

# Schoolwires®

## Master Agreement

### Standard Terms and Conditions

These Standard Terms and Conditions apply to and are included as part of each Master Agreement (the “Master Agreement”) between Schoolwires, Inc., a Delaware corporation (“Schoolwires”), and an entity that has entered into a Master Agreement with Schoolwires (“Client”). Capitalized Terms used herein but not otherwise defined are defined or used in the Master Agreement. As used in these Standard Terms and Conditions, the term “Master Agreement” also includes any Supplements or Amendments to the Master Agreement, and, as such, the term “Master Agreement” shall alternatively refer to a Supplement or an Amendment, where and as applicable.

- 1. Licenses or Services.** The Master Agreement lists each of the software licenses, support and/or services to be provided to Client by Schoolwires or a third party (the “Licenses or Services”). Schoolwires or a third party will provide those Licenses or Services to Client to the extent listed in the Master Agreement. Any license or service that may be described in these Standard Terms and Conditions but that is not expressly included as a License or Service in the Master Agreement will not be provided to Client unless separately purchased at additional fees.
- 2. Supplementary Terms.** Some Licenses or Services, or components thereof, may be subject to one or more Supplements. Some Supplements may apply to third party components, while others may apply to the Schoolwires proprietary components, which are provided as part of the Licenses or Services. Supplements have their own terms and conditions or agreements that supplement these Standard Terms and Conditions and the Master Agreement. In the event of a conflict between a Supplement and these Standard Terms and Conditions, or between a Supplement and the remainder of the Master Agreement, the items related to the specific License or Service will control. Otherwise, these Standard Terms and Conditions apply to all Licenses or Services.
- 3. Client Obligations.** During the term of the Master Agreement, Client will have the following obligations:
  - a. Adherence to End User Requirements.** Ensure that the computing systems utilized by Client and its end users meet the required configurations as set forth in the End User Requirements at the URL indicated on the Master Agreement and that the end users maintain such other equipment as may be necessary for the implementation and operation of the Licenses or Services (other than equipment provided by Schoolwires for purposes of Hosting Services as set forth in Section 11 hereof). Schoolwires will have no liability with respect to problems encountered by Client or its end users in using the Licenses or Services in the event that the Client’s or its end users’ computing system does not meet the required system configurations. Schoolwires reserves the right to modify the End User Requirements. The End User Requirements may be modified by Schoolwires from time to time by informing Client that the requirements are changing in an e-mail or other writing sent to the Site Administrator at least thirty (30) days in advance of the effective date of the change (which e-mail or writing may simply refer the Site Administrator to the above URL, which Client agrees to monitor for changes, to review the modified requirements set forth therein). Schoolwires shall have no obligation to provide any separate notice to Client of any such change.
  - b. Marketing References.** Permit Schoolwires to use the name of Client and approved quotes from, and references to, Constituents in marketing Schoolwires to others.
  - c. Surveys.** Permit Schoolwires to survey applicable Constituents of Client regarding the Site, the Licensed Software and related matters. Any such survey will be done in accordance with the Schoolwires Privacy Policy.

- c. **Cooperation.** Client acknowledges that certain services or obligations of Schoolwires may be dependent on Client providing certain data, information, or assistance to Schoolwires. Client agrees that Schoolwires shall not be responsible or in breach of this Agreement for any delay or failure by Schoolwires to fulfill its obligations hereunder to the extent caused by Client's failure to provide timely cooperation reasonably requested by Schoolwires or otherwise set forth in the Master Agreement.
- 4. **Third Parties.** Third party software or services may be utilized by Client in concert with the Licensed Software or the Site, and the Licensed Software or the Site may include components, or refer or link to websites, provided by third parties. Certain third party providers of software, services, or websites which may be utilized by Client may require Client and/or its users to agree to additional or different terms or agreements as a condition to use of such offerings. Unless otherwise expressly provided in the Master Agreement or a Supplement, Schoolwires is not responsible or liable for any third-party software or services or any third party website and, while it may attempt to assist Clients and Constituents in dealing with any third party product, service, or website, it shall have no obligation to do so (unless otherwise specified in a Supplement) and may require Client to contact the third party providing the software, services or website for support or any other issue or problem. In the event that Schoolwires provides any support for any third party software, service or website, Client recognizes and agrees that Schoolwires would be limited to providing only such support that it is provided by the applicable third party for these purposes.
- 5. **Term.** The Master Agreement will become effective and binding on the parties on the earlier of the first date the Master Agreement has been signed by both Schoolwires and the Client or the date specified in the Master Agreement as the "Start Date," and, in the event that the Master Agreement has been signed by the parties before the Start Date, the parties performance obligations shall commence on such Start Date. The "Initial Term" of the Master Agreement shall extend from the Start Date until the "Expiration Date" which is specified in the Master Agreement or, if no Expiration Date is specified, until the end of the period(s) for which fees are specified as being due under the relevant exhibit to the Master Agreement. The Master Agreement will continue in effect from year to year after the Expiration Date (the "Automatic Renewal Period") unless either party provides at least 60 days prior written notice of its desire not to renew, in which event the Master Agreement will terminate at the end of the then current period. In the event that Schoolwires changes the pricing set forth in the Master Agreement for periods beyond the Initial Term, or in the event that an annual fee is otherwise increased pursuant to Section 6.f below, it will give Client at least 90 days written notice of the new pricing prior to the end of the then current annual or other contract period. Unless Client provides notice of nonrenewal as set forth above, the new pricing will take effect at the beginning of the next term. The Initial Term, along with any Automatic Renewal Period and any other renewal periods mutually agreed upon by the parties in an Amendment hereto, constitutes the "Term" of this Master Agreement. If the Master Agreement is terminated prior to the natural expiration of its Term due to an uncured breach or as otherwise authorized hereunder, then the Term shall be deemed reduced accordingly.
- 6. **Prices and Payment Terms.** This section applies to all Clients except that, for those Clients which (i) have purchased Licenses and/or Services from an entity authorized by Schoolwires to receive payment from Clients for certain of the Schoolwires products and/or services (an "Authorized Agent", such as an ESA or reseller); and (ii) are obligated to make payment to such Authorized Agent for specified Licenses and/or Services as confirmed in writing by the terms of Client's Master Agreement with Schoolwires and its agreement with the Authorized Agent, the Client will be invoiced by and shall make payment to the Authorized Agent for the applicable Licenses and Services and, where certain payments are owed to both the Authorized Agent and Schoolwires, this Section 6 shall apply to Client's payment obligations to Schoolwires.
  - a. **Prices.** The Master Agreement describes the amounts payable to Schoolwires for Licenses and Services.



