

LEARNING ESSENTIALS BUNDLE SOFTWARE LICENSE SCHEDULE

THIS BLACKBOARD LEARNING ESSENTIALS BUNDLE 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 THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

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 Software, 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** “**Designated Server Site**” means the physical location where the Software will be installed, as identified in the Order Form.
- 1.7** “**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.
- 1.8** “**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.
- 1.9** “**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.
- 1.10** “**Third Party Software**” means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software.
- 1.11** “**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.
- 1.12** “**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.
- 1.13** “**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 FOR COURSE DELIVERY, CONTENT SYSTEM, COMMUNITY ENGAGEMENT ONLY

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) 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. 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 FOR COURSE DELIVERY, CONTENT SYSTEM, COMMUNITY ENGAGEMENT

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, and, if applicable, 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, in which case Customer shall, in addition, reimburse to Blackboard the reasonable costs of conducting the audit.

5. LIMITED WARRANTY

5.1 For Course Delivery, Content System, Community Engagement, Mobile Learn only: 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. BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS REPAIR OR REPLACEMENT (AT BLACKBOARD'S OPTION) OF THE RELEVANT SOFTWARE IN A TIMELY MANNER.

5.2 For Blackboard Web Conferencing and Blackboard IM Services only: Blackboard warrants for Customer's benefit alone that, for the License Period, the Service will perform substantially in accordance with the Documentation, provided that: (i) Blackboard has received all amounts owed under this Schedule; (ii) Customer is not in material breach of this Schedule; (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.

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 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 Mobile Application for each of the licensed modules (the modules contained within Customer's Mobile Application) which Customer has selected for the User Software in formats which are compatible with the Mobile Application. 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 [here](#) 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 the Mobile Platform 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/mobileedu/> or any successor website.

9. BLACKBOARD COLLABORATE WEB CONFERENCING AND IM SERVICES

The following provisions apply only to the Blackboard Collaborate Web Conferencing and Blackboard IM software and 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.

9.2 Registration; Passwords and Access.

A. **Registration.** In consideration of Customer's use of the Software and ASP Services, Customer or its Authorized End Users may be required to provide information in order to register for and/or use certain Software and ASP 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.

B. **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 ASP Services or 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 ASP Services and/or the 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 ASP Services or Software.

9.3 **Consents; Customer Content.** Where ASP Services are specified in the Order Form, Customer acknowledges and agrees that the ASP Services are provided via the Internet and that Customer and its Authorized End Users' information, including personal information, may be transferred across national borders and stored or processed in any country in the world. 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 ASP Services or Software and agrees to obtain and maintain all such consents or permissions throughout the term of this Agreement. If Customer or any Authorized End User resides in the European Union, upon registration Customer or such Authorized End User will be indicating its explicit consent that the personal information it provided may be transferred and stored in countries outside the EU, including the United States. If Customer or such Authorized End User fails to provide such consent, Customer or such Authorized End User will not be permitted to access the Services for which registration is required. Personal information shall only be used in accordance with Blackboard's Privacy Policy at <http://www.blackboard.com/Footer/Privacy-Center.aspx>.

9.4 **ASP Storage.** ASP Services include a total of 50GB of storage for archives ("Storage Capacity"), unless otherwise specifically set forth in the Order Form. Storage in excess of the Storage Capacity is subject to purchase.

BLACKBOARD LEARN DEVELOPER'S NETWORK EXHIBIT

THIS BLACKBOARD LEARN DEVELOPER'S NETWORK EXHIBIT ("EXHIBIT") IS A "EXHIBIT" PURSUANT TO THE BLACKBOARD LEARNING ESSENTIALS BUNDLE SOFTWARE LICENSE SCHEDULE ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE AND USE SOFTWARE AND PURCHASE SOFTWARE MAINTENANCE AS IDENTIFIED IN THE ORDER FORM.

1. PROGRAM DESCRIPTION

1.1 Blackboard desires to create a community of developers who design software that is interoperable with Blackboard's existing software. In order to do so, Blackboard makes available, subject to the terms of this Agreement, membership in a Blackboard Developers Network (the "Developers Network" or "BbDN"). Members of the BbDN have access to a Software Development Kit (the "SDK"), a package containing APIs and documentation that allow Customer to write code that interfaces with certain Blackboard software, reference materials and other documentation, support provided via a community discussion forum and a copy of Blackboard Academic Suite™. If you wish to join the Developer's Network and get access to the SDK and other benefits of membership, you must agree to the terms of this Agreement. This program relates to the Blackboard Learn applications only.

