please find a Software Licensing Agreement between the University of Memphis and Blackboard, Inc. for the Blackboard Transact System for Campus ID Card System. The University has contract with Blackboard for this since a competitive process that was conducted in 2003. Attached is additional detail regarding the history of the contractual relationship. Please note that TBR is still in negotiations on the legal terms of the Agreement but we have included the latest version of the document.

Per Fiscal Review's request to see non-competitive agreements/amendments, this contract must be approved by the Committee. Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed. If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 346, Nashville, Tennessee 37217.

Sincerely,

Angela Gregory Flynn
Director of Purchasing and Contracts

cc: Dale Sims, Business and Finance

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Billy Mueller	*Contact Phone:	(901) 678-3879		
*Original Contract Number:		*Original RFS Number:			
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	9/1/2013	*Current End Date:	8/31/2018		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	The University of Memphis				
*Division:	Information Technology				
*Date Submitted:					
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	See attached				
*Contract Vendor Name:	Blackboard, Inc				
*Current Maximum Liability:	\$1,095,699.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY:
\$309,982.00	\$314,382.00	\$318,957.00	\$323,715.00	\$328,663.00	
FY:	FY:	FY:	FY:	FY:	FY:
FY:	FY:	FY:			
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY:
FY:	FY:	FY:	FY:	FY:	FY:
FY:	FY:	FY:			
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons					

Supplemental Documentation Required for
Fiscal Review Committee

and provide the authority for the carry forward provision:				
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:				
*Contract Funding Source/Amount:	State:	\$1,595,699.00	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A				
Method of Original Award: <i>(if applicable)</i>		Competitively Bid via RFP		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		*See - Fiscal Year Expenditures for FY2004, through Projected cost FY2018.		

Supplemental Documentation Required for Fiscal Review Committee

<p>For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.</p>					
<p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>					
<p>Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.</p>					
Deliverable description:	FY:2014	FY:2015	FY:2016	FY:2017	FY:2018
Campus ID Card System	\$309,982.00	\$314,382.00	\$318,957.00	\$323,715.00	\$328,663.00
Deliverable description:	FY:	FY:	FY:	FY:	FY:
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<p>Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.</p>					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<p>Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.</p>					
Proposed Vendor Cost: (name of vendor)					
Blackboard	See Planned	expenditures	by fiscal year	by deliverable	above.
Other Vendor Cost: (name of vendor)					
	Not Applicable				

Procurement Process Summary

Contract term from 2003 – 2008

The Blackboard Inc contract is a result of a RFP bid awarded May 2003. The initial contract was routed through the appropriate levels and was approved and signed by Chancellor Charles Manning May 7, 2003.

Contract purchases for Blackboard Inc systems began FY04, totaling \$359,076.00. This cost included all schedule charges to include the following: Transaction System Software, Transaction System Hardware, Integration Systems, Maintenance, and Services. During the term of this contract, purchases were processed based on Blackboard Inc's quotes, submitted by the requesting departments. These quotes were within the threshold of the University's level of approval. Purchases were referenced to the contract and were routed for review and signatures per policy. Additional purchases that were not directly related to this contract were processed based on Sole Source justification documents. Annual renewals were processed according to the information shown above.

Contract term from September 1, 2008 – August 31, 2013

On April 28, 2008, the University of Memphis signed a Master Terms Agreement with Blackboard Inc for hardware maintenance, software licenses and services maintenance. Reasons why this agreement was not signed at the Tennessee Board of Regents approval level is a followings. Documentation presented to Procurement Services for processing this purchase was the Master Terms Agreement and a quote in the amount of \$104,824.00. No additional quotes or references to additional charges were included with these documents. The Master Terms Agreement and quote of \$104, 824 listed a five year term, from September 1, 2008 to August 31, 2013. The University routed the agreement and quote for approval and signatures at the University's level. There were no documents received by Procurement Services indicating that the \$104,824.00 was only a one year quote of a five year term. Purchasing documents and quotes that required signatures were reviewed, approved and signed by the University President and/or Director of Procurement and Contract Services with required documentation attached. These approved purchases were reported to the appropriate agency on the monthly or quarterly reports. Purchasing documents that did not require signatures were processed appropriately based on policy.

2013 – 2018 Contract

After the resignation of a the initial Buyer and reassignment of the Blackboard Inc contract to another Buyer, the details of the actual terms of the Master Service Agreement signed 2008 were discovered by the Procurement Manager. Purchasing documents for the September 1, 2013 – August 30, 2014 contract have been reviewed and are being routed accordingly including review and approval of the Tennessee Board of Regents (TBR).

The information on the attached Summary Sheet reflects previous purchases from 2003 through 2013. In addition, future projected purchases are listed for the current contract term September 1, 2013 through August 31, 2018.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that **must** be individually detailed or addressed **as required**. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	The University of Memphis	
3) Service Caption :	Software Licensing, maintenance and services for Blackboard Transact System for Campus ID Card System	
4) Proposed Contractor :	Blackboard, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	9/1/2013	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	8/31/2018	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$ 1,595,699.00	
8) Approval Criteria : (select one)	<input type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the state
	<input checked="" type="checkbox"/>	only one uniquely qualified service provider able to provide the service
9) Description of Service to be Acquired :	Continue/Renew annual software licensing, hardware and hardware maintenance for the Blackboard Transact System.	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	The Blackboard Transact System is used by the University to operate and utilize the Campus (ID) Card System which is vital to the University's continuing security efforts, as well as its ability to recruit, retain, and graduate students.	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	Yes. The services were initially purchased in 2003 through the RFP process and have become an integral part of the University's operations.	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)	Providence Equity Partners, 650 Massachusetts Avenue NV 6 th Floor Washington, DC 20001	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :		

Formed in 1997, Blackboard software and services are used by over 9,300 institutions in more than 60 countries.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

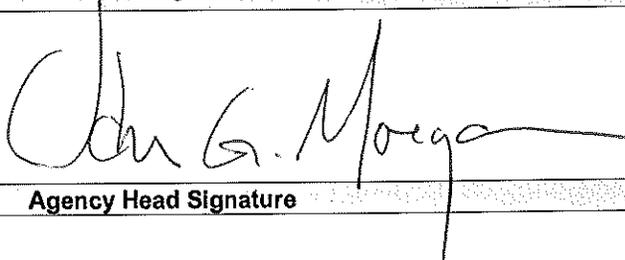
The Blackboard contract was competitively bid in 2003. The system has been customized for the University of Memphis to utilize and operate the Campus ID Card System. We have explored the opportunity of competitive suppliers, but no other supplier can provide the uniqueness of this type of system; and no other entity has access to the system software and/or code. It would be cost prohibited and disruptive to ongoing student services to replace this Transact System.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products. The product or service is unique and easily established as one of a kind; the program requirements cannot be modified so that competitive products or services may be used; items must be interchangeable or compatible with in place items, and the cost of conversion, including but not limited to disruptions, re-training, and replacement precludes bidding competitively. The software license and maintenance renewal are both required annually to operate the Campus Card (ID) system.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



9-5-13

Agency Head Signature

Date

REQUEST: NON-COMPETITIVE CONTRACT

#14 Documentation of Office for Information Resources Endorsement:
(required only if the subject service involves information technology)

The Information Technology Department at the University has reviewed and supports the Blackboard contract renewal. The Blackboard Transact System is used by the University to operate and utilize the Campus (ID) Card System which is vital to the University's continuing security efforts, as well as its ability to recruit, retain, and graduate students.

Expenditure Summary Since 2003 Competitive Process

<u>Year</u>	<u>Amount</u>
2004	\$359,076.00
2005	\$103,675.00
2006	\$102,163.82
2007	\$122,395.78
2008	\$118,665.65
2009	\$190,274.40
2010	\$370,564.92
2011	\$190,510.00
2012	\$174,403.02
2013	<u>\$192,814.36</u>
	\$1,924,542.95

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input checked="" type="checkbox"/>	RFP	<input type="checkbox"/>	Competitive Negotiation	<input type="checkbox"/>	Alternative Competitive Method
<input checked="" type="checkbox"/>	Non-Competitive Negotiation	<input type="checkbox"/>	Negotiation w/ Government(eg, ID, GG, GU)	<input type="checkbox"/>	Other

Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

See Attached documents.



