

## BLACKBOARD LEARNING ESSENTIALS BUNDLE SaaS SERVICES LICENSE SCHEDULE

THIS BLACKBOARD LEARNING ESSENTIALS BUNDLE SaaS SERVICES LICENSE SCHEDULE ("SCHEDULE") IS AN ADDENDUM 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 USE THE BLACKBOARD SaaS SERVICES. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT. THIS SCHEDULE IS INTENDED TO SUPERCEDE AND REPLACE CUSTOMERS EXISTING BLACKBOARD LEARN LICENSE SCHEDULE AND MANAGED HOSTING SCHEDULE, AS APPLICABLE, UPON CUSTOMER'S ACCESS TO THE SaaS ENVIRONMENT.

### 1. ADDITIONAL DEFINITIONS

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

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

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

**1.4** "**Customer Data**" means all data provided by Customer or its end users through the Mobile Platform.

**1.5** "**Customer Systems**" means any system Customer uses to house data for the Mobile Platform.

**1.6** "**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 SaaS Services, 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.

**1.7** "**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.

**1.8** "**SAAS Services**" means the Software as a Service offering provided hereunder.

**1.9** "**Software Error**" means a failure of any SaaS Services materially and substantially to conform to applicable Documentation, provided that such failure can be reproduced and verified by Blackboard in the most recent version of such SaaS Services 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) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the SaaS Services, or (vi) any use of the SaaS Services other than expressly authorized in this Schedule.

**1.10** "**Supported Interface**" means application-based interfaces (API) provided pursuant to the *Blackboard Developer* program, to the extent the program is available, network protocols, data formats, database schemas, and file formats available for use with the SaaS Services as expressly specified in the Documentation.

**1.11** "**Third Party Software**" means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software.

**1.12** "**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.

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

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

### 2. GRANT OF LICENSE

Subject to the terms and conditions of the Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicensable right and license to access and use the SaaS Services and one unsupported Test Copy of the SaaS Service Software ("Test 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. Customer shall not (i) copy or duplicate any SaaS Services or Test Software or Documentation; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any SaaS Services or Test 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 SaaS Services on any computer, network, system or equipment other than in the Blackboard SaaS Services environment. Customer shall not provide access to the SaaS Services or Test Software to anyone other than Authorized End Users. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated.

### 3. DELIVERY

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, Blackboard will provide access to the SaaS Services and any Test Software, and delivery shall be deemed complete when Blackboard notifies Customer that such access is available.

### 4. LIMITED WARRANTY

Blackboard warrants, solely for the benefit of Customer, that any SaaS Services licensed under this Schedule will substantially conform to the applicable Documentation during the Term of the Agreement. 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; and (iii) Customer has notified Blackboard in writing of any failure of the SaaS Services to conform to the foregoing warranty. BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY OTHER THAN ANY APPLICABLE SERVICE LEVEL CREDITS, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS BLACKBOARD'S USE OF COMMERCIALY REASONABLE EFFORTS TO BRING THE SaaS SERVICES INTO CONFORMANCE WITH THE APPLICABLE DOCUMENTATION IN A TIMELY MANNER. Blackboard may enhance and/or change the features of the SaaS Services in Blackboard's discretion as long as the core functionality of the SaaS Services are not materially reduced.

## 5. 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 <https://blackboard.secure.force.com/publicbarticleview?id=KA57000000PB0o>, 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. Blackboard reserves the right to implement bug fixes at any time as necessary.

## 6. FERPA

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

7. **THIRD-PARTY AND REMOTE ACCESS.** Customer consents to allow Blackboard to provide access to Customer's data to Blackboard employees and to certain third party service providers which have a legitimate need to access such information in order to provide their services to Blackboard as part of Blackboard's provision of the SaaS Services to Customer. Blackboard and its employees, subcontractors, service providers, or agents involved in the handling, transmittal, and processing of Customer's Data will be required to maintain the confidentiality of such data in accordance with the terms and conditions of the Agreement.