2. DEFINITIONS.

2.1 "**Blackboard Software**" means the Blackboard software, limited to a maximum of 150 users, 100 courses, and 1,000 enrollment records, provided pursuant to this Agreement, and Supported Interfaces (and any Documentation and help files included within such software), as well as any additional materials that Blackboard may, in its sole discretion, provide, such as corrections, updates and Upgrades. Blackboard shall have no obligation to provide such additional materials, and any such additional materials that it does provide shall be deemed to be part of the Blackboard Software under this Agreement.

2.2 "**Developer Software**" means: (i) software application programs created by the Developer that are designed to operate in combination with the Blackboard Learn™ software that is provided pursuant to the Agreement; and (ii) all documentation for these software application programs; provided that: (a) the software application programs and documentation are authored or created by Developer or on Developer's behalf and that such software programs do not contain intellectual property from the Blackboard Software, and (b) the software application programs do not incorporate any part of the Blackboard Software, other than the connectors into the APIs of the Blackboard Software; or (c) such software applications programs and documentation do not otherwise constitute a Derivative Work of the Blackboard Software.

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

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

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

2.6 "**Supported Interfaces**" means application programming interfaces ("API"), network protocols, data formats, database schemas, and file formats used in the Blackboard Software as described in the Documentation.

2.7 "**Upgrades**" mean the object code versions of the Blackboard Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that has been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

3. OBLIGATIONS

3.1 **General.** Developer shall use the Blackboard Software to develop the Developer Software in a manner and for purposes that are consistent with the Purpose of this Exhibit.

3.2 **Blackboard Obligations.**

3.2.1 Blackboard shall provide Developer with: (a) access to the Developer's Network Information; and (b) one (1) copy of the Blackboard Software, pursuant to the licenses in Section 4 below, together with Documentation to assist in developing the Developer Software.

3.2.2 For thirty (30) days after the Effective Date, Blackboard shall provide web-based technical support, for installation purposes only, to two (2) technical contacts at Developer's location who are the only individuals who may contact Blackboard regarding installation support services. Developer may change its technical contacts as long as Blackboard is informed in writing and the list does not exceed two (2) contact personnel. Such support will be available Monday through Friday from 8:00 AM to 8:00 PM EST, except federal holidays. Except with regard to the foregoing, Blackboard will have no obligation to provide: (a) any support regarding the Blackboard Software, (b) any development tools for, or updates to, the Blackboard Software, and (c) any maintenance or training for the Blackboard Software.

3.3 **Developer Obligations**

3.3.1 Developer agrees and represents that it shall develop the Developer Software in accordance with the Purpose of this Exhibit and to enable simple installation and integration of the Developer Software into the Blackboard Software, as installed by a Customer.

3.3.2 Developer shall provide its standard customer support to Customers using and installing the Developer Software. Developer shall be solely responsible for providing all end-user support for any Developer Software.

3.3.3 Prior to permitting a third party to resell or distribute the Developer Software, Developer shall provide Blackboard a right of first refusal to resell or distribute the Developer Software based upon mutually agreeable terms which shall be no worse than the most favorable terms granted to such third party.

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

3.3.5 The Developer may provide consulting services to third parties relating to the Developer Software, but the Developer shall not use the Blackboard Software licensed to the Developer under this Exhibit to provide consulting services that are related to the Blackboard Software and not the Developer Software.

4. LICENSE

4.1 **Developers' Network Information Grant.** Solely in connection with the Purpose of this Exhibit, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a limited, nonexclusive, nontransferable right and license to download, review and use up to twenty five (25) copies of the Developer's Network Information on the Internet or Intranet server or servers at Developer's site. Developer may use the Developer's Network Information solely in connection with its own internal development purposes in connection with the Purpose of this Schedule. Developer may copy the Developer's Network Information, or any portion thereof, in whole or in part only for the Purpose of this Exhibit.