- b. Invoices.** An invoice for the Commencement Charges will be sent to Client following receipt of the signed Master Agreement and shall be due within 30 days from the Start Date, except that, in any instance in which the Master Agreement is signed by both parties after the Start Date, the Commencement Charges shall be due within 30 days from the date of invoice. An invoice for any and all Subscription Fees for each renewal or other period during the Term will be sent to Client no earlier than 60 days prior to the commencement of such period and shall be due within 30 days from the first day of such period. Invoices for any other amounts due will be sent at the time specified for the related item or Service in the Master Agreement or purchase order or, if no date is specified, following delivery of the item or Service for which payment is due. Unless a due date is otherwise specified above or in a Master Agreement, all invoices are due no later than 30 days from the date of the invoice.
- c. Ancillary Costs.** Except as otherwise provided in the Master Agreement, any ancillary costs incurred by Schoolwires or its employees or agents related to the Licenses or Services will be billed separately to Client. For example, if Schoolwires provides training services at Client's location, Client will be responsible for the reasonable costs of travel, accommodations and meals for the individuals providing those services.
- d. Late Fees and Interest.** In addition to any other remedy provided herein, a one-time late fee of 2% of the amount otherwise due will be payable with respect to any amounts not paid within five days of the date due. In addition, interest will be charged on any payment that is past-due and shall be based on a per annum rate equal to the lesser of the prime rate published by The Wall Street Journal at the time in question plus 2% or the highest rate permitted by applicable law.
- e. Taxes.** Client will be responsible for the payment of all taxes, including, but not limited to, sales tax, business privilege tax, or gross receipts tax, now or hereinafter imposed by any governmental body or agency with respect to the Master Agreement, the Licenses or Services or the payments due from Client, and will pay all penalties and interest imposed with respect to such taxes and all attorneys' fees incurred by Schoolwires in connection with the payment of or dispute regarding such taxes. Client will not be responsible for any net income tax or capital stock tax imposed on Schoolwires. Fees set forth in the Master Agreement do not include taxes or duties. If Schoolwires is required to pay or collect any federal, state, or local tax or duty on any fees charged to Client or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on the Schoolwires net income, then such taxes and/or duties will be billed to and paid by Client immediately upon receipt of the Schoolwires invoice for the taxes or duties charged.
- f. Price Protection Guarantee.**

  - 1. Except for Master Agreements which cover a multi-year term and explicitly specify the fees due for each year, Schoolwires may increase fees (whether Hosting Fees, Subscription Fees or other fees) prior to any renewal or extension period during the Term (including any Automatic Renewal Period), but any such increase in fees for the same level of service will not exceed the greater of: (i) 5% of the non-discounted fees for the immediately preceding year; or (ii) a percentage amount no greater than the increase in the U.S. Department of Labor's Consumer Price Index for all Urban Consumers, U.S. City Average ("CPI-U"). In each instance, the CPI-U will be measured over a twelve (12) month period which ends on the month which is six (6) months prior to the first month of the contract year for which the increase would apply. Changes in the Licenses or Services being provided may result in other changes to fees.
  - 2. For Master Agreements which cover a multi-year term and specify the fees due for each year, any right of Schoolwires to increase fees during the multi-year term shall be as specified by the provisions of the Master Agreement.
  - 3. Except as otherwise expressly provided above, the right to increase fees as set forth in this provision shall supersede any conflicting agreements or Amendments entered into by Schoolwires prior to the effective date of this version of these Standard Terms and Conditions.

**7. Definitions.** As used in the Master Agreement, the following terms will have the following meanings:

**“Amendment.”** A duly executed written document, signed by each party, which expressly modifies or supplements these Standard Terms and Conditions or the Master Agreement and/or provides additional software, services or support to Client. An Amendment is also referred to at times as an Addendum.

**“Application Server.”** The computer(s) used by Schoolwires for the purpose of hosting the Licensed Software and/or the Site for access over the Internet by Clients.

**“Automatic Renewal Period”** shall have the meaning prescribed in Section 5.

**“Commencement Charges.”** Any amounts due to Schoolwires for (i) any and all installation, setup, training, implementation and any other Licenses or Services to be provided in connection with making the Site and/or the Licensed Software available initially to Client, (ii) any and all Subscription Fees due for the initial annual or other period of the Term; and (iii) any and all Services or other fees identified in the Master Agreement as due during the Initial Term.

**“Constituents.”** A Client’s administrators, teachers, parents, students, Site visitors, community members and any other individuals authorized to access or utilize the Licenses or Services.

**“Hosting Fee.”** Annual or prorated (partial year) fee for the hosting of Licensed Software and/or the Site by Schoolwires, as and to the extent a distinct Hosting Fee is specified in the Master Agreement. In some instances, the Hosting Fee may be bundled with other Subscription Fees.

**“Hosting Services.”** The services, internet access, and equipment provided by Schoolwires in order to remotely operate and maintain the Site and the Licensed Software for access over the internet. Schoolwires Hosting Services are web hosting services that host a school’s or library’s website.

