

**SOFTWARE SCHEDULE
BLACKBOARD ANALYTICS SOFTWARE SCHEDULE**

THIS BLACKBOARD ANALYTICS™ 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.

1. ADDITIONAL DEFINITIONS

- 1.1. “Authorized End User”** means any individual who uses the Software for Customer’s internal business purposes only.
- 1.2. “Application Pack”** means the object code software utility release(s) that are designed to work with the Software that may be, in Blackboard’s sole discretion, issued in between the issuance of Updates, designated by AP#, and/or later incorporated into Updates or Upgrades.
- 1.3. “Corrections”** means a change (e.g. a fix, workaround or other modification) made by or for Blackboard which corrects Software Errors in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update.
- 1.4. “Consulting Support”** means consulting, advising, training or answering questions from an Authorized End User, remotely via telephone, email or other remote methods, regarding Software use, design, operation or customization. Consulting Support does not include any custom software development or obligations to design custom enhancements for any Authorized End User.
- 1.5. “Designated Server Site”** means the physical location where the Software will be installed, as identified in The Order Form.
- 1.6. “Software”** means, for purposes of this Schedule only, the Blackboard Analytics Software proprietary software, as identified in The Order Form.
- 1.7. “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; (v) accident, misuse or any other cause which, in Blackboard’s reasonable determination, is not inherent in the Software; or (vi) any use of the Software other than as expressly authorized in this Schedule.
- 1.8. “Standard Software Support”** means standard services as described in Exhibit A to this Schedule, including access to general release versions of the Software and help desk support for problem resolution related to Software operation. Standard Software Support does not include Consulting Support.
- 1.9. “Support Times”** means the hours of each day and the days of each week set forth in Attachment 2 hereto.
- 1.10. “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.
- 1.11. “Third-Party Software”** means the software or content manufactured or created by third parties 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.

2. LICENSE

2.1. Grant of License. Subject to the terms and conditions of this Schedule and the Master Terms, Blackboard grants Customer a limited, non-exclusive, non-transferable, non-sublicenseable right and license (i) to install and use one (1) production copy and one (1) unsupported Test Copy of the Software for one (1) installation at Customer’s Designated Server Site, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Content to Customer’s Authorized End Users (unless otherwise expressly stated in the) and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (a) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers or (b) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained nodes. Customer acknowledges and understands that, in the event it wishes to use the Software for any purposes other than those expressly permitted by the foregoing, including, without limitation, to provide course materials or other content to any end users who are not Customer’s Authorized End Users, Customer will be required to obtain additional license rights from Blackboard pursuant to a separately executed Schedule and payment of additional license fees.

2.2. General Usage Restrictions. Customer agrees not to use the Software or Documentation for any purposes beyond the scope of the license granted in Section 2.1 or, if applicable, any special provisions set forth on The Order Form. Without limiting the foregoing, except as expressly contemplated in this Agreement or as otherwise agreed in writing between the Parties, Customer shall not: (i) copy or duplicate the Software or Documentation, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the 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; (iii) install or use the Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard; (iv) modify the Software or create any derivative product of the Software, except with the prior written consent of Blackboard, provided that the foregoing shall not be construed to prohibit

Customer from configuring the Software to the extent permitted by the Software's standard user interface; (v) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the license granted in Section 2.1; or (vi) use the Software or Documentation to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software, nor will Customer add any other notices or markings to the Software or any portion thereof except as permitted by the Software standard user interface. Customer shall not use the Software in violation of Blackboard's obligations to any third party incurred prior to the Schedule Effective Date, provided that Blackboard has notified Customer of such obligation. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard's prior written consent; provided. Customer shall ensure that its use of the Software complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Software. Customer shall ensure that its Authorized End Users will comply with the provisions of this Schedule in all respects, including, without limitation, the restrictions set forth in this Section 2.2. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Under no circumstances shall Customer permit any third party to host the Software.

2.3 Further Restrictions. Customer acknowledges that certain Blackboard Software contains an "Auto Report" feature, which feature provides to Blackboard aggregate usage statistics regarding the Software, and Blackboard represents and warrants that the Auto Report feature does not report individually identifiable use information to Blackboard or any third party. Customer will not disable the Auto Report feature of the Software, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby.

2.4 Interoperability. Customer may integrate additional data sources in accordance with the specifications as outlined in the Documentation, which may be accessed at the Blackboard Analytics Client extranet.