Blackboard

This Blackboard Order Form (“Order Form”) by and between Blackboard (as defined below) and University of Memphis (“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 attached Blackboard Master Agreement which is incorporated herein and attached as an exhibit, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer’s acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent 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

Maintenance and Licensing Products	Year 1 9/1/13 to 8/31/14	Year 2 9/1/14 to 8/31/15	Year 3 9/1/15 to 8/31/16	Year 4 9/1/16 to 8/31/17	Year 5 9/1/17 to 8/31/18
B2 INTGRATION 15K-24,999 CHC	\$11,924	\$12,401	\$12,897	\$13,413	\$13,949
TRANSACT 15K-24,999	\$79,728	\$82,917	\$86,234	\$89,683	\$93,270
Platinum software coverage	\$18,330	\$19,064	\$19,826	\$20,619	\$21,444
TOTAL	\$109,982	\$114,382	\$118,957	\$123,715	\$128,663

B. Term

- Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be one (1) year following the Effective Date with the option to renew for up to four (4) additional one (1) year terms at the pricing indicated herein.
- Effective Date:** September 1, 2013

C. Payment Terms

- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
- Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
- 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

- Customer’s existing Blackboard Software Schedules including any Amendments, Addendums, or Exhibits thereto are hereby appended to the Master Terms outlined herein which shall replace and supersede the existing Master Terms between the parties.
- The Blackboard Professional Services Schedule, Blackboard Software License Schedule and Blackboard Transact Schedule are hereby attached as Exhibits to this Order Form and incorporated herein.
- The Parties agree that this multiyear agreement does not contain third party license/support, services or hardware. Fees for third party license/support, services and hardware will continue to appear each year on the annual maintenance agreement.
- The definition of B2 Integration is:
 Blackboard’s Banded B2 banded integration pricing includes annual maintenance for a limitless number of integrations [TIA & DIA] except for the following:
 - Aramark
 - Sodexo
 - Customer developed integration
- The Parties agree that in the event of conflicting terms between the Order Form, Blackboard Schedules and the Master Agreement, the terms of the Master Agreement shall take precedence.
- A Statement of Work (“SOW”) has been attached and approved to format. Future SOWs will be specific to the work to be performed.

Customer: University of Memphis
Signature
Name (printed)
Title (printed)
Date

Blackboard (“Blackboard”)
Signature
Name (printed) TESS FRAZIER
Title (printed) VICE PRESIDENT
Date

**EXHIBIT TO THE BLACKBOARD ORDER FORM
BLACKBOARD MASTER AGREEMENT**

1. SCOPE OF AGREEMENT.

1.1 Order Forms. This Blackboard master agreement (“Master Agreement”) between Customer and Blackboard describes the general terms by which Customer may license or purchase, as applicable, an Offering (as defined below) from Blackboard. This Master Agreement, together with the Order Form(s) referencing it, form the entire agreement between the Parties in respect of the specified Offering. Customer acknowledges that it only has right to use and/or receive the Offering to the extent provided pursuant to one or more applicable Order Forms.

1.2 Order of Precedence. In the event a conflict arises between this Master Agreement and the provisions of any Order Form and/or Schedules, this Master Agreement will govern. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement.

2. DEFINITIONS.

2.1 “Agreement” means this Master Agreement, the Order Form(s), and exhibits to such Order Form(s), as amended from time to time.

2.2 “Authorized End User” means an individual authorized by the Customer to use or otherwise access an Offering from time to time in the manner set forth in this Agreement.

2.3 “Available Date” means, with respect to any particular Offering, the date upon which the Offering is made available to Customer pursuant to the terms of the relevant Order Form, regardless of whether Customer utilizes the Offering.

2.4 “Blackboard” means the definition set forth in the relevant Order Form.

2.5 “Blackboard Property” means all materials, including, but not limited to any computer software (in object code, source code form or as a hosted solution, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML script, design elements, formulas, documentation, templates, formatting, CGIs, Javascripts, PL/SQL coding, other applications, content, software or other technology made, conceived, developed or provided by Blackboard or its suppliers and any trade secrets, know-how, methodologies and processes related to Blackboard’s products or services, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein and any Derivative Works thereof.

2.6 “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. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party’s business, operations, vendors or customers. Blackboard’s Confidential Information will be deemed to include all Blackboard Property; Customer’s Confidential Information will be deemed to include all Customer Property.

2.7 “Customer” means the customer identified on the relevant Order Form.

2.8 “Customer Content” means any data, information, graphics or other media files or other content provided by Customer or any end user through use of an Offering.

2.9 “Customer Property” means all graphic user interface, text, images, music, designs, products, computer programs, drawings, content, end user information, documentation, notes, development aids, technical documentation, information and other materials provided by Customer to Blackboard for use in connection with the Offering, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein. Customer Property includes any third party software provided by, or made available at the request of, Customer for use in connection with any Offering.

2.10 “Derivative Works” shall mean a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which the preexisting work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”. The term Derivative Works shall not include and Blackboard shall not obtain any rights with respect to any Confidential Information of the Customer or any Customer-developed content or other Customer materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof.

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

2.12 “Effective Date” means the effective date set forth in the relevant Order Form.

2.13 “Equipment” means any hardware and/or firmware provided by Blackboard to Customer.

2.14 “Offering” means Software, Services, Professional Services or Equipment, as applicable.

2.15 “Order Form” a document executed by both parties which lists items to be purchased and/or licensed by Customer as well as other information related to such items, each of which is incorporated into this Agreement.

2.16 “Party” means either Blackboard or Customer.

2.17 “Professional Services” means any professional services provided by Blackboard to Customer.

2.18 “SaaS Service” means software provided by Blackboard as a Blackboard-hosted solution.

2.19 “Services” means any services provided by Blackboard to Customer, including, without limitation, SaaS Services.

2.20 “Software” means the object code version of software provided by Blackboard to Customer.

2.21 “Test Copy” means a copy of the Software which may be used only for purposes of testing the Software in Customer’s environment, and not for production purposes.

3. PROPRIETARY RIGHTS

3.1 Ownership of Customer Property. As between Customer and Blackboard, Customer Property is and shall remain the sole and exclusive property of Customer.

3.2 Ownership of Blackboard Property. As between Customer and Blackboard, Blackboard Property is and shall remain the sole and exclusive property of Blackboard or its licensors or suppliers.

3.3 Vesting of Rights. To the extent, if any, that ownership of any of the Blackboard Property does not reside or automatically vest in Blackboard, Customer hereby transfers and assigns to Blackboard all rights, title interest and goodwill which Customer may have in and to Blackboard Property. Without prejudice to the

generality of the foregoing, in the event that ownership of any Blackboard Property vests in Customer for any reason, Customer agrees to execute all such instruments and do all such things as Blackboard may require of it to transfer or assign such ownership to Blackboard.

3.4 Non-exclusivity. Customer acknowledges that it has no rights of exclusivity as to any of the Offerings to be provided by Blackboard, and that Blackboard shall have the right to provide to third parties with software, services and equipment which are the same or similar to those provided to Customer, and to use or otherwise exploit any Blackboard Property in providing such services.

3.5 Blackboard Use of Customer Property. During the term of this Agreement, Customer grants to Blackboard, solely to perform its obligations hereunder, a non-exclusive, royalty-free license (a) to modify, arrange, combine, copy, store, transmit, distribute, and otherwise use the Customer Property and each element thereof generally and in combination with other elements of the Customer Property and the Blackboard Property, and (b) to make archive or backup copies and other copies of the Customer Property. Customer hereby grants to Blackboard an unrestricted, irrevocable (subject to a material breach), non-exclusive, perpetual, worldwide license to use the Customer Property during the Term, for the sole purpose of performing its obligations hereunder.

3.6 General Usage Restrictions. Customer agrees not to use any Offering for purposes beyond the scope of this Agreement. Without limiting the foregoing, Customer shall not: (a) modify the Offering or create any derivative product of the Software or SaaS Service, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software or SaaS Service to the extent permitted by the solution's standard user interface, (b) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the Agreement other than as expressly provided for herein, or (c) use the Offering to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software or SaaS Service, nor will Customer add any other notices or markings to the Software or SaaS Service or any portion thereof except as permitted by the solution's standard user interface. Customer shall not use the Software or SaaS Service in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Customer of such obligation. Further, in the event that Customer exceeds its license limitations, as set forth in an applicable Schedule or Order Form, additional fees may apply, and Customer shall, on an annual basis, provide Blackboard with documentation as reasonably required by Blackboard to verify its compliance with such license limitations.

3.7 Customer Property. Customer represents that: (a) Customer owns or has sufficient rights in and to the Customer Property, including, without limitation, personal, educational, and financial information contained within the Customer Property, in order for Customer and its Authorized End Users to use, and permit use of, the Offering(s), and (b) the Customer Property does not and shall not contain any content, materials, advertising or services that infringe on or violate any applicable law, regulation, or right of a third party. Blackboard does not operate or control the information, services, opinions or other content of the Internet that may be incorporated in, operated with or otherwise displayed by the Offerings. Blackboard reserves the right to remove from any Offering any Customer Property that Blackboard determines, in its sole discretion, may subject Blackboard to liability or may be dangerous, offensive, pornographic, or in violation of applicable law or regulations or the terms of this Agreement. Customer agrees that it shall make no claim whatsoever against Blackboard relating to the Customer Property (or Blackboard's removal thereof pursuant to the preceding sentence) or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet.

4. REPRESENTATIONS.

4.1 By Blackboard. Blackboard represents and warrants that (a) it has authority to enter into this Agreement, and (b) during the Term Blackboard will comply with all applicable laws and regulations governing all matters set forth herein.