**“Initial Term”** shall have the meaning prescribed in Section 5.

**“Licensed Software.”** The software to which a license is granted by Schoolwires to Client. If a Site is included in the Licenses and Services provided in the Master Agreement, then the software required to utilize the Site is included as Licensed Software. The Licensed Software includes: (a) the unmodified software first made available to Client hereunder, as such Licensed Software may be updated from time to time by any Software Enhancements and/or Upgrades thereto; and (b) all documentation, electronic or printed, made generally available by Schoolwires along with the Licensed Software.

**“Licenses.”** The Licensed Software which is licensed to Client to the extent specified in the Master Agreement.

**“Materially Limit.”** Client’s use of the Site or Licensed Software is Materially Limited if, due to a defect in the Licensed Software or due to the repeated or prolonged unavailability of the Application Server, Client is unable to use the Site or the Licensed Software for the main purpose for which it is intended to be used.

**“Privacy Policy.”** The policy addressing the collection, use and sharing of personal information which is posted on the Site or within the Licensed Software as further specified in Section 16.

**“Proprietary Rights.”** Any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, knowhow, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property.

**“Services.”** The professional services, Hosting Services and/or Software Support to be provided to Client by Schoolwires to the extent specified in the Master Agreement.

**“Services Credits.”** Pre-purchased credits that can be applied to the purchase of many Schoolwires professional services. Services Credits must be used within 12 months of purchase or they will expire without any right to refund.



**"Site."** A website, social learning environment or other web-based environment or program ("environment") which is enabled, built upon and/or powered by one or more Licensed Software programs. Unless otherwise specified in a Supplement, these Licensed Software programs serve as the technology framework in which a Client may create and publish content into the applicable environment.

**"Site Administrator."** Individual(s) identified by the Client with overall responsibility for developing and maintaining the Site and Site content.

**"Software Enhancements" (also, "Enhancements").** Modifications to the Licensed Software made available to Client by Schoolwires during the Term hereof, where such modifications are designed to correct faults, improve performance, improve or add features, or adapt to a changed computing environment and which are included as part of the Licensed Software and not separately priced, packaged or marketed.

**"Software Support" (also, "Support").** The following support made available to Client by Schoolwires for the Licensed Software: (i) Software Enhancements and Upgrades made available to Client during the Term; and (ii) the additional support services provided as part of the applicable Support Package selected by Client as described in Section 8.

**"Start Date"** shall have the meaning prescribed in Section 5.

**"Subscription Fees."** Any fees which cover an annual or partial year period as specified in the Master Agreement. Subscription Fees could include Subscription License Fees, subscription-based Hosting Fees and/or other periodic fees which may be bundled together or priced separately (as applicable), and also include any or all such fees which are due for any renewal period.

**"Subscription License."** A license granted to Client to access and use the Licensed Software on an annual or partial year basis as specified in the Master Agreement.

**"Subscription License Fees."** The fees for each Subscription License which are specified in Exhibit A of the Master Agreement under the "Licensed Software" heading and which cover the annual or partial year period as specified in the Master Agreement. In some instances, Subscription License Fees may be bundled with other Subscription Fees.

**"Supplement."** A set of supplementary terms and conditions that may be attached as an Exhibit to the Master Agreement or otherwise incorporated into the Master Agreement which describes rights, restrictions and/or limitations associated with certain software or services provided by a third party or by Schoolwires (as applicable). Unless otherwise expressly specified in a Supplement, Schoolwires shall have no responsibility or liability with respect to any third party software or service.

**"Support Package."** A Support Package is comprised of the Support services provided as part of the designated package purchased by Client under a Master Agreement.

**"Term"** shall have the meaning prescribed in Section 5.

**"Terms of Use."** Those terms which govern use of the Site and the Licensed Software and which are posted thereon as further specified in Section 16.

**"Upgrade."** A new version of the Licensed Software developed to replace an older version of the same Licensed Software and which is made available to Client by Schoolwires during the Term hereof. An Upgrade is designated with a higher version number. For avoidance of doubt, an Upgrade does not include any software separately priced, packaged or marketed by Schoolwires, even if such software is similar to the Licensed Software. By way of example, if Client purchases a license to use a particular package or bundle of features of Licensed Software (a "Package"), then Client shall be entitled to Upgrades for that Package without paying additional fees therefor but not to Upgrades to or for a different Package which may have incremental fees associated therewith.

8. **Support Packages.** The Master Agreement indicates the Support Package that Client has chosen to purchase or which is included in the Client's Subscription Fees. A description of what is included in Client's Support Package may be



specified in the Master Agreement and/or may otherwise be available at the URL indicated on the Master Agreement. The Support Packages may change at the discretion of Schoolwires by posting the modifications at the above URL and, where the changes apply to a Support Package then in effect for a Client, by informing Client that the Support Package is changing in an e-mail or other writing to the Site Administrator at least thirty (30) days in advance of the effective date of the change (which e-mail or writing may simply refer the Site Administrator to the above URL, which Client agrees to monitor for changes, to review the modified Support Package). Schoolwires will not materially reduce the level of Support described as included within Client's Support Package for periods during which Client is then committed to purchase such Support Package as long as Schoolwires continues to provide such level of Support to similarly situated clients as part of the Support Package purchased by Client. Schoolwires shall have no obligation to provide any separate notice to Client of any such change.

9. **Professional Services.** The Master Agreement indicates the professional services that Client has chosen to purchase. A description of the services purchased by Client may be specified in the Master Agreement and/or may otherwise be available at the URL indicated on the Master Agreement and/or as part of the Master Agreement. The services descriptions may change at the discretion of Schoolwires by posting the modifications at the above URL, provided that Schoolwires shall not materially reduce the scope of any professional services which Client has previously purchased. Where a change to a professional services description applies to services purchased by, but not completed for, Client, Schoolwires shall inform Client of the change in an e-mail or other writing to the Site Administrator at least thirty (30) days in advance of the effective date of the change (which e-mail or writing may simply refer the Site Administrator to the above URL, which Client agrees to monitor for changes, to review the modified training or professional services description). Schoolwires shall have no obligation to provide any separate notice to Client or any such change.