2.5 Third Party Software/Content. Customer acknowledges that the Software may utilize software and/or content made available to Blackboard by third parties, which shall constitute "Third Party Software." Pursuant to its agreements with these third parties, Blackboard hereby grants to Customer a non-exclusive, non-transferable license to load and/or operate and use the Third Party Software solely in connection with Customer's own instructional activities.

2.6 Ownership of Software. Blackboard and its licensors shall be deemed to own and hold all right, title and interest in and to the Software, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the Software not expressly granted by this Agreement, and Customer further acknowledges that Blackboard hereby reserves and retains all rights not expressly granted in this Agreement, including, without limitation, the right to use the Software for any purpose in Blackboard's sole discretion.

2.7 Expansion of Licensed Use. Blackboard Software is priced annually based upon the number of FTE. If the number of Customer's FTE expands, additional fees may apply.

3. DELIVERY

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, Blackboard will install a copy on Customer's server, and delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available.

4. FEES

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

5. TERM

This Schedule shall become effective (i) when executed by authorized representatives of both Parties (the "Schedule Effective Date"); or (ii) the Effective Date of the Agreement, whichever later occurs, and shall continue for one (1) year ("Initial Term"). Upon completion of the Initial Term, this Schedule shall continue in full force and effect for additional one (1) year terms ("Renewal Term"), unless either party terminates this Schedule by providing written notice of such termination at least thirty (30) days prior to the end of such Initial Term or then-current Renewal Term. Upon termination of this Schedule, all licenses granted under this Schedule shall immediately cease, and Customer will: (i) immediately discontinue all use of Software licensed under this Schedule; (ii) pay to Blackboard all amounts due and payable hereunder; (iii) remove the Software from its server and provide to Blackboard proof of the destruction of the original copy and any other copies of the Software; and (iv) return all Documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

