

BLACKBOARD LEARN DEVELOPER'S NETWORK SCHEDULE

THIS BLACKBOARD LEARN DEVELOPER'S NETWORK 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 AND USE 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. 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 Schedule, 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 Schedule.

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 Schedule 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 Schedule 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 Schedule, 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 Schedule.

4.2 Blackboard Software License Grant. Solely in connection with the Purpose of this Schedule 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 Schedule (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 Schedule. 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 Schedule, 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 Schedule; 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 Schedule. 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 Schedule 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 Schedule, 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 Schedule 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 Schedule 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 Schedule, 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 Schedule, 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 Schedule 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 Schedule, 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 Schedule 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 Schedule, 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 Schedule for Blackboard to execute and deliver this Schedule 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 Schedule.

7.2 Developer Warranties. Developer represents and warrants: (a) that it has authorized the person who has signed this Schedule for Developer to execute and deliver this Schedule 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 Schedule, 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 Schedule.