4.2 By Customer. Customer represents and warrants that (a) it has authority to enter into this Agreement, (b) during the Term it will comply with all applicable laws and regulations governing all matters set forth herein; (c) during the Term it will comply with the then current Blackboard privacy policies, which Blackboard reserves the right to modify in compliance with all relevant state and federal laws, from time to time, effective five (5) days after such modified policies are posted at the relevant link, such posting to constitute effective notice of changes; (d) during the Term Customer shall refrain from using any Offering in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Offering or the resources available through the Offering; (e) Customer will take appropriate steps to ensure that it does not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement and (f) during the Term, to the extent that Authorized End Users exercise the rights granted to Customer under this Agreement, Customer shall ensure that such Authorized End Users comply with the obligations applicable to such exercise set forth in this Agreement. Notwithstanding the foregoing, the preceding provisions of this section regarding Blackboard privacy policies are subject to the requirements of the T.C.A., Title 10, Chapter 7 and any other provisions of Tennessee law pertaining to the disclosure of state records.

5. TERM; TERMINATION.

5.1 Term. This Agreement shall commence as of the Effective Date and shall continue in effect until the later of: (a) the expiration of the minimum term, as specified on the relevant Order Form, or (b) the expiration or termination of all Order Forms. Each Order Form, and the license(s) associated therewith, shall terminate as set forth in such Order Form.

5.2 Termination for Breach. In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety, or, at the non-breaching Party's option, it may terminate solely the relevant Order Form pursuant to which such breach has occurred, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Without limiting the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party materially breaches the provisions of Section 9 or the license usage restrictions in any Order Form.

5.3 Effect of Termination. Upon termination of this Agreement, all Order Forms shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Blackboard all amounts due and payable hereunder. Each Party: (a) will immediately cease any use of the other Party's Confidential Information, (b) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply. This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Customer reserves the right to terminate the Agreement upon written notice to Blackboard. Termination under this Section 5.3 shall not be deemed a breach of Agreement by the Customer. Upon receipt of the written notice, Blackboard shall cease all work associated with the Agreement. Should such an event occur, Blackboard shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, Blackboard shall have no right to recover from the Customer any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

5.4 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. Without limiting the foregoing, the provisions of Sections 1, 2, 5, 7, 9 and 10 of this Master Agreement shall survive the termination of this Agreement for any reason.

6. FEES; EXPENSES.

6.1 Fees; Payments. In consideration for Blackboard's performance under this Agreement, Customer agrees to pay Blackboard all fees required by the Order Forms, as applicable, which fees will be due in accordance with the provisions of the relevant Order Form, but in no event later than thirty (30) days after receipt of invoice from Blackboard. Blackboard expressly reserves the right to change the fees payable under any Order Form, other than the licensing fees stated in Table A of the Order Form and not to exceed four percent (4%) annually with respect to any renewal of such Order Form upon expiration of its then-current term. All fees for any annual term Software license or annual Services shall be due and payable upon the date of execution of the applicable Order Form. Customer will pay all fees in U.S. dollars unless otherwise set forth in the applicable Order Form. Payments shall be sent to the address indicated on the invoice.

6.2 Late Fees. Blackboard may charge interest 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. Customer acknowledges that any delay in payment for any Initial Term or Renewal Term may result in termination of the Blackboard license and/or an interruption in service at Blackboard's sole discretion.

6.3 Taxes. 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 Software or Equipment or the performance of Services by Blackboard to Customer. Customer will be responsible for payment of such Taxes at point of sale. If Customer is exempt from any such Taxes, then such Taxes shall not be charged to Customer upon Blackboard's receipt of a copy of documentation acceptable to Blackboard that satisfies the requirements of the relevant tax authority to exempt such fees from such Tax (such as Customer's tax exemption certificate, or VAT Registration Number.) All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law, regulation, or rule then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, timely pay the required amount to the relevant tax authority, provide Blackboard with an official receipt, certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard the amount to which Blackboard is otherwise entitled under this Agreement, less the amount required to be deducted or withheld. In the event, and to the extent, that Blackboard is unable to claim an income tax credit for the full amount deducted or withheld (the "Unrecouped Withholding"), Customer shall pay Blackboard, within sixty (60) days following receipt of an invoice from Blackboard, the Unrecouped Withholding.

6.4 Expenses. Except as provided in this Agreement, each party will be responsible for its own expenses incurred in rendering its performance or exercising its rights under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies.

6.5 Purchase Orders. Customer agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Blackboard, it will timely issue such purchase order and inform Blackboard of the number and amount thereof. Customer agrees 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 Customer's obligations under this Agreement, including payment of amounts owed to Blackboard.

7. DISCLAIMERS AND REMEDIES.

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

7.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY TENNESSEE STATE LAW, IN NO EVENT WILL BLACKBOARD OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OFFERINGS, WHETHER OR NOT BLACKBOARD WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (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). TO THE MAXIMUM EXTENT ALLOWED BY TENNESSEE STATE LAW, EXCEPT FOR THE INDEMNITY SET FORTH IN SECTION 8.1, IN NO EVENT SHALL BLACKBOARD OR ITS LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF TWO (2) TIMES THE CURRENT ANNUAL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE AFFECTED OFFERING DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.3 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. INFRINGEMENT.

8.1 Blackboard Infringement Obligations. If any third party brings a claim against Customer alleging that the Offering infringes a U.S. or European patent or a copyright under applicable law of any jurisdiction in which Customer is using the Offering, Customer must promptly notify Blackboard in writing and make no admission in relation to such alleged infringement. Provided that Customer has promptly fulfilled all of the foregoing obligations and is not in material breach of the Agreement, Blackboard shall at its own expense and option: (a) indemnify, defend, and settle such claim, (b) procure Customer the right to use the Offering, (c) modify or replace the Offering to avoid infringement. In the event that Blackboard exercises option (a) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Blackboard will keep Customer informed of, and will consult with any independent legal advisors appointed by Customer at Customer's own expense regarding the progress of such defense.

8.2 Exceptions. Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement based upon: (a) any use of the Offering in a manner other than as specified by Blackboard, (b) any combination of the Offering with other products, equipment, devices, software, systems or data not manufactured or provided by Blackboard to the extent such claim is directed against such combination, (c) the Customer Content, or the use of the Customer Content, or (d) any modifications or customization of the Offering by any person other than Blackboard or a Blackboard-authorized third party (any of the foregoing, separately and collectively, "Customer Matters").

8.3 Customer Infringement Obligations. Section Intentionally Deleted.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE TENNESSEE STATE LAW.

9. CONFIDENTIALITY.

9.1 Nondisclosure and Nonuse. Each Party receiving Confidential Information agrees not to use such Confidential Information except for the purposes set forth in this Agreement, or as required by law, and pursuant to such use shall disclose such Confidential Information only to those directors, officers, employees and agents of such Party (a) whose duties justify their need to know such information, and (b) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information.

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

9.3 Terms of Agreement. Except as otherwise provided by law, neither Party shall disclose the terms of the Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 9 to keep such terms confidential.

9.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 9 will not apply to information that: (a) is publicly available or in the public domain at the time disclosed, (b) is or becomes publicly available or enters the public domain through no fault of the recipient, (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto, (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure, (e) is independently developed by the recipient, or (f) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order, (b) to comply with applicable law or regulation requiring such disclosure, or (c) to make such court filings as may be required to establish a Party's rights under this Agreement.

9.5 Contact Information. Customer hereby authorizes Blackboard to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from Blackboard relating to Blackboard-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services Customer has purchased through Blackboard for the purpose of providing those products and services or support or maintenance for the products and services. Customer acknowledges that it has the right to provide such consent, and Blackboard acknowledges that it will not use or distribute the contact information except as explicitly set forth above. The purpose of the permissions granted in this section are for the sole purpose of Blackboard providing support as outlined in this agreement and for reasons including, but not limited to, software upgrades, version releases, and fixes. Contact information will not be used for marketing and/or solicitation purposes.

9.6 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Offering in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

9.7 Compliance. Customer shall comply with this Section 9 to the maximum extent permitted by the Tennessee Open Records Act.

10. MISCELLANEOUS MATTERS.

10.1 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (a) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law, and (b) to give effect to the intent of the Parties (including, without limitation, with respect to the economic effect of the Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

10.2 Conflict Resolution. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Tennessee. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10.3 Modification and Waiver. No modification, amendment, supplement, or other change to this Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the Party against whom enforcement thereof is sought. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving Party to enforce any other provision or right herein.

10.4 Assignment. No right or obligation of Customer under this Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Blackboard, and any attempt to assign, delegate or otherwise transfer any of Customer's rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, this Agreement shall bind each Party and its permitted successors and assigns.

10.5 Remedies. To the maximum extent permitted by Tennessee State Law, the Parties agree that any breach of confidentiality or proprietary rights could cause irreparable injury for which an adequate remedy at law may not exist; therefore, the Parties agree that either party may seek equitable remedies, including without limitation, injunctive relief and specific performance, as appropriate remedies to redress any such breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Section 8.

10.6 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 sent to 650 Massachusetts Avenue NW, 6th Floor, Washington DC, 20001 or to such other address as shall be given in accordance with this Section 10.6, and shall be effective upon receipt. Alternatively, Customer may provide notices to GeneralCounsel@Blackboard.com, provided that Customer provides an email address to Blackboard for notices which Blackboard may send to Customer.