#### 10. Grant of Licenses.

- a. **Subscription License Grant.** During the Term of the Master Agreement, Schoolwires grants to Client the non-exclusive, non-transferable right and license under the Proprietary Rights of Schoolwires and its licensors to access and execute the Licensed Software on the Application Server and transmit information from the Licensed Software and/or the Site to Client or a Constituent through the Internet. The Licensed Software may be used only for Client-related matters. Client will not permit the Licensed Software or the Site to be used for other purposes. Client will not have the right to relicense or sell rights to access or use the Licensed Software or the Site or to transfer or assign rights to access or use the Licensed Software or the Site, except as expressly provided herein. Client may not disassemble, decompile or reverse engineer the Licensed Software, nor may it use the Licensed Software in a service bureau environment or otherwise operate the Licensed Software for the benefit of a third party. All rights not expressly granted to Client herein are expressly reserved by Schoolwires.
- b. **Ownership.** Title to the Proprietary Rights embodied in the Licenses and Services will remain in and be the sole and exclusive property of Schoolwires and its licensors. Client will not alter, share, change or remove any proprietary notices, code, system imagery or confidentiality legends placed on or contained within the Licensed Software. Client shall not alter, change or remove the "powered by Schoolwires" footer placed on the Licensed Software or the Site and shall display such footer in a manner which makes it clearly visible to the users.

#### 11. Hosting Services.

- a. **Hosting.** During the term of the Master Agreement, Schoolwires will (i) install, operate and maintain the Site and/or the Licensed Software on the Application Server and (ii) utilize commercially reasonable efforts to provide to Client and its Constituents access to the Application Server via the Internet 24 hours per day, seven days per week, except for routine or required maintenance or other outages outside the control of Schoolwires, sufficient for Client to exercise its license rights. Schoolwires will monitor the Application Server and undertake commercially reasonable efforts to restore promptly all failures of service at no additional charge to Client. Schoolwires may install Upgrades, Software Enhancements, "bug fix releases" and other updates to the Licensed Software in its sole discretion and Client recognizes and agrees that, due to the nature of a vendor-hosted technology environment, it shall be required to utilize the version of the Licensed Software which is then generally hosted by Schoolwires for its clients. Schoolwires will have no responsibility for providing hardware, software or services needed to access the Internet from Client's location, all of which will be provided by Client or its Constituents.



- b. **CPU Usage, Storage, Transfer Rate and Other Usage Limitations.** Depending on the particular software component at issue, Client's use of the Licensed Software and the Site is limited to a maximum number of gigabytes of storage, number of mbps of bandwidth, number of users, number of Sites and/or other usage restrictions as specified in the Master Agreement and/or an applicable Supplement. In addition, to avoid performance problems with the Application Server, Client shall not use excessive amounts of CPU processing or disk space, post abusive content, or have an excessive amount of transfer rate usage, sometimes also referred to as "bandwidth," on any Application Server, as such excessive or abusive use is determined by Schoolwires in its sole discretion (where a quantified bandwidth limitation is specified in the Master Agreement for a particular software component or Site, such limitation shall define permitted bandwidth usage with respect to that software component or Site). If any limitation or restriction is reached, Schoolwires may take actions to prevent Client from exceeding the applicable restriction or limitation (such as precluding the creation of any additional content or webpages). Any violation of the obligations set forth in this provision shall be a material breach of this Agreement by Client and shall entitle Schoolwires to immediately pursue all available remedies and corrective actions, including disconnection or discontinuance of any and all Licenses or Services, taking down offensive or abuse content on a Site, assessment of additional charges and/or termination of the Master Agreement.

## 12. Warranties and Disclaimers.

- a. **Limited Warranty—Licensed Software.** During the Term of the Master Agreement, and except as otherwise expressly provided below, Schoolwires warrants only to Client that the then-current version of the Licensed Software shall perform in all material respects in accordance with the accompanying documentation under normal use. If the Licensed Software fails to perform in all material respects in accordance with this warranty (resulting in a "defect") and the Client promptly notifies Schoolwires of such defect, then Schoolwires will exert reasonable efforts to correct, or implement a commercially practicable workaround for, the defect. If, after Client's notification, Schoolwires is unable to correct or implement a commercially practicable workaround for the defect within a commercially reasonable period of time (which may vary depending on the nature and severity of the defect), then Schoolwires shall be in breach of this warranty. In such event, then CLIENT'S SOLE AND EXCLUSIVE REMEDY AND SCHOOLWIRES SOLE AND EXCLUSIVE LIABILITY FOR BREACH OF THIS WARRANTY WILL BE REFUND OF ANY FEES ATTRIBUTABLE TO ANY TIME CLIENT'S USE OF THE LICENSED SOFTWARE IS MATERIALLY LIMITED, SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 12.d. Because the foregoing Limited Warranty relates to items intended to be used on a regular (typically daily) basis, no action for breach of such Limited Warranty may be commenced unless a claim in writing relating thereto is made by Client within 30 days after the alleged breach.
- b. **Proprietary Rights Warranty and Indemnification.** Schoolwires represents and warrants that Schoolwires has the authority to license the rights which are granted herein. Schoolwires will defend, indemnify, and hold Client harmless from claim or damage arising out of (i) the lack of right or authority to license the rights granted herein, or (ii) infringement of any U.S. copyright, trade secret, or patent known to Schoolwires as a result solely of the use of the Licensed Software provided by Schoolwires; provided, however, that Schoolwires is promptly notified in writing of any such suit or claim, and further provided that Client permits Schoolwires to defend, compromise, or settle same, and provides all available information and reasonable assistance to enable Schoolwires to do so. The foregoing is exclusive and states the entire liability of Schoolwires with respect to infringements or misappropriation of any Proprietary Rights by Schoolwires.
- c. **Disclaimers.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES PROVIDED ABOVE, NEITHER SCHOOLWIRES NOR ANY OF ITS SUPPLIERS MAKES ANY WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AND SCHOOLWIRES AND ITS SUPPLIERS SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. NEITHER SCHOOLWIRES NOR ITS SUPPLIERS WARRANTS OR REPRESENTS THAT ACCESS TO OR USE OF THE LICENSED SOFTWARE OR ANY SERVICES WILL BE UNINTERRUPTED, IN COMPLIANCE WITH ANY REQUIREMENTS OR CRITERIA (INCLUDING THOSE IN ANY OF SCHOOLWIRES MARKETING MATERIALS OR PRODUCT BRANDING), OR FREE FROM ERRORS OR DEFECTS. THE LICENSED SOFTWARE AND SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE



INTERNET AND ELECTRONIC COMMUNICATIONS AND NEITHER SCHOOLWIRES NOR ITS SUPPLIERS ARE RESPONSIBLE FOR ANY DELAYS, FAILURES, OR PROBLEMS. WHILE SCHOOLWIRES MAY CHOOSE TO PROVIDE CERTAIN SUPPORT FOR THIRD PARTY SOFTWARE, SERVICES AND WEBSITES ("THIRD PARTY PRODUCTS") PURSUANT TO THE TERMS OF SECTION 4 ABOVE, SCHOOLWIRES DISCLAIMS ALL WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT) FOR ALL THIRD PARTY PRODUCTS. IN ADDITION, WHERE A LICENSE OR SUBSCRIPTION TO A COMPONENT OF LICENSED SOFTWARE IS PROVIDED TO CLIENT AT NO CHARGE, THEN SUCH COMPONENT IS MADE AVAILABLE TO CLIENT ON AN "AS-IS" BASIS WITHOUT ANY WARRANTIES WHATSOEVER (INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT).

- d. **Limitation of Liability.** INDEPENDENT OF THE FOREGOING PROVISIONS, IN NO EVENT AND UNDER NO LEGAL THEORY, INCLUDING TORT OR CONTRACT, SHALL SCHOOLWIRES OR ANY OF ITS SUPPLIERS BE LIABLE TO CLIENT OR ANY CONSTITUENT OR OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOSS OF GOODWILL OR REPUTATION, WORK STOPPAGE, COMPUTER MALFUNCTION, OR ANY OTHER KIND OF COMMERCIAL OR PERSONAL DAMAGES, EVEN IF SCHOOLWIRES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SCHOOLWIRES MAXIMUM LIABILITY FOR ACTUAL DAMAGES ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT FOR ANY CAUSE(S) WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION(S), EXCEED IN THE AGGREGATE THE SUBSCRIPTION LICENSE FEES PAID TO SCHOOLWIRES FOR THE INITIAL ANNUAL PERIOD DURING THE TERM FOR THE COMPONENT OF LICENSED SOFTWARE GIVING RISE TO THE LIABILITY. WHERE A LICENSE OR SUBSCRIPTION TO A COMPONENT OF LICENSED SOFTWARE IS PROVIDED TO CLIENT AT NO CHARGE, THEN SCHOOLWIRES DISCLAIMS ALL LIABILITY FOR ANY DAMAGES WHATSOEVER WHICH MAY ARISE OUT OF OR RELATE TO CLIENT'S USE OF SUCH COMPONENT.
- e. **Limitation of Warranties.** Client agrees that Schoolwires has made no agreements, representations or warranties other than those expressly set forth in the Master Agreement.

### 13. Indemnity.

- a. **Indemnification of Client for Posting of Certain Content by Schoolwires.** The Schoolwires employees are not permitted to post unauthorized materials on the Site or in any Licensed Software. Client is responsible for monitoring the Site and the Licensed Software on a regular basis to be certain that it does not contain unauthorized material. In the event that Client discovers any materials that it believes were posted by an employee of Schoolwires and that it believes should be removed from the Site or the Licensed Software, it will notify Schoolwires as soon as possible and in any event within one business day of discovery. In the event unauthorized materials were posted by an employee of Schoolwires, then Schoolwires agrees to indemnify, defend and hold harmless Client (and its directors, officers, and employees) from and against any and all losses, damages, expenses (including court costs, reasonable attorneys' fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities or obligations, directly resulting from the posting of such unauthorized materials by an employee of Schoolwires (except to the extent that such claims arise out of or result solely from the negligence or willful misconduct of Client, its employees or agents or the failure of Client to comply with any covenant, provision or agreement of Client contained herein).
- b. **Indemnification of Schoolwires for Posting of Content by Anyone Other Than Schoolwires.** CLIENT ACKNOWLEDGES THAT PERSONS OTHER THAN SCHOOLWIRES EMPLOYEES, PARTICULARLY STUDENTS, MAY POST INAPPROPRIATE MATERIAL ON THE SITE OR IN THE LICENSED SOFTWARE OR INTERFERE WITH THE PROPER FUNCTIONING OF THE SITE OR THE LICENSED SOFTWARE, E.G., "HACK" THE SITE OR LICENSED SOFTWARE, AND THAT IT MAY BE DIFFICULT TO DETERMINE PRECISELY WHO TOOK SUCH ACTIONS OR WHEN THEY WERE TAKEN. CLIENT IS RESPONSIBLE FOR MONITORING THE SITE AND/OR ITS LICENSED SOFTWARE ON A REGULAR BASIS TO BE CERTAIN THAT THEY DO NOT CONTAIN INAPPROPRIATE MATERIAL AND ARE FUNCTIONING PROPERLY. IN THE EVENT CLIENT DISCOVERS ANY MATERIALS THAT SHOULD BE REMOVED FROM THE SITE OR THE LICENSED SOFTWARE, IT WILL DO SO PROMPTLY OR, IF IT CANNOT DO SO, WILL NOTIFY SCHOOLWIRES IMMEDIATELY. Client agrees to indemnify, defend and hold harmless Schoolwires (and its directors, officers, employees, affiliates,



successors and assigns) from and against any and all losses, damages (including but not limited to incidental and consequential damages), expenses (including court costs, reasonable attorneys' fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities or obligations, related to, caused by, arising from or on account of the activities of Client or any Constituent relating to any content posted on the Site or in any Licensed Software by anyone other than a Schoolwires employee.