EXHIBIT A: SOFTWARE SUPPORT

1. Software Support.

- 1.1. Software Support Services. During the Initial Term and any Renewal Term, Blackboard shall render the software support services set forth in this section to Customer subject to: (i) Customer's selected support specified in Attachment 1; (ii) Customer's payment of the support fees described in Section 3; and (iii) Customer's compliance with its obligations set forth in Section 2 and elsewhere in this Agreement. For any future renewal period, Customer may change the support option by requesting such change in writing within thirty (30) days of the start of the then-current Renewal Term.
- 1.2. Standard Software Support Option Services. The standard software support services to be provided by Blackboard pursuant to this Exhibit are as follows:
 - 1.2.1. Help Desk for Problem Resolution. Blackboard will provide Customer with help desk assistance during the Support Times regarding the diagnosis and correction of Software Errors. Customer agrees to follow Blackboard's current policies and procedures for communicating problems and Software Errors. Subject to this Section 1.2.1, Blackboard will attempt to resolve any support problems communicated by Customer. If the problem is determined by Blackboard to be the result of configuration or actions by Customer, Blackboard will communicate such determination to Customer along with a recommendation for resolution. In such case where Customer is determined to have caused the problem or condition, Customer may request in writing for Blackboard to provide time and materials support to be billed at Blackboard's then standard billing rates. Standard Software Support does not include any Consulting Support.
 - 1.2.2. Access to Software Upgrades. Blackboard periodically develops new releases to Software, which may include enhancements, bug fixes and optimization. New releases to Software shall be provided to Customer at no additional cost. Blackboard agrees to provide support for at minimum the latest commercially available version and one (1) prior version of the Software. Blackboard will provide Customer with (i) the most recent general release version of the Software; (ii) installation instructions; and (iii) automated installation scripts for some or all of the new release components. Customer is responsible for the installation, testing and deployment of all new releases. During the development of Software releases, Blackboard, in Blackboard's sole and absolute discretion, may decide to incorporate new third party technologies (including Third-Party Software), new versions and/or features of existing technologies, or discontinue using previously used third party technologies due to obsolescence or vendor support issues regarding such third party products that prevent or make it commercially unreasonable for Blackboard to provide an automated upgrade path for one (1) or more components of such product releases (a "Technology Platform Decision"). In the event of a Technology Platform Decision, Blackboard will notify Customer of any re-installation requirements, service options and additional installation fees for the reinstallation of the new version of the Software, and notwithstanding anything to the contrary contained in this Agreement, in the event of a Technology Platform Decision, Blackboard shall not be required to reinstall any new version of the Software on Customer's system unless Customer pays Blackboard the additional installation fees charged by Blackboard for such reinstallation.
 - 1.2.3. Software Error Correction.
 - 1.2.3.1. Notification. To obtain Software Error correction services, Customer must notify Blackboard promptly of any suspected Software Error and must provide Blackboard with reasonable detail of the nature of and circumstances surrounding the Software Error.
 - 1.2.3.2. Software Error Correction. Blackboard will use commercially reasonable efforts to correct and resolve Software Errors that Customer reports to Blackboard and which Blackboard is able to reproduce. Customer will promptly provide Blackboard with all information requested by Blackboard to reproduce such Software Errors. For each such Software Error, Blackboard will use commercially reasonable efforts to provide Customer with a software patch, a work-around, or, if Blackboard is unable to provide Customer with either of the foregoing, a specific action plan for addressing the Software Error, including a good faith estimate of the time required to correct and resolve such Software Error.
 - 1.2.4. Response Times. Blackboard will use commercially reasonable efforts to respond to Customer, by telephone or e-mail, within the same business day or by the end of the next business day, regarding Software Errors that Customer reports to Blackboard during the Support Times. For purposes of this Exhibit, "respond" means Blackboard's acknowledgment of a Software Error, and does not necessarily mean that a resolution will be achieved.
 - 1.2.5. Limitations on Blackboard's Support Obligations. Notwithstanding anything to the contrary elsewhere in this Agreement, Blackboard will have no obligation to provide any support services to Customer if:
 - 1.2.5.1. Such support is related to the use or operation of any third party reporting tools not directly provided by Blackboard;
 - 1.2.5.2. Such support relates to or involves any software, hardware products or data not provided or approved by Blackboard, including performance problems that cannot be specifically attributed to Software;
 - 1.2.5.3. Such support directly relates to problems inherent with third party software licensed from other vendors;
 - 1.2.5.4. Such support directly relates to problems associated with alterations or modifications of the Software by Customer or a third party;
 - 1.2.5.5. Customer has not installed or used the Software in accordance with instructions provided by Blackboard;
 - 1.2.5.6. Customer has failed to replace earlier versions of the Software with a newer release or patch made available to Customer;
 - 1.2.5.7. Blackboard agrees to provide support for at minimum the latest commercially available version and one (1) prior version of the Software;
 - 1.2.5.8. A party other than Blackboard (or a party authorized by Blackboard) has serviced the Software and the Software no longer conforms to its Blackboard Software specifications; or
 - 1.2.5.9. Customer is not in full compliance with the terms of this Agreement or is not in material compliance with the terms of any other agreement between Blackboard and Customer.
- 1.3. Additional Services. Upon mutual agreement and written request from Customer (and subject to a Professional Services Agreement Statement of Work) Blackboard may provide Customer with additional support services for the Software not otherwise covered under this section, provided that Customer pays Blackboard for such service at Blackboard's then standard hourly and

expense reimbursement rates. Except to the extent specifically otherwise provided in this Exhibit, such support service is not included within the terms of this Agreement.

2. **Customer's Obligations.**

- 2.1. **Documentation of Problem.** During the Initial Term or any Renewal Term, Customer will provide Blackboard with detailed information regarding the problem and assist Blackboard as requested in performing problem resolution actions. All problems will be logged by Customer on the designated web-based support system.
- 2.2. **Access.** During the Initial Term or any Renewal Term, Customer will provide Blackboard with reasonable access (via remote telecommunications or on-site access at Customer's premises should Blackboard prefer to provide the support on-site) to Customer's copies of the Software to the extent necessary, in Blackboard's discretion, to enable Blackboard to meet its support obligations as set forth in this Exhibit.
- 2.3. **Support Contact.** Customer shall designate one (1) employee and one (1) alternate as its "Support Contacts" to be generally available during the Support Times to confer with Blackboard regarding Software Errors and other support-related issues. Customer's Support Contacts are identified in Attachment 2. Customer shall notify Blackboard promptly of any changes in the persons designated as Support Contacts. Blackboard will provide technical support only to Customer's Support Contacts.
- 2.4. **Product Upgrades.** Customer is responsible for the installation of all Upgrades. Blackboard will provide Upgrade installation support services on a time and materials basis subject to a Professional Services Agreement Statement of Work Consulting Services Worker Order or existing services agreement.