10.7 Force Majeure. Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.

10.8 U.S. Government Users. The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.10, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the

Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue NW, 6th Floor, Washington, DC 20001. All rights not specifically granted in this Agreement are reserved by Blackboard.

10.9 Export Control. Customer shall not export or allow the export or re-export the Offering, any components thereof or any Confidential Information of Blackboard without the express, prior, written consent of Blackboard 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, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.

10.10 Relationship. Blackboard and Customer are independent contracting parties. This Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

10.11 Non-solicitation. Throughout the term of this Agreement, and for a period of twelve (12) months thereafter, both Customer and Blackboard agree not to solicit or retain the services of any person who is an employee of the other party and who was engaged in rendering the Offering. The Parties agree that the restrictions set forth in this Section 10.11 shall not apply to solicitations directed at the public in general or to the retention of the services of an individual as a consequence of that individual responding to such a public solicitation. For purposes of this Section, "Blackboard" includes Blackboard Inc. and its subsidiaries.

10.12 Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Blackboard attest in writing that Blackboard will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference as Exhibit C.

If Blackboard is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Blackboard may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

10.13 Records. Blackboard shall maintain documentation for all charges against the Customer under this Contract. The books, records, and documents of the Customer, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Customer, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

10.14 Entire Agreement. This Agreement and Exhibit(s), constitutes the entire, full and complete Agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. This Agreement, and any Order Form thereto, may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

**EXHIBIT TO THE BLACKBOARD ORDER FORM
BLACKBOARD PROFESSIONAL SERVICES SCHEDULE**

THIS BLACKBOARD PROFESSIONAL SERVICES SCHEDULE (“SCHEDULE”) IS A “SCHEDULE” PURSUANT TO THE MASTER TERMS (THE “AGREEMENT”) BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY OBTAIN THE PROFESSIONAL SERVICES SET FORTH IN ANY SOW (DEFINED BELOW) ATTACHED TO THE AGREEMENT AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT. THE PARTIES AGREE THAT IN THE EVENT OF CONFLICTING TERMS BETWEEN THE ORDER FORM, BLACKBOARD SCHEDULES AND THE MASTER AGREEMENT, THE TERMS OF THE MASTER AGREEMENT SHALL TAKE PRECEDENCE.

1 PROFESSIONAL SERVICES

1.1 Professional Services. Blackboard shall use commercially reasonable efforts to perform the Professional Services as set forth in each SOW. Blackboard shall perform the Professional Services in a professional manner in accordance with industry standards.

1.2 Issuance of SOW and Modifications. Customer may, at any time during the term of this Schedule, request that Blackboard (a) provide it with new Professional Services or (b) modify the provision of Professional Services contained in any pre-existing SOW(s) (either (a) or (b) the “Proposed Professional Services”) by delivering to Blackboard a written request describing the Proposed Professional Services. Blackboard may prepare an additional SOW or modified SOW upon receipt of a request for Proposed Professional Services, describing the services requested, its proposed fees, costs and expenses payable by the Customer to Blackboard in connection with the performance of such services and any other terms and conditions as Blackboard reasonably deems necessary. Customer, within five (5) business days after receipt of the proposed SOW, shall notify Blackboard of its acceptance of such addendum in which case the parties shall enter into a binding SOW. Until Blackboard’s acceptance, Blackboard shall have no obligation to perform the Proposed Professional Services. Additional SOWs, regardless of whether they relate to the same subject matter as the initial SOW(s), shall become effective upon execution by authorized representatives of both parties.

1.3 Execution of SOWs. Each SOW (including agreed modifications to pre-existing SOWs) must be signed by a duly authorized representative of each party or must be approved by a duly authorized representative of each party in an electronic mail which clearly identifies the SOW in respect of which approval is being given before it becomes part of this Schedule and thereby becomes binding on the parties.

2. PERSONNEL

2.1 Suitability. Blackboard shall assign employees and subcontractors with qualifications suitable for the work described in a SOW. Blackboard may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors. Customer may request that any employee or subcontractor be replaced. Blackboard shall make reasonable efforts to comply, provided that alternate suitably qualified employee or subcontractor is available.

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

3. FEES AND PAYMENT

3.1 Expenses. In addition to the fees set forth in the Order Form, Customer will reimburse Blackboard for (i) reasonable travel and living expenses incurred by Blackboard’s employees and subcontractors for travel from Blackboard’s offices in connection with the performance of the Professional Services, (ii) international telephone charges (if applicable), and (iii) any other expenses contemplated in the applicable SOW. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Schedule and each applicable SOW, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Travel and per diem expenses may not exceed those established by Tennessee Board of Regents’ policy. Blackboard agrees to comply with Customer’s travel policies.

3.2 Records. Blackboard will keep reasonable books of account in support of charges under this Schedule. All such records will be open for review or audit by Customer at reasonable times and upon reasonable notice solely to support charges based on expenses, for time or materials or similar invoice items. An audit of such records may be made only at Customer’s expense, no more than once a year, by an independent firm of accountants as may be reasonably acceptable to Blackboard.

**EXHIBIT TO THE BLACKBOARD ORDER FORM
BLACKBOARD SOFTWARE LICENSE SCHEDULE**

THIS BLACKBOARD SOFTWARE LICENSE SCHEDULE (“SCHEDULE”) IS A “SCHEDULE” PURSUANT TO THE MASTER TERMS (“AGREEMENT”) BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE SOFTWARE AND PURCHASE SOFTWARE MAINTENANCE AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT. THE PARTIES AGREE THAT IN THE EVENT OF CONFLICTING TERMS BETWEEN THE ORDER FORM, BLACKBOARD SCHEDULES AND THE MASTER AGREEMENT, THE TERMS OF THE MASTER AGREEMENT SHALL TAKE PRECEDENCE.

1. ADDITIONAL DEFINITIONS

1.1 “Application Pack” means the object code software utility release(s) that are designed to work with the Software that may be, in Blackboard’s sole discretion, issued in between Updates, designated by AP#, and/or later incorporated into Updates or Upgrades.

1.2 “Blackboard Materials” means the Blackboard training materials, course materials, instructor’s manuals, product documentation and all other instructional materials specified on the Order Form and delivered to Customer pursuant to Section 3 below. For purposes of this Schedule, unless otherwise expressly stated in the applicable Order Form, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard pursuant to Section 3 below.

1.3 “Central Service” means the Bb Mobile Team’s internal API used to power Mobile Central across all platforms (iPhone, BlackBerry, Android, Mobile Web, and any additional Blackboard authorized platforms).

1.4 “Corrections” means a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects Software Errors in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update.

1.5 “Customer Data” means all data provided by Customer or its end users through the Blackboard Mobile Service.

1.6 “Customer Systems” means any system Customer uses to house data for the Blackboard Mobile Central Application.

1.7 “Designated Server Site” means the physical location where the Software will be installed, as identified in the Order Form.

1.8 “FTE” or “Full Time Equivalent” is defined as the number of full-time students plus half of the part-time students. To the extent that Customer desires non traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses to utilize the Blackboard Software, the total number of such other users shall be communicated to Blackboard to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total FTE number reported by Customer. FTE may be further described in the Order Form, and such definition in the Order Form shall control in the event of a conflict with this Schedule.

1.9 “ICM Services” means integration and customization services selected and purchased by Customer and provided to Customer by Blackboard as part of an optional annual maintenance program for the Downloadable Solution, and includes integration of the Software with Customer’s other licensed Blackboard products, and support related to planned minor releases from Blackboard such as application packs, service packs and hotfixes, as well as updates and upgrades. ICM Services shall not include support or technical assistance required as a result of changes to Customer’s system architecture, or from changes to Customer’s external environment such as the installation of third party authentication or other tools.

1.10 “Version” means the release of Blackboard Materials made generally available by Blackboard that is marketed as a separate product or module and is identified by a number that differs from the prior release in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

1.11 “Software Error” means a failure of any Software materially and substantially to conform to applicable Documentation, provided that such failure can be reproduced and verified by Blackboard using the most recent Version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Customer, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Customer’s or its end users’ negligence, (ii) any modification or alteration to the Software not made by Blackboard, (iii) data that does not conform to Blackboard’s specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, (vi) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software, or (vii) any use of the Software other than expressly authorized in this Schedule.

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

1.13 “Third Party Software” means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software.

1.14 “Updates” means the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or solution, including Application Packs.

1.15 “Upgrades” means the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or solution.

2. GRANT OF LICENSE

Subject to the terms and conditions of the Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicenseable right and license to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Customer’s Designated Server Site (unless Customer purchases the Blackboard Managed Hosting Non-Production Test Environment in which case Blackboard will host the Test Copy of the Software) as described in the Order Form, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Content to Customer’s Authorized End Users (unless otherwise expressly stated in the special provisions of the Order Form) and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (i) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers, or (ii) on multiple managed nodes that are configured and deployed on a single physical host that manages the self-contained nodes. Customer shall not (i) copy or duplicate any Software or Documentation, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) except to the extent permitted by law decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; or (iii) install or use any Software on any computer, network,

system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard's prior written consent.