## 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 any applications provided by Blackboard for use on mobile devices ("User Software"). Standard distribution terms utilized by Apple, Google or Microsoft to distribute Blackboard's applications through Apple App Store, Google Play App Store, or Windows App Store shall be applicable.

8.2 **Customers Obligations.** Customer is responsible for maintaining Customer Applications, Customer Systems and Customer Data. 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.

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.

## 9. BLACKBOARD COLLABORATE WEB CONFERENCING

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

### 9.1 Specific Definitions.

- A. **"ASP Services"** shall mean those services, as may be amended from time to time, provided by Blackboard in respect of the hosting of, and access via the Internet to, the Software for the purpose of permitting Customer and its Authorized End Users to use the Software in the manner as more particularly set out herein (for greater certainty, ASP Services are optional and are only provided when indicated in the Order Form).
- B. **"Event"** means a single live broadcast event transmitted over the Service created and/or sponsored in whole or substantial part by Customer or Customer's employees that is branded under Customer's name. The term "Events" shall include both live and archived Events.
- C. **"Seat"** means each End User served by a Stream in the Service and shall include an Authorized End User's access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of unique Authorized End Users of the Service.
- D. **"Stream"** means the stream of digitally encoded data that delivers an Event to an Authorized End User.
- E. **"Support Instance"** is a unique request for support or service, and encompasses the cycle of communication from request initiation to instance resolution. Up to 250 Support Instances are included in the price in the Order Form ("**Included Instances**"). Support Instances in excess of the Included Instances are subject to purchase.

## 10. SaaS REGISTRATION; PASSWORDS AND ACCESS.

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

10.2 **Passwords and Access.** Customer and its Authorized End Users may receive a password and account designations upon completing the registration process. Customer is solely responsible for maintaining the confidentiality of these account(s) and password(s), and is fully responsible for all activities that occur under such passwords or user identifications. Customer shall be permitted to provide access codes and passwords to Authorized End Users. Customer acknowledges and agrees that Customer is solely responsible for the issuance of access codes and passwords and that Blackboard will only issue access codes or passwords to Authorized End Users on Customer's instruction and as Customer's agent. Customer acknowledges and agrees that Customer shall be responsible for each and every access, use or employment of the SaaS Services or Test Software that occurs by its Authorized End Users and/or in conjunction with such passwords and user identifications, and that Blackboard is authorized to accept the user identifications and passwords as conclusive evidence that Customer, or its Authorized End Users, as the case may be, have accessed, utilized, or otherwise employed the SaaS Services and/or the Test Software. Customer agrees to (a) notify Blackboard of any

unauthorized use of such password or user identifications and any other breach of security, and (b) ensure that Customer and its Authorized End Users exit from Customer's or such Authorized End User's account at the end of each session using the logout button. Customer and its Authorized End Users are solely responsible for applying the appropriate level of access rights to Customer Content and to communications involving the use of the SaaS Services or Test Software.

**10.3 Consents.** Customer is solely responsible for obtaining and maintaining any necessary consents or permissions from its Authorized End Users or others whose information may be collected, recorded, processed, stored, used, disclosed, transferred, exchanged or otherwise handled as a result of, or as part of, any Customer Content or any communications involving the use of the SaaS Services, User Software, or Test Software and agrees to obtain and maintain all such consents or permissions throughout the term of this Agreement. Personal information shall only be used in accordance with Blackboard's Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Center.aspx>.

**10.4 Data Processing Addendum.** If Customer is subject to the European Union Data Protection Directive 95/46/EC, the European Union General Data Protection Regulation or similar statute, then this Schedule expressly incorporates by reference the Data Processing Addendum available at <http://agreements.blackboard.com/bbinc/data-processing-addendum.aspx>. For data that Blackboard processes on Customer's behalf, Customer agrees that it is the controller of all Customer Content within the SaaS Services, User Software, and Test Software, including uploaded content within the SaaS Services, User Software, and Test Software, and that Blackboard is not a controller of such data.