#### 14. Termination.

- a. **Breach.** In the event of a breach of the Master Agreement, other than a payment breach, the Master Agreement may be terminated by the non-breaching party upon 30 days advance written notice to the breaching party setting forth the particulars of the breach of the Master Agreement. Such termination will not take effect and the Master Agreement will remain in full force provided the breaching party cures such breach within such 30-day period. In the event such cure reasonably cannot be accomplished within 30 days but the breaching party has initiated such cure within 15 days of receipt of notice of breach and diligently and continuously pursues such cure, the termination will not take effect if the breach is cured within 60 days of such notice.
- b. **Payment Breach.** The Master Agreement may be terminated immediately, at the sole election of Schoolwires, in the event that Client fails to make any payment required to be made by Client, where such failure continues for 10 days after Client's receipt of notice of nonpayment. Upon such termination by Schoolwires, then all future fees that would otherwise have become due during the remainder of the Term shall immediately become due in accordance with the "acceleration of fees" provisions of Section 14.c. Prior to exercising the termination right authorized above, and in addition to pursuing any other available rights and remedies, Schoolwires may, in its sole discretion and without additional notice to Client, suspend performance of any and all Services provided to Client (including disabling Client's use of the Licensed Software and/or Site) until and to the extent that Schoolwires determines (in its sole discretion) to resume performance of some or all of the suspended Services or to terminate the Master Agreement as authorized above.
- c. **Acceleration of Fees.** Client understands and agrees that it has no termination for convenience right under this Master Agreement and that it is assuming a committed obligation to pay for all fees due during the entirety of the Initial Term and, thereafter, for each Auto-Renewal Period effectuated, in accordance with Section 5 and each other renewal period agreed to by the parties. In the event that Client attempts or purports to terminate this Master Agreement prior to the expiration of any such committed period, then, in addition to any other remedies available at law or in equity, all future payment obligations that would otherwise have become due for any and all remaining periods during the Term shall immediately and automatically accelerate and become due and payable to Schoolwires in full (with the parties hereby agreeing that these payments are not intended to be, and should not be considered, a penalty, but rather are intended to result in Schoolwires receiving the full economic value of the contract as committed to by Client).
- d. **Change of Terms.** In the event that Schoolwires notifies Client of a material change in these Standard Terms and Conditions pursuant to Section 22 and Client does not wish to accept such change, then Client may, as its sole remedy, notify Schoolwires within 60 days of receipt of notice of such change that the Master Agreement will terminate 30 days after the date of the termination notice from Client unless Schoolwires notifies Client that such change shall not apply to Client. If Schoolwires does not notify Client that such change shall not apply to Client, then the Master Agreement will terminate at the end of such 30-day period. Following any such termination, Schoolwires will refund to Client the portion of any fees previously paid by Client that are attributable to the period following such termination and Client will pay to Schoolwires any fees attributable to the period prior to such termination that have not yet been paid. This provision shall not apply to any terms herein which specify that changes to a service, requirement or other item may be made by informing the Site Administrator of the modifications (including by referring to a specified URL) and Client shall have no termination right in connection with any such modified terms posted therein.
- e. **Survival of Provisions.** The following obligations will survive the expiration or termination of the Master Agreement: (i) any and all warranty disclaimers, limitations of liability and indemnities granted by either party



herein, (ii) any covenant granted herein for the purpose of determining ownership of, or protecting, the Proprietary Rights, including without limitation, the confidential information of either party, or any remedy for breach thereof, and (iii) the payment of taxes, duties, or any money to Schoolwires.

- 15. Content and Related Ownership Rights.** For purposes of determining ownership rights hereunder, “content” shall mean words (i.e., text), pictures, images or sounds which are intended to be, or are, posted on the Licensed Software or the Site. All Proprietary Rights in and to any content developed solely and independently by Client shall be owned by Client, except that any such content which is a derivative work of any content owned by Schoolwires shall be owned by Schoolwires. All Proprietary Rights in and to any content developed solely and independently by Schoolwires shall be owned by Schoolwires, except that any such content which is a derivative work of any content owned by Client shall be owned by Client. All Proprietary Rights in and to any content developed jointly by the parties shall be owned in its entirety by Schoolwires, but Client shall have a non-exclusive, non-transferable license to access, reproduce and use such content solely to support its internal operations (including the right to post such content on any of Client’s websites) for the Term of the Master Agreement. Without limiting any rights in content as described above, Schoolwires shall own all Proprietary Rights in the design or layout of any custom template, website “skin” (including the “look and feel” of the resulting Site) or other deliverable developed for Client by Schoolwires. In this regard, the fees paid by Client for the development of any custom template, “skin” or other deliverable are in exchange for Client’s right to use (as opposed to own) such intellectual property pursuant to the license rights granted in Section 10. For the avoidance of doubt, all Proprietary Rights in and to the architecture, technological framework, software or other intellectual property related to the Site and the Licensed Software, and any derivative work of any such intellectual property (whether developed by Client or Schoolwires or any authorized third party) shall be owned exclusively by Schoolwires. Client hereby assigns to Schoolwires all right, title and interest in and to all works described as owned by Schoolwires above, including all derivative works thereto and all intellectual property rights therein, and further agrees to cooperate with Schoolwires and execute any and all documents necessary to fully effectuate such ownership.
- 16. Terms of Use and Privacy Policy.** Schoolwires will provide access to its Terms of Use and Privacy Policy on the Site or in the Licensed Software and may change those terms from time to time. By signing the Master Agreement, Client represents that it has reviewed and accepted the then-current version of such terms. Client shall not remove, disable, impede access to or otherwise modify the Terms of Use and/or Privacy Policy. If it does so, then in addition to any other remedies available to Schoolwires, Client hereby agrees to indemnify, defend and hold Schoolwires harmless from and against any and all losses, damages, expenses, suits, actions, claims (including claims asserted by third parties), penalties, liabilities or obligations which, by the express terms of the Privacy Policy and/or Terms of Use, are prevented, prohibited, limited or otherwise addressed.
- 17. Notices.** All notices given or made in connection with the Master Agreement will be in writing. Delivery of written notices will be effective: (i) on the second business day after the date of mailing, if delivered by registered or certified mail, postage prepaid, (ii) upon delivery to the Site Administrator or a senior manager of the recipient, if sent by hand delivery, (iii) upon delivery, if sent by prepaid courier, with a record of receipt, (iv) on the next day after the date of dispatch, if sent by facsimile or telecopy (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested) or (v) by email to the Site Administrator or a senior manager of the recipient provided that there is reasonable evidence that the e-mail was successfully delivered. All deliveries will be made to the addresses set forth in the Master Agreement. Any party may change the address to which notices to it (or copies of such notices) will be addressed by giving notice of that change to the other party in accordance with the requirements of this section; provided, however, that a party may also notify the other party of a change of address by sending an e-mail sent to a senior manager of the other party (with respect to Client, a senior manager shall include the Site Administrator and, with respect to Schoolwires, a senior manager shall be any officer holding the title of Vice President or higher) where there is reasonable evidence that the e-mail was successfully delivered. Notwithstanding the foregoing: (a) any notice of termination of the Master Agreement must be sent by registered or certified mail; and (b) any provision of these Standard Terms and Conditions which allows for notice of a change in a requirement, service description or other item by sending an e-mail or written notice to the Site Administrator (which notice may refer to a specified URL for details), or which permits notice of a change of these Standard Terms and Conditions as authorized