3. DELIVERY

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

4. AUDIT

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

5. LIMITED WARRANTY

Blackboard warrants, solely for the benefit of Customer, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to the applicable Documentation for a period of ninety (90) days after the initial Available Date. The warranty set forth in this Section shall only be valid if: (i) Blackboard has received all amounts owed under this Agreement, (ii) Customer is not in material breach of this Agreement, (iii) Customer has installed any Corrections, Upgrades and Updates made available to Customer, and (iv) Customer has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. **IN THE EVENT THAT THE SOFTWARE CANNOT BE REPAIRED OR REPLACED BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS TWO (2) TIMES THE FEES PAID ANNUALLY.**

6. SUPPORT AND MAINTENANCE

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

7. FERPA

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

8. BLACKBOARD MOBILE SERVICE

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

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

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

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

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

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

**EXHIBIT TO THE BLACKBOARD ORDER FORM
BLACKBOARD TRANSACT SCHEDULE**

THIS BLACKBOARD TRANSACT SCHEDULE (“SCHEDULE”) IS A “SCHEDULE” PURSUANT TO THE MASTER TERMS (THE “AGREEMENT”) BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE BLACKBOARD TRANSACT SERVICES AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT. THE PARTIES AGREE THAT IN THE EVENT OF CONFLICTING TERMS BETWEEN THE ORDER FORM, BLACKBOARD SCHEDULES AND THE MASTER AGREEMENT, THE TERMS OF THE MASTER AGREEMENT SHALL TAKE PRECEDENCE.

1. ORDERING AND DELIVERY OF EQUIPMENT AND CARDS

Customer may order Equipment and Cards with respect to which Blackboard has otherwise provided a price quote by submitting to Blackboard either a written purchase order or an authorized Blackboard price quote accompanied by payment for such Equipment and Cards in the form of check or valid authorization to charge Customer’s credit card account. Blackboard agrees to sell to Customer the Equipment and Cards set forth and requested in any purchase order accepted in writing by Blackboard, provided that no purchase order will be binding upon Blackboard until Blackboard accepts such purchase order in writing, and further provided that Blackboard will have no liability to Customer with respect to any purchase orders that are not accepted. No partial shipment of Equipment and Cards requested pursuant to any purchase order shall constitute acceptance of the entire purchase order.

1.1 Cancellation. Customer may not cancel a purchase order executed concurrently with the execution of this Agreement. However, Customer may cancel any subsequent purchase order by providing written notice to Blackboard not less than thirty (30) days prior to the relevant requested shipment date.

1.2 Configuration. Blackboard shall configure the Application Software and Reader Client Software purchased by Customer through Blackboard with the specifications as identified on the Configuration Workbook, including installation of the applicable Software and related components on the Equipment prior to shipment. The configuration shall be subject to written approval by Blackboard.

1.3 Shipment and Delivery Terms. Upon acceptance of any purchase order, Blackboard will establish a shipping date for the relevant Equipment and Cards as close as practicable to Customer’s requested date, subject to Blackboard’s reasonable discretion. Notwithstanding the foregoing, if Blackboard is to configure the Equipment pursuant to Section 1.3, Blackboard shall endeavor to ship the Equipment and Cards within seven (7) business days of Blackboard’s receipt of the Equipment and Cards. To the maximum extent allowed by applicable law, Blackboard shall not be liable for any damage or penalty arising from delay in delivery or from failure to give notice of any delay. Blackboard agrees to exercise reasonable efforts to expedite particular shipments of Equipment and Cards when so requested by Customer, provided that Customer will be charged an additional fee equal to 10 percent (10%) of the total purchase price for the item being so shipped. The Equipment and Cards are deemed made available to the Customer on the date Blackboard ships the Equipment to Customer. All shipments shall be made FOB Destination.

1.4 Changes in Fees. Blackboard reserves the right to amend its Equipment price lists at any time in its discretion, provided that any increase in such prices shall not affect the amounts payable under any purchase orders accepted by Blackboard prior to the implementation of such new prices. Any decrease in applicable prices shall be effective immediately upon publication by Blackboard and shall be applicable to all outstanding purchase orders accepted by Blackboard.

1.5 Passing of Title. Title to Equipment shall pass to Customer and, the Equipment shall be deemed sold and payment will be owed thereon upon delivery to Customer.

1.6 Termination of Right of Possession. Customer’s right to possession of Equipment owned by Blackboard shall terminate immediately if: (i) it becomes insolvent or makes an arrangement with its creditors generally or has a liquidator or a receiver appointed over a substantial part of its business or assets or commences to be wound up (other than for the purposes of a solvent amalgamation or reconstruction); (ii) it pledges or in any way charges by way of security for any indebtedness any Equipment which is the property of Blackboard; or (iii) payment of the applicable fees is not submitted by Customer pursuant to Section 2.1 above.

1.7 License to Enter. Customer grants Blackboard, its agents and employees an irrevocable license at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or, where Customer’s right to possession has terminated, to recover it.

1.8 Passing of Risk. Risk of loss or damage to any Equipment shall pass to Customer upon receipt of the Equipment.

1.9 Assignment of Warranty. Blackboard agrees that it shall assign to Customer any manufacturer’s warranty applicable to the Equipment.

2. BLACKBOARD WEB DEPOSIT AND WEB STOREFRONT SERVICE

2.1 Service. If Customer is purchasing the Blackboard Web Deposit, Web Storefront Service or Video Surveillance pursuant to an Order Form, or in the event that Customer licenses Blackboard Video Surveillance Software, and in consideration for the Service Fee (as set forth in the Order Form), Blackboard shall provide the Customer with the Service. The Customer will only use the Service to allow individuals to make deposits via an online web portal (“Web Portal”) to Cardholders (as defined below), and to perform associated functions specified in the Service’s Documentation. The Customer will be responsible for notifying Cardholders of the procedures and information necessary to make and receive such deposits (“Cardholder Data”).

2.2 Web Portal. Blackboard grants for the period of the Term (as defined below) to Customer a limited non-exclusive, worldwide, royalty-free license to place a digital image of the Blackboard Logo, which will be presented to Customer (the “Image”), on an appropriate page of the Customer’s Internet site, with a hyperlink to Blackboard’s (or a third party acting on its behalf) Web Portal site designated by Blackboard (the “Link”). Such Link may be changed by Blackboard upon notice to Customer. The Customer may not use any other trademark or service mark in connection with the Image without the prior written approval of Blackboard. The Link may not be used in any manner to provide a user with access to the Web Portal via any framing, layering, screen scraping or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by Customer or any party other than Blackboard. Customer may not allow the Image to be linked to any other website.

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

Prior to a Renewal Term, Blackboard may conduct an audit in accordance with the Master Terms, to determine the number of Cardholders (as defined above) in the current licensing period. Blackboard shall utilize the current number of Cardholders determined in such audit and any information that may be supplied by Customer to reasonably determine the number of Cardholders for the forward licensing period of twelve (12) months.

For the Service on this Schedule, Customer’s license for the Service on this Schedule may be expanded in increments as indicated below:

Cardholder Ranges
1- 1999 Cardholders
2000-3999 Cardholders
4000-7999 Cardholders
8000-14999 Cardholders
15000-24999 Cardholders
25000-49999 Cardholders

Additional bands of twenty-five thousand (25,000) Cardholders will be priced separately.

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

3. BLACKBOARD PREPAID CAMPUS CARD SERVICES

If Customer purchases Blackboard Prepaid Campus Card Services, then Exhibit A shall be attached hereto and incorporated herein.

4. FINANCIAL MATTERS

This Section shall only be applicable in the event that Customer uses the functionality incorporated into the Software or accessed via the Software through Blackboard or an entity acting on its behalf that enables the capture of consumer or commercial payment card data, such as branded credit/debit cards or ACH clearing information.

4.1 Card Processor. Blackboard provides connectivity with such payment processors ("Processors"), at the levels designated, as set forth in the Documentation for the purpose of authorization and settlement of transactions via the Blackboard Payment Gateway. Customer shall establish a merchant account with a financial institution that processes credit card or ACH transactions with one of the Processors that Blackboard has established relationships with prior to deployment of such functionality in the Software. Modifications required supporting changes of Customer's bank, accepted Customer payment methods, Processor, or communication interfaces with the Processor will be chargeable to Customer and performed on a time and materials basis pursuant to a separate Statement of Work from Blackboard. Changes required to the Software to enable Customer to change Processors or communication interfaces to a Processor will be subject to a one-time charge for labor and licensing of software, to be determined by Blackboard at the time of the change request.