4.2 **Blackboard Software License Grant.** Solely in connection with the Purpose of this Exhibit and the development of the Developer Software, Blackboard hereby grants to Developer, and Developer hereby accepts from Blackboard, a nontransferable, nonexclusive right and license to use the copy of the Blackboard Software provided to Developer by Blackboard, but only at the address at which Developer provides pursuant to this Exhibit (or other locations, provided that Developer notifies Blackboard in writing and Blackboard does not object within ten (10) days of receiving such notice), and solely for the purposes of: (1) creating the Developer Software at the Designated Server Site; and (2) supporting the Developer Software at the Designated Server Site. No right is granted to distribute all or any portion of the Blackboard Software or the Documentation. In the event that Developer desires to receive a license to use the Blackboard Software other than in connection with development or support of the Developer Software, or on operating system other than the one at the Designated Server Site, such license shall be pursuant to a separate license agreement. Developer may only make one (1) backup copy of the Blackboard Software for its own internal purposes, but otherwise may not copy, duplicate or reproduce the Blackboard Software in any manner.

4.3 **Third Party Software/Content.** Developer acknowledges that the Blackboard Software may utilize software and/or content made available to Blackboard by certain third parties (the "Third Party Software"). Pursuant to its agreements with such third parties, Blackboard hereby grants to Developer a non-exclusive, nontransferable and sublicensable right and license to load and/or operate and use the Third Party Software solely to the extent of the license in Section 4.2.

4.4 Termination of Access to Third Party Software. Blackboard's licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate Developer's access to all or any part of the Third Party Software at any time for any reason without prior notice or liability. Blackboard's licensors and suppliers may change, suspend or discontinue all or any aspect of the Third Party Software, including the availability, without prior notice or liability.

4.5 No Other Rights Granted. Apart from the licenses expressly granted in Sections 4.1 and 4.2, no license or other right is granted by Blackboard to Developer under this Exhibit. Developer shall have no right or access to the source code of the Blackboard Software. Developer shall appoint no resellers, other developers, or sub-distributors or ASPs of the Blackboard Software, and shall not permit any third party to access the Blackboard Software, including, without limitation, any subcontractors for the purpose of subcontracting the development of the Developer Software.

4.6 Nondisclosure and Nonuse. Developer shall (a) disclose Developer's Network Information during the term of this Agreement to only those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Developer's Network Information; and (b) use such Developer's Network Information during the term of this Agreement only for the Purpose set forth in this Agreement. Developer shall treat the Developer's Network Information as strictly confidential, and shall use the same care to prevent disclosure of such information as it uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances.

4.7 Restrictions. Except as may be expressly permitted during the Term of this Agreement in Section 4.2, Developer shall not: (a) modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Blackboard Software or any part thereof, or grant any other person or entity the right to do so or take any action that would assist any other person or entity in doing so (and Developer will promptly notify Blackboard of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify the Blackboard Software); (b) modify, delete, replace, change, prepare derivative works of or otherwise alter any files in the Blackboard Software; (c) loan, rent, lease, give, sublicense, distribute, transfer, publish, disclose, display, or otherwise make available the Blackboard Software, in whole or in part, to any other person or entity except as expressly permitted herein; (d) use the Blackboard Software in connection with the development of any products other than the Developer Software or (e) transmit the Blackboard Software over a network or from one computer to another (other than on a limited basis within Developer's local area network), or upload the Blackboard Software to electronic bulletin boards, web sites, or otherwise distribute them (or any portion), whether electronically, or on tangible media.

5 MARKETING

5.1 License for Marks. Contingent upon the requirements set forth in this Section 5, Blackboard grants to the Developer, for the term of this Exhibit, a limited, nonexclusive, royalty-free license to use the "Blackboard[®]" the "Bb" logo, and "Blackboard Building Blocks[®]", "Blackboard Developer's Network[™]", "Blackboard Developer's Network Catalog", "BbDN", "Blackboard PowerLinks[™]", "Blackboard PowerLinks DevNet" trademarks and trade names, each only in order to show that Developer is a member of the Developer's Network and that the Developer Software is compatible with the Blackboard Software (the "Blackboard Licensed Marks"). Developer grants to Blackboard a limited, nonexclusive, royalty-free license to use the following Marks: (1) the Developer's corporate name and/or trade name, (2) the Developer's corporate logo; and (3) the product name of the Developer Software developed under this Exhibit; each only in order to identify Developer Software that is compatible with the Blackboard Software (the "Developer Licensed Marks"). Collectively, the Blackboard Licensed Marks and the Developer Licensed Marks shall be referred to as the "Licensed Marks". Each of these two licenses is contingent on the requirements that each Party: (a) does not create a unitary composite mark involving a Mark of the other Party without the prior written approval of such other Party; (b) displays symbols and notices clearly and sufficiently, indicating the trademark status and ownership of the other Party's Marks in accordance with applicable trademark law and practice; and (c) uses the other Party's Marks in a manner that is consistent with the Purpose of this Exhibit. In no event shall Developer use the word "Blackboard" in the name of any of its products or services, including, without limitation, the use of "[product] for Blackboard". Each Party acknowledges that its utilization of the Licensed Marks under this Exhibit will not create in it, nor will it represent that it has any right, title or interest in or to such Licensed Marks other than the licenses expressly granted herein. Blackboard may, but is not obligated to, list the Developer Licensed Marks on web sites and product marketing materials associated with the Developer's Network and the Blackboard Building Blocks and Blackboard PowerLinks Programs. Neither Party will do anything to contest or impair the trademark rights of the other Party and will comply with such Party's standard trademark usage guidelines as such Party may provide from time to time.