under Section 22, shall not require adherence to the delivery requirement of this provision but, instead, shall be deemed delivered when sent or posted by Schoolwires (as applicable).

- 18. Assignment.** The Master Agreement and all the rights and powers granted by the Master Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Client will not assign the Master Agreement or any right or interest under the Master Agreement, nor delegate any work or obligation to be performed under the Master Agreement, without prior written consent from Schoolwires. Any attempted assignment or delegation in contravention of this section will be void and ineffective.
- 19. Governing Law.** This Master Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws doctrines.
- 20. Disputes.** In the event of any dispute between the parties arising out of or relating to this Agreement, either party may notify the other party in writing of the dispute and the parties shall first attempt to resolve the dispute amicably, promptly and in good faith through direct discussions between senior managers of each party. In the event that the parties are unable to resolve a dispute in an amicable manner within thirty (30) days from the provision of written notice thereof (or such longer period as the parties may agree to in writing), then to the extent that either party elects to pursue legal action against the other party, the parties agree to submit to the exclusive jurisdiction of, and venue in, the State or Federal courts in Centre County, Pennsylvania to so resolve the dispute or otherwise interpret this Agreement.
- 21. Relationship of Parties.** The relationship of Schoolwires and Client is that of independent contractors. Neither Schoolwires nor Client will have any right or authority to bind the other party or to assume or create any obligation or responsibility, expressed or implied, on behalf of the other party, or in the other party's name.
- 22. Amendment and Waiver; Changes to Terms.** To be effective, any Amendment, supplement or waiver under the Master Agreement must be in writing and signed by authorized representatives of both parties, except as otherwise provided in this Section 22. Neither the failure of either party to exercise any right, power or remedy provided under the Master Agreement or to insist upon compliance by any other party with its obligations under the Master Agreement, nor any custom or practice of the parties at variance with the terms of the Master Agreement, will constitute a waiver by such party of its right to exercise any such right, power or remedy or to demand such compliance. Schoolwires may change these Standard Terms and Conditions, as well as the terms of any Supplement, or details related to its software or services at any time. Schoolwires may elect to post revised versions of the Standard Terms and Conditions or a Supplement at the applicable URL indicated on the Master Agreement. As to changes in these Standard Terms and Conditions or any Supplement, Schoolwires will give Client at least 60 days' notice of such change (where such notice may point Client to the website address noted above, or its successor location on the web, to review the revised documents). As to Client, such change will take effect at the end of the 60 day notice period except as provided in Section 14.d. In addition to the above, changes that increase the software or services provided or that do not materially diminish the Licenses or Services may be made by Schoolwires at any time. Furthermore, the obligation to provide notice to Client shall not apply to changes to a service, requirement or other item which may be made by informing the Site Administrator of the modifications (including by referring to a specified URL) to the extent that this process for informing Client of such changes is specified in the applicable provision of these Standard Terms and Conditions.
- 23. Entire Agreement.** The Master Agreement, including these Standard Terms and Conditions and the Terms of Use and Privacy Policy, set forth all of the promises, covenants, agreements, conditions and undertakings between the parties with respect to the subject matter thereof. They supersede all prior or contemporaneous agreements and understandings, negotiations, inducements or conditions, express or implied, oral or written, between the parties including, without limitation, any purchase order issued by Client whether dated before the date of the Master Agreement or, except as otherwise provided in Section 24, any purchase order dated after the date of the Master Agreement.
- 24. Purchase Orders.** A Client purchase order referencing a particular Master Agreement previously entered into between the parties may be accepted by Schoolwires as an Amendment to such Master Agreement if it is for the purchase of additional professional services (purchase orders will not be accepted for the purchase of any Licenses or for the

provision of any Hosting Services), provided that the referenced Master Agreement must still be in effect at the time that the purchase order is issued and, provided, further, that any terms and conditions accompanying the purchase order shall have no force or effect. A purchase order shall be deemed accepted by Schoolwires to the extent that Schoolwires issues an invoice pursuant thereto and delivers the applicable Services to Client. All professional services acquired through a purchase order in accordance with the above shall be governed solely by these Standard Terms and Conditions.