4.2 Fiscal Responsibility. Customer retains responsibility for compliance with all rules and regulations of any bank, card association, card processor and other entities related to issuance, acceptance, and settlement and clearing of payment transactions conducted through the Software. In the event Customer fails to comply and continues such failure for thirty (30) days after notice from Blackboard, Blackboard may suspend connectivity under this Section 7 without any further liability or obligation to Customer, until such time as Customer provides documented evidence of full compliance. Notwithstanding the foregoing, Blackboard may suspend connectivity immediately, without liability, in the event of an ongoing security breach or failure. Customer acknowledges that as a condition of providing connectivity under this Section 4, Blackboard may be obligated by its Processors to pay fines and audit costs for security breaches that appear to arise from Customer and/or Blackboard's systems. To the maximum extent allowed by applicable law, in the event that Blackboard is fined or audited due to an alleged security breach of systems within Customer's control, Customer shall (i) pay all fines or audit fees incurred due to such security breach, or (ii) solely if applicable state law does not permit Customer to pay fines or audit fees, permit Blackboard to implement an annual security fee, to be assessed based on the Customer's then-current security situation and the likelihood of future fines or audits. Failure to consent to one of the two options above in this Section 4.2 shall mean that Blackboard may, in its sole discretion, refuse to provide Customer with connectivity to any Processors in connection with the Software.

4.3 Financial Privacy. Blackboard hereby agrees that it shall comply with all reuse, redisclosure or other customer information handling, processing, security, and protection requirements that are specifically required of a non-affiliated third party processor or servicer (or subcontractor) under the Federal Trade Commission's Privacy of Consumer Financial Information; Final Rule (16 CFR 313) implementing Title V of the Gramm-Leach-Bliley Act, Public Law 106-102 (the "GLB Requirements") and other applicable federal and state consumer privacy laws, rules, and regulations. Without limiting the foregoing, Blackboard agrees that it is prohibited from disclosing or using any nonpublic personal information (as defined in the GLB Requirements) disclosed to it by Customer, except solely to carry out the purposes for which it was disclosed, including use under an exception contained in Section 313.14 or 313.15, as applicable, of the GLB Requirements in the ordinary course of business to carry out those purposes.

4.4 Risk Management. The Risk Management Feature of the Blackboard Payment Gateway provides Customer with the ability to perform certain management and oversight functions to their electronic payment transactions. This includes the ability to accept or reject electronic transactions captured and originating from the Software and processed by the Blackboard Payment Gateway and using the Risk Management feature. Blackboard does not own any electronic transactions or data processed on the Customer's behalf and simply provides a service for the authorization, management, and settlement of transactions destined for the Customer's bank via the Processor.

4.5 Batch settlement of transactions. Customer should periodically review batch settlement activity to ensure all transactions are settled with the Customer's bank successfully. Blackboard is not responsible for any fees incurred by the cardholder, card associations or merchant acquirer as a result of delayed batch settlement, including, but not limited to, interchange assessments and cardholder overdraft fees.

4.6 Indemnity. Section Intentionally Deleted.

4.7 PCI Compliance. Blackboard agrees that it (or a third party acting on its behalf) has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with the PCI DSS. Upon written request, Blackboard will supply to Customer the current status of its PCI DSS compliance status, and evidence of its most recent validation of compliance upon execution of this addendum.

5. SUPPORT AND MAINTENANCE

Support and Maintenance for Blackboard Transact Software will be provided in accordance with Exhibit B, which is attached hereto and incorporated herein. To the extent purchased by Customer on an Order Form, Support and Maintenance for the equipment shall be provided in accordance with Exhibit B, which his attached hereto and incorporated herein.

EXHIBIT A: SOFTWARE SUPPORT

1. SCOPE

1.1 After the initial warranty period for the applicable Software, Blackboard will provide Customer with the maintenance and support services for the applicable Blackboard Transact™ Software covered by this Schedule and attached Exhibit in accordance with Blackboard's then-current maintenance and support policies. Blackboard shall determine in its sole discretion, based on its policies, the most appropriate manner in which to provide maintenance and support as provided for in the Blackboard Support Guide. To the extent that Customer has purchased additional service levels, such additional services are covered by the applicable exhibit to this Schedule.

1.2 In order to provide these services in a timely, efficient and effective manner, Blackboard may require the Customer's reasonable cooperation, at no cost to Blackboard. For the purposes of providing the support and maintenance services under this Schedule, and upon Blackboard's request, Customer shall provide Blackboard service personnel with full, free, safe, and timely access to all System components covered by this Schedule or components which materially affect the operation of System components covered by this Schedule.

1.3 Blackboard's access to the Software may include, as Blackboard recommends, remote access to the applications and/or host computer or workstations and physical access to the Customer premises.

1.4 Solely to permit Blackboard to provide maintenance and support services, Customer shall maintain: (i) Internet access protocols as agreed with Blackboard. Blackboard will request permission from Customer to access server for each case created.

1.5 If reasonable access is not provided upon reasonable request, Customer shall be deemed to have waived Blackboard's performance of the maintenance and support services until such access is provided. Blackboard shall have no liability for such inability to perform maintenance and support services in such event.

1.6 Customer shall identify a System Administrator to be trained by Blackboard. Blackboard shall not be held responsible for any costs incurred by the Customer in providing a System Administrator. Customer shall perform the appropriate test and verification analysis on the applicable Software in accordance with routines, documentation and instructions provided by Blackboard. Customer shall promptly inform Blackboard of the results of these tests. **1.7** Customer shall provide Blackboard with troubleshooting assistance.

1.8 Blackboard, with the assistance of Customer, will diagnosis a reader problem and determine if the problem is related to Equipment or communication protocols.

1.9 If the problem is with Equipment, the current equipment maintenance options will prevail. If the problem is with the communication protocols, the Customer will be advised on the steps to take for resolution. It is up to the Customer to solve all on-campus communication problems. Blackboard is not responsible for campus communication problems.

2. EXCLUSIONS.

2.1 If problems or defects with the System or any of its components result from a Force Majeure Event (as defined in the Master Terms) or Customer misuse or abuse, Blackboard shall charge Customer, and Customer shall pay Blackboard, its then current hourly rates and any related charges then in effect for maintenance services.

2.2. Any on-site maintenance service not covered by the applicable maintenance and support services schedules provided by Blackboard shall be subject to a minimum charge of eight (8) hours. Such items excluded from maintenance and support services as provided for in the Blackboard Support Guide include (but are not limited to):

(a) The resolution of any problems due to inspection, service, relocation, tampering, configuration changes, installation of additional feature, functions, or software not provided, authorized or installed by Blackboard.

(b) Software not manufactured by Blackboard and not covered by this Schedule, including, but not limited to Datacard, Microsoft Windows®, etc.

(c) The resolution of any problems due to or caused by knowing disregard for System Administration procedures as outlined in the current version of the Blackboard System Administration Guide or other relevant documentation.

(d) Computer viruses and any damage caused by such viruses.

3. CUSTOMER SUPPORT

3.1 Coverage Hours. Blackboard shall provide Customer with customer support services available 6:00 a.m. to 6:00 p.m. MST time, five (5) days a week, Monday through Friday, excluding US Federal and Arizona State holidays ("Coverage Hours"). Outside of the Coverage Hours, Blackboard shall make available to Customer access to on-call personnel for support services, deemed by Blackboard to be an emergency. See pages 11-13 in the Client Support Guide for definitions of Severity 1 (emergencies) that make reference to Support Guide in language.

3.2 Limits. Customer support is limited to questions on product configuration, usage and notification of defects and is available by calling or notifying Blackboard. Upon receipt of a call or notification by Blackboard approved methods, Blackboard will determine whether an error is related to or directly caused by the Software. Blackboard will make available to Customer the Customer Support Guide in which will be processes for submitting a support case, including documented severity guidelines.

3.3 Purchase of Additional Support and Maintenance Services. In addition to the basic maintenance and support services set forth herein, Customer may purchase additional Software maintenance and support services packages in accordance with the applicable terms and conditions. Refer to attached Exhibit.

4. TIME AND MATERIALS SERVICES

4.1 At Blackboard's sole discretion, support services may be made available to Customer at Blackboard's then current fees and applicable hourly minimums for Software which Customer has not paid the applicable support fees or Blackboard has excluded in accordance with this Schedule.

4.2 Blackboard will provide Customer with an estimate for the provision of such services. Blackboard, at its sole discretion, will require either a Purchase Order and/or Statement of Work for the estimated fees prior to providing any support services in accordance with this section.

5. FEES

5.1 Software basic support services are covered under the Customer's annual license fee for the Software as defined and agreed upon in the Order Form. To the extent Customer has purchased additional Software support services, Customer shall pay annually such additional fees related to such services. Blackboard reserves the right to modify the Annual Support Fee for each Renewal Term, not to exceed four percent (4%) increases from previous year.

EXHIBIT B SUPPORT AND MAINTENANCE FOR THE EQUIPMENT

(EXHIBIT B SHALL ONLY BE APPLICABLE IN THE EVENT CUSTOMER HAS PURCHASED SUPPORT AND MAINTENANCE FOR THE EQUIPMENT PURSUANT TO AN ORDER FORM)

1. SCOPE

1.1 After the initial warranty period for the applicable Equipment, Blackboard will provide Customer with the equipment maintenance for the applicable Blackboard Transact™ Equipment covered by this Schedule in accordance with Blackboard's then-current equipment maintenance policies. Blackboard shall determine in its sole discretion, based on its policies, the most appropriate manner in which to provide equipment maintenance. To the extent that Customer has purchased additional level service, such additional services are covered by the applicable exhibit to this Schedule.