**10.5 Service Level Specifications.** Customer shall be entitled to the SAAS service specifications set forth in Exhibit A.

**Exhibit A**  
**SaaS Service Levels**

**SaaS Services Setup and Access**

Blackboard is responsible for the setup and initial configuration of the SaaS Services, including all elements reasonably necessary to operate and maintain the SaaS Services. Provisioning occurs shortly after execution of the applicable Order Form. Migrations and configurations vary in duration depending on the type of SaaS services ordered and the extent of any migration(s) from existing services. Customer is responsible for providing Blackboard sufficient information required by Blackboard to perform its obligations herein.

Following setup and initial configuration, Blackboard shall provide Customer with the procedures necessary to enable Customer's access and use, and Customer's provisioning of its Authorized End Users' access and use of the SaaS Services as contemplated herein. The procedures may include access codes, passwords, technical specifications, connectivity standards, and protocols.

**Service Levels and Credits**

Blackboard shall use commercially reasonable efforts to make the SaaS Services Available, as defined below, twenty-four (24) hours a day, seven (7) days a week, with a minimum targeted uptime of 99.9% per calendar month. The SaaS Services shall be considered "Available" unless and to the extent an Authorized End User cannot reasonably access the SaaS Services other than as a result of (a) scheduled maintenance, or (b) issues outside the reasonable control of Blackboard, including without limitation (i) packet loss, latency, or unavailability due to Internet or telecommunications problems outside the Blackboard network, and (ii) third-party software integrations requested or deployed by Customer.

Service credits for Blackboard's failure to meet the Availability service level of 99.9% per calendar month are as follows:

<b><u>Length of Unavailability (per calendar month)</u></b>	<b><u>SaaS Services Service Credit</u></b>
1 to 4 aggregate hours below 99.9% Availability	1 day of service fees (i.e., 1/30 monthly fees)
4 to 48 aggregate hours below 99.9% Availability	2 days of service fees (i.e., 1/15 monthly fees)
48 to 96 aggregate hours below 99.9% Availability	5 days of service fees (i.e., 1/6 monthly fees)

\*Each block of 96 hours below 99.9% Availability thereafter shall be credited 5 days of service fees.

Upon Customer's request within seven (7) days from the end of the applicable calendar month, Blackboard will provide a report generated by a commercial tool showing service level performance for the preceding month. Customer must notify Blackboard of its request for any earned service credits within seven (7) days from receipt of the report for the applicable calendar month or the credits are forfeited. In order to be eligible, Customer must be in compliance with the Agreement, including the contracted Active User Capacity and storage quota, and be operating in the current version of the SaaS Services. The above service credits shall be Customer's sole and exclusive remedy for Blackboard's failure to meet the Availability service level. The aggregate maximum number of service credits to be issued by Blackboard to Customer for any and all such failures during any given calendar month shall not exceed the fees for one month of service. All service credits shall be applied to the next period's SaaS Services fees.

**Monitoring and Maintenance**

***Ongoing Monitoring***

The SaaS Services are monitored and maintained in accordance with industry standards. Blackboard implements a software monitoring system to provide real-time information about the SaaS Services environment to Blackboard system administrators. Blackboard shall monitor and maintain the environment to ensure appropriate operation, in its sole discretion. Customer shall be notified by email in advance of periods of scheduled maintenance and required repairs.

***Backup and Disaster Recovery***

Blackboard provides comprehensive redundant backups. Blackboard implements a backup strategy of performing daily backups and retains backup data for one month. Where possible, data is replicated to an offsite location. In the event of a disaster, Blackboard will use reasonable efforts to restore service. Blackboard will not attempt to restore service if such attempt may, in Blackboard's sole discretion, put Blackboard, its employees, or its agents at risk for injury.

***Outages***

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

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

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