5.2 Press Releases. Subject to Section 7.3, any news release, public announcement, marketing materials, advertisement or publicity proposed to be released by either Party concerning the activities of either Party in connection with this Exhibit, including the Developer Software, will be subject to the written approval of the other Party prior to release. Any such publicity shall be consistent with the Purpose of this Exhibit and will give due credit to the contribution of each Party.

5.3 Marketing Costs. Any costs of promotion and marketing shall be borne solely by the respective Party, and nothing in this Exhibit shall be interpreted to require promotion of products or services through marketing media forms which either Party normally charges a fee to provide.

5.4 Marketing Materials. Each Party will submit to the other Party for its prior written approval, which shall not be unreasonably withheld, any marketing materials to be used in connection with performing its obligations or rights under, or related to, this Exhibit, including but not limited to business card, website or jewel case design, that incorporates any of the other Party's Marks. Each Party will undertake to respond to any such request for approval within ten (10) business days. Each Party reserves the right to disapprove such marketing materials if it reasonably determines that its Marks are improperly used or if the marketing materials do not accurately represent the business relationship between the Parties or the services or products of the other Party.

5.5 Quality Standards. Each Party agrees that the nature and quality of its products and services supplied in connection with the other Party's Marks shall conform to quality standards communicated in writing by the other Party for use of its Marks. Each Party agrees to supply the other Party, upon request, with a reasonable number of samples of any marketing or other materials publicly disseminated by such Party which utilize the other Party's Marks. Each Party shall comply with all applicable laws, regulations and customs and obtain any required government approvals pertaining to use of the other Party's Marks.

6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Blackboard Intellectual Property. Except as specifically set forth in this Exhibit, no title to or ownership of any portion of the Developer's Network Information or Blackboard Software as well as any other products or services manufactured, sold and/or distributed or otherwise made available by Blackboard, or to any proprietary rights related to those products/services, is transferred pursuant to or by virtue of this Exhibit and all rights and interest to the foregoing shall remain the sole and exclusive property and proprietary information of Blackboard.

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

6.3 Ownership Rights in Derivative Works. All Derivative Works of the Blackboard Software shall be owned exclusively by Blackboard. All Derivative Works shall be deemed to be "works made for hire." To the extent that title to the Derivative Works does not, by operation of law, vest in Blackboard or the Derivative Works are not considered "works made for hire," Developer hereby irrevocably assigns all right, title and interest therein to Blackboard. Blackboard, however, shall grant and hereby grants to Developer a nonexclusive, royalty-free, world-wide, license to use any such Derivative Works for the Purpose set forth in this Exhibit during the Initial Term and any subsequent Renewal Terms. In the event that Blackboard permits Developer in writing to use non-employees to perform the obligations of Developer under this Exhibit, Developer shall take all necessary action to secure on behalf of Blackboard all rights to the Derivative Works from such non-employees.

7. LIMITED WARRANTY

7.1 Blackboard Warranties. Blackboard represents and warrants that: (a) it has authorized the person who has signed this Exhibit for Blackboard to execute and deliver this Exhibit to Developer on behalf of Blackboard; (b) it and/or its suppliers and licensors possess all rights necessary to grant the rights herein; and (c) it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.

7.2 Developer Warranties. Developer represents and warrants: (a) that it has authorized the person who has signed this Exhibit for Developer to execute and deliver this Exhibit to Blackboard on behalf of Developer, (b) the Developer Software shall be developed in a good and workmanlike manner and in compliance with the requirements and Purpose of this Exhibit, and (c) that it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Exhibit.