1.2 In order to provide these services in a timely, efficient and effective manner, Blackboard may require the Customer's reasonable cooperation, at no cost to Blackboard. For the purposes of providing the Equipment maintenance under this Schedule, and upon Blackboard's request, Customer shall provide Blackboard service personnel with full, free, safe, and timely access to all System components covered by this Schedule or components which materially affect the operation of System components covered by this Schedule.

1.3 To troubleshoot equipment issues, Blackboard may require access to client Software.

1.4 Blackboard's access to the Software may include, as Blackboard recommends, remote access to the applications and/or host computer or workstations and physical access to the Customer premises.

1.5 Solely to permit Blackboard to provide equipment maintenance, Customer shall maintain: (i) Internet access protocols as agreed with Blackboard. Blackboard will request permission from Customer to access server for each case created.

1.6 If reasonable access is not provided upon reasonable request, Customer shall be deemed to have waived Blackboard's performance of the maintenance and support services until such access is provided. Blackboard shall have no liability for such inability to perform equipment maintenance services in such event.

1.7 Customer shall identify a System Administrator to be trained by Blackboard. Blackboard shall not be held responsible for any costs incurred by the Customer in providing a System Administrator. Customer shall perform the appropriate test and verification analysis on the applicable Software in accordance with routines, documentation and instructions provided by Blackboard. Customer shall promptly inform Blackboard of the results of these tests. **1.8** Customer shall provide Blackboard with troubleshooting assistance.

1.9 Blackboard, with the assistance of Customer, will diagnosis a reader problem and determine if the problem is related to Equipment or communication protocols.

1.10 If the problem is with Equipment, the current equipment maintenance options will prevail. If the problem is with the communication protocols, the Customer will be advised on the steps to take for resolution. It is up to the Customer to solve all on-campus communication problems. Blackboard is not responsible for campus communication problems.

2. EXCLUSIONS.

2.1 If problems or defects with the System or any of its components result from a Force Majeure Event (as defined in the Master Terms) or Customer misuse or abuse, Blackboard shall charge Customer, and Customer shall pay Blackboard, its then current hourly repair rates and any related charges then in effect for maintenance services.

2.2. Any on-site maintenance service not covered by the applicable equipment maintenance schedules provided by Blackboard shall be subject to a minimum charge of eight (8) hours. Such items excluded from equipment maintenance as provided for in the Blackboard Support Guide include (but are not limited to):

(a) The resolution of any problems due to inspection, service, relocation, tampering, configuration changes, installation of additional feature, functions, or software not provided, authorized or installed by Blackboard.

(b) Software or Equipment not manufactured by Blackboard and not covered by this Schedule, including, but not limited to Datacard, Dell, Microsoft Windows®, etc.

(c) The resolution of any problems due to or caused by knowing disregard for System Administration procedures as outlined in the current version of the Blackboard System Administration Guide or other relevant documentation.

(d) Computer viruses and any damage caused by such viruses.

3. CUSTOMER SUPPORT

3.1 Coverage Hours. Blackboard shall provide Customer with customer support services available 6:00 a.m. to 6:00 p.m. MST time, five (5) days a week, Monday through Friday, excluding US Federal and Arizona State holidays ("Coverage Hours"). Outside of the Coverage Hours, Blackboard shall make available to Customer access to on-call personnel for support services, deemed by Blackboard to be an emergency as provided for in the Blackboard Support Guide.

3.2 Limits. Customer support is limited to questions on product configuration, usage and notification of defects and is available by calling or notifying Blackboard. Upon receipt of a call or notification by Blackboard approved methods, Blackboard will determine whether an error is related to or directly caused by the Software or Equipment. Blackboard will make available to Customer the Customer Support Guide in which will be processes for submitting a support case, including documented severity guidelines.

4. EQUIPMENT MAINTENANCE

4.1 Upon payment of the applicable annual Equipment maintenance fees, Blackboard will provide the following:

(i.) Reader and peripheral equipment may be supported by submitting a support case to assist Customer in diagnosing equipment problems during Coverage Hours.

(ii.) Reader and peripheral Equipment manufactured by Blackboard is supported by way of depot repair. At Blackboard's sole discretion, such Equipment shall be repaired or replaced. Customer shall request a Return Material Authorization (RMA) number from Blackboard and return such reader and/or peripheral Equipment to the factory for repair. Repaired or replaced Equipment will be returned to the customer within 10 business days using standard shipping methods.

(iii.) Reader and peripheral Equipment manufactured by a third party vendor is supported by way of depot repair. At Blackboard's sole discretion, such Equipment shall be repaired or replaced. Customer shall request a Return Material Authorization (RMA) number from Blackboard and return such reader and/or peripheral Equipment to Blackboard for repair. Repaired or replaced Equipment will be returned to the Customer within 10 business days unless said Equipment is deemed by Blackboard to require repair or replacement by the manufacturer or its authorized repair facility. In the event said Equipment requires repair or replacement by manufacturer or authorized repair facility, Equipment will be sent to the manufacturer by Blackboard within 2 business days of receipt from Customer and repaired or replaced Equipment will be returned to Customer, using standard shipping methods, within 3 business days of return to Blackboard from manufacturer or authorized repair facility.

(iv.) Equipment including, but not limited to, NCR, Dell, Compaq, and Gateway are supported by onsite third party repair.

(v.) If at Blackboard's reasonable discretion, a piece of Equipment is no longer capable of being maintained in good operating condition, including, but not limited, to normal wear and tear, non-support of Equipment due to discontinuance of support from the manufacturer or its authorized repair facility, or the non-availability of repair components, Blackboard will provide to Customer an estimate of Blackboard's refurbishment charges, if any, for such equipment in accordance with Blackboard's then-current charges and policies. Should Customer fail to have Blackboard refurbish the equipment within 60 days of notification or if refurbishment is not available, said Equipment will no longer be maintained under this Agreement and if provided, such estimate will be considered null and void. A credit will be issued for the prorated balance of maintenance fees paid to Blackboard for the Equipment during the current term.

5. TIME AND MATERIALS SERVICES

5.1 At Blackboard's sole discretion, repair or maintenance may be made available to Customer at Blackboard's then current fees and applicable hourly minimums for Equipment which Customer has not paid the applicable maintenance or Blackboard has excluded in accordance with this Schedule.

5.2 Blackboard will provide Customer with an estimate for the provision of such services. Blackboard, at its sole discretion, will require either a Purchase Order or prior approval for the estimated fees prior to providing any repairs or maintenance in accordance with this section.

6. FEES

6.1 Customer shall pay annual Equipment maintenance fee (the "Annual Equipment Maintenance Fee") to Blackboard for the services provided hereunder related to the equipment. To the extent Customer has purchased additional equipment maintenance and support services, Customer shall pay annually for such additional fees related to such services. If Customer fails to pay the Annual Equipment Maintenance Fee in accordance with the Order Form, Schedule and the Master Terms, Blackboard may suspend any and all equipment maintenance support to Customer. Blackboard reserves the right to modify the Annual Equipment Maintenance Fee for each Renewal Term, not to exceed four percent (4%) increases from previous year.

**EXHIBIT TO BLACKBOARD ORDER FORM
 BLACKBOARD TRANSACT™ PROFESSIONAL SERVICES STATEMENT OF WORK (SAMPLE)
 SOW NO. ____**

This Statement of Work is a mutual agreement of both Blackboard and University of Memphis ("Customer") of the services that may need to be performed. As such, it may be modified in writing, approved by designated representatives of Blackboard and Customer. The work described below is intended to be performed on a firm fixed price basis.

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

1. Introduction and Objectives

This Statement of Work ("SOW") has been created and submitted to offer Blackboard's assistance to Customer with the New System project ("Services"). Customer has identified the following objectives for the Services:

Scope of Project inserted here.

2. Project Scope and Requirements

Based on discussions with Customer and our derived understanding of the project scope, Blackboard will deliver the following Consulting Services:

Phase	Phase Description and Major Tasks	Work Deliverables
Phase A – Analysis and Design	Conduct Project Validation which includes: <ul style="list-style-type: none"> List goes here Define Business Rules; Define Reporting Requirements; Gather Information required for Configuration Workbooks for the first five of each family of readers. Blackboard will take be training the Customer on the information required to complete the remaining Configuration Workbooks ;	<ul style="list-style-type: none"> Deliver Configuration Workbooks with the first 5 of each reader type completed. Workbooks include: Global System Retail Systems Data Integration Deliver Project Plan
Phase B – Implementation and Training	Installation and Configuration of the Blackboard Solution on Client provided servers: <ul style="list-style-type: none"> List goes here Software Configuration for the first five of each family type based on information gathered and documented in the following client approved workbooks: <ul style="list-style-type: none"> List goes here First Five Configuration Services – Blackboard will be responsible to configure the first five of the following elements in the Blackboard Transact Software: <ul style="list-style-type: none"> List goes here Integration installation and configuration of: <ul style="list-style-type: none"> List goes here Conduct Training on Blackboard Transact Software. Modules include: <ul style="list-style-type: none"> List goes here 	<ul style="list-style-type: none"> Operational Transaction System Completed Training Engagement and Training acceptance signoff Configured Software aligning to the Configuration Workbooks for the first 5 of each reader type.
Phase C - Project Installation and Close	First Five Hardware Deployment Services – Blackboard will be responsible for training and coordination efforts with the campus for the activation, reader programming, and wire termination (when required) of the following first five devices: <ul style="list-style-type: none"> List goes here 	Configuration of hardware to include signed equipment checklist. Completed Production Readiness Review (PRR) document.

		Completed Project Close report,
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3. Customer Responsibilities

The customer will be an integral part of the engagement process and will participate in the planning, development, and testing of the solution being implemented. They will also be responsible for:

- Provide virtual or physical server for Blackboard Reporting System Application, Blackboard Database and Blackboard Application Software;
- The Hardware reader activation, reader programming, and wire termination beyond the first five readers of each family type;
- When Blackboard resources are on site at Customer's facilities, Customer will provide adequate workspace, telephone access, internet access, and access to network resources required to execute the Services;
- The customer will provide Blackboard with access to the appropriate physical and technical environments to successfully complete the effort outlined in this document;
- The customer will be responsible for network security, and managing configuration related to firewalls and open ports on the network, as well as ensuring that appropriate anti-virus and intrusion detection software is utilized where applicable;
- The customer will provide a project lead to provide subject matter expertise, leadership and coordination of all customer required activities and facilities;
- The customer will participate in the analysis, design and development of all configuration data including data files used to transfer data from customers' information system(s) to the Blackboard Transact database;
- The customer contact must be available on a timely basis to make critical project decisions that are required to allow the work to progress;
- The customer is responsible for installation of wiring and power for all associated hardware (unless otherwise stated);
- Customer project lead must attend all status meetings;

4. Project Organization & Resource Responsibilities

The following resources will be working on this engagement from both the Customer and Blackboard teams.

Blackboard resource requirements:

Role	Description
Project Manager	The Project Manager will serve these functions: <ul style="list-style-type: none"> • Manages the coordination of the project work effort between Blackboard and Customer for cost, schedule, resources and performance. • Assist in the coordination of all tasks, provides status updates.
Business Consultant	The Business Consultant will serve these functions: <ul style="list-style-type: none"> • Work with key stake holders to obtain client business rules and business processes. • Provide guidance to the IT team and stake holders. • Configure the software to meet customer's business needs. • Create documentation and a test plan.

Customer resource requirements:

Role	Description
Project Sponsor	The Project Sponsor often serve these functions: <ul style="list-style-type: none"> • lead as needed - can be non-technical • provide strategic oversight and direction • mitigate risks by using resources across the organization • validate from a functional and strategic point of view that the project is meeting its intended objectives • set business priorities and policy initiatives • define project goals and objectives • approve the project plan • allocate staff resources • resolve problems not resolved at other levels and manage conflicts
	The Project Lead often serve these functions:

Role	Description
Project Lead	<ul style="list-style-type: none"> • Manage the coordination of the project work effort. To include: <ul style="list-style-type: none"> ◦ Costs ◦ Schedule ◦ Resources ◦ Performance. • Assist in the coordination of all tasks, • Provides status updates. This is a part time role for the duration of the project.
Systems Administrator	The System Administrator often serve these functions: <ul style="list-style-type: none"> • Understands the configuration and functionality of the Transact software and hardware • Has the ability and authority to work with departments at the institution to successfully run the one card program • Has access to key decision makers in the IT department, Residential Life, Security, Marketing, Dining and financial departments • Provides guidance and training to client site transact users • Runs reports and monitors tools, updates and adjusts system configuration to meet changes in the business needs Works with the Blackboard Team to trouble shoot issues and to obtain necessary information and products
Card Program Administrator	The Card Program Administration often serve these functions: <ul style="list-style-type: none"> • Supervises the card office operations on a day to day basis • Provide clients with answers to questions and needs surrounding the use of the campus card. • Provides cards, markets and promotes the use of the card throughout campus departments. • Understands the configuration and functionality of the Transact software and video imaging hardware. • May manage integrations, create accounts and provide reports to individuals and departments. Performs end of and beginning of semester system and account updates.

5. Consulting Engagement

The following section describes the fees for this consulting engagement. Exit Criteria will be established at the beginning of the project to ensure agreement on phase completion.

The following table represents project milestones and related professional fees.

Qty	Unit	Part Number	Description	Unit Price	Unit Discount	Extended Net
Integration and Customization Maintenance						
1	YR	Part number goes here	Part number Description goes here	\$X.XX	\$X.XX	\$X.XX
ICM Subtotal						\$X.XX
Consulting						
1	EA	Part number goes here	Part number Description goes here	\$X.XX	\$X.XX	\$X.XX
Consulting Subtotal						\$X.XX
Subtotal						\$X.XX
Discount						\$X.XX
Grand Total						\$X.XX

* Note: Travel Expenses will be billed as Actual (as incurred). They are not included in the Project Fees. Compensation to Blackboard for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to Blackboard, subject to the maximum amounts and limitations specified in the Tennessee Board of Regents Policies, as they may be from time to time amended.
 * Please refer to the Pricing Summary for Hardware, Software and other related costs not related to services.

6. Travel and Related Expenses

Blackboard Consulting will invoice the Customer for the actual travel related expenses incurred as part of this engagement. Blackboard Consulting will make every reasonable effort to minimize travel expenses to the customer while still meeting project objectives. Compensation to Blackboard for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to Blackboard, subject to the maximum amounts and limitations specified in the Tennessee Board of Regents Policies, as they may be from time to time amended.

Estimated number of trips: **0 trip(s).**

7. Integration and Customization Maintenance (ICM)

Integration & Customization Maintenance (ICM) is an annual fixed-price subscription billed as a maintenance fee for a named consulting project developed by Blackboard Consulting. In the event a minor upgrade or patch to a Blackboard product causes a solution to behave inconsistently with the documented specifications, Blackboard will assist in restoring the solution's functionality. ICM does not cover major version upgrades or platform changes. ICM will be invoiced up front and initiated when the named service consulting project is completed. Year 2 costs will be billed to align with the Blackboard Software license renewal date and will be prorated based on the closure date of the project. ICM is automatically renewed on an annual basis, but shall expire or terminate in the event that the Master Agreement expires or terminates.

8. Change Control Process

Changes to scope, resources, or timeline will go through Blackboard's Change Control Process. This process is critical in ensuring that the integrity of the project and its scope are maintained throughout the engagement. Any work outside of this scope will not be completed unless those specific requirements have gone through the Change Control Process. All changes must be done in writing and signed by both parties prior to execution.

The purpose of the Change Control Process is to define the mechanisms for requesting, evaluating, deciding, and tracking possible changes to project schedule, budget, scope, business objectives, and deliverables. The key objectives of the process are to:

- Identify changes in scope, or other unplanned activity, in advance and control them.
- Protect the integrity of deliverables that have been approved as fit for purpose.
- Ensure that new tasks and other requested changes are justified and cost justifiable, and that affected deliverables are identified and modified accordingly (newly baseline).
- Obtain authorization to proceed with the new tasks/changes and assign them to appropriate individuals to be completed.
- Monitor the progress and costs of the changes.

The Change Control Process shall apply to the following types of changes:

- Any change of project scope, unplanned activity, or the production of an unplanned deliverable (i.e. any task not explicitly included within the scope of the current baseline work plan).
- Any change to the resource plan or delivery timeline that impacts the work schedule, work effort or project end date.
- Modifications to approved project deliverables except where:
 - The modification has been planned.
 - The deliverable has a suspected fault (e.g., where factual errors are subsequently discovered in an approved document, or where approved software apparently does not function to specification).
- Material changes or deviations to stated assumptions.

Project team member will not begin work on a task for which there is not an explicit task on the work plan without first obtaining approval.

9. Assumptions

Documenting assumptions properly sets expectations and mitigates risk for both parties. The contents of this SOW have been explicitly constructed based on these assumptions. Changes to these assumptions may invoke the change control process.

- Notwithstanding any language to the contrary in the Professional Services Agreement, all fees will be billed as milestones are completed.
- Customer and Blackboard will document and signoff on all changes in scope that differ from what is contained in this SOW.
- The customer shall have five business days to review each deliverable and provide comments for changes in writing. Changes will be incorporated and returned to customer for approval within five business days. Customer will have five business days to approve or provide comments on revised deliverables. If no response is received, the deliverable shall be considered approved. The customer will provide all network and systems configuration information, and systems access, as required, for the proper integration with Blackboard Transact.
- Prior to moving the Transact Application to Production, a Production Readiness Review (PRR) document will be signed off by Blackboard and Customer. The document outlines the activities for transitioning the Transact Application to a 'production environment'. The document also initiates transition to Blackboard's 24/7 Customer Support, and specifies items to be completed post-production.
- Installation of any new cable is not included. Any cable that is found to be defective or faulty will be documented and submitted for repair or replacement as a change order.

10. Payment

The maximum payment amount authorized under this Statement of Work (SOW) will not exceed \$ _____ without a duly executed amendment to this SOW.

EXHIBIT C

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Blackboard Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	52-2081178

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:



NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.