25. **Third-Party Beneficiaries.** No person other than the parties hereto will be a third-party beneficiary of the Master Agreement or have any rights in connection therewith except to the extent expressly provided in these Standard Terms and Conditions.
26. **Export Controls.** Client agrees to comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities, and not to export or re-export the Licensed Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals.
27. **Force Majeure.** Neither party shall be liable for any delay or nonperformance of any provision of this Agreement caused by one or more conditions beyond the reasonable control of the performing party, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. However, the party whose performance is delayed or otherwise impacted shall use reasonable commercial efforts to notify the other party of such delay or impact and to minimize its effect.
28. **Transition Matters.** These Standard Terms and Conditions apply to all Master Agreements. To the extent that any Client previously entered into an agreement with Schoolwires entitled a "Services Agreement", these Standard Terms and Conditions apply to each such Services Agreement (including any Amendments or supplements thereto) as well, and references to "Master Agreement" shall also be deemed to include any prior Services Agreement.
29. **Confidential Information.** Confidential Information is non-public information of a party which is provided to the other party hereunder and which is: (i) in good faith designated in writing as confidential; or (ii) of a type which should be recognized in good faith by a commercially reasonable party as confidential; and, in either case (iii) maintained as confidential by the disclosing party. A party receiving Confidential Information may use it only for the purposes for which it was provided and may not disclose it to any third party unless such third party has a need to know in order to perform certain services or obligations for the benefit of the recipient and such third party is bound in writing by confidentiality restrictions substantially similar to those required hereunder. The obligations of the parties to maintain the Confidential Information of the other as confidential shall remain in place for so long as a party maintains the applicable information as confidential. The limitations on disclosure or use of Confidential information shall not apply to information which (i) is rightfully obtained by the recipient without breach of any obligation to maintain its confidentiality; (ii) is or becomes known to the public through no act or omission of the recipient; (iii) the recipient develops independently without using Confidential Information of the other party; or (iv) is disclosed in response to a valid court or governmental order, if the recipient has given the other party prior written notice and provides reasonable assistance.



## BLACKBOARD MASTER AGREEMENT

### 1. SCOPE OF AGREEMENT.

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

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

### 2. DEFINITIONS.

**2.1 "Agreement"** means this Master Agreement, the Order Form(s), Schedule(s) and other exhibits to such Order Form(s) or Schedule(s), as amended from time to time.

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

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

**2.4 "Blackboard"** means the definition set forth in the relevant Order Form.

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

**2.6 "Confidential Information"** means any non-public information disclosed by either Party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party's business, operations, vendors or customers. Blackboard's Confidential Information will be deemed to include all Blackboard Property; Customer's Confidential Information will be deemed to include all Customer Property.

**2.7 "Customer"** means the customer identified on the relevant Order Form.

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

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

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

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

**2.12 "Effective Date"** means the effective date set forth in the relevant Order Form.

**2.13 "Equipment"** means any hardware and/or firmware provided by Blackboard to Customer.

**2.14 "Offering"** means Software, Services, Professional Services or Equipment, as applicable.

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

**2.16 "Party"** means either Blackboard or Customer.

**2.17 "Professional Services"** means any professional services provided by Blackboard to Customer.

**2.18 "SaaS Service"** means software provided by Blackboard as a Blackboard-hosted solution.

**2.19 "Services"** means any services provided by Blackboard to Customer, including, without limitation, any SaaS Service.

**2.20 "Software"** means the object code version of software provided by Blackboard to Customer.

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

### 3. PROPRIETARY RIGHTS

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

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

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



Customer for any reason, Customer agrees to execute all such instruments and do all such things as Blackboard may require of it to transfer or assign such ownership to Blackboard.

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

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

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

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

#### **4. REPRESENTATIONS.**

**4.1 By Blackboard.** Blackboard represents and warrants that (a) Blackboard and any person executing or otherwise agreeing on Blackboard's behalf to this Agreement (including any Schedule, Order Form or click-through agreement which may be incorporated into this Agreement from time to time) has authority to enter into this Agreement, and (b) during the Term Blackboard will comply with all applicable laws and regulations governing all matters set forth herein.

**4.2 By Customer.** Customer represents and warrants that (a) Customer and any person executing or otherwise agreeing on Customer's behalf to this Agreement (including any Schedule, Order Form or click-through agreement which may be incorporated into this Agreement from time to time) has authority to enter into this Agreement, (b) during the Term it will comply with all applicable laws and regulations governing all matters set forth herein; (c) during the Term it will comply with the then current Blackboard privacy policies, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified policies are posted at the relevant link, such posting to constitute effective notice of changes, which privacy policies are hereby incorporated by reference; (d) during the Term Customer shall refrain from using any Offering in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Offering or the resources available through the Offering; (e) Customer will take appropriate steps to ensure that it does not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement and (f) during the Term, to the extent that Authorized End Users exercise the rights granted to Customer under this Agreement, Customer shall ensure that such Authorized End Users comply with the obligations applicable to such exercise set forth in this Agreement.

#### **5. TERM; TERMINATION.**

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

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

**5.3 Effect of Termination.** Upon termination of this Agreement, all Order Forms shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Blackboard all amounts due and payable hereunder. Also, in the event of any termination prior to the end of any Order Form's term, Customer shall immediately pay Blackboard all fees which are then due or would become due had no termination occurred. Each Party: (a) will immediately cease any use of the other Party's Confidential Information, (b) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its



possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.

**5.4 Survival.** The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination. Without limiting the foregoing, the provisions of Sections 1, 2, 5, 7, 9 and 10 of this Master Agreement shall survive the termination of this Agreement for any reason.

**6. FEES; EXPENSES.**

**6.1 Fees; Payments.** In consideration for Blackboard's performance under this Agreement, Customer agrees to pay Blackboard all fees required by the Order Forms, as applicable, which fees will be due in accordance with the provisions of the relevant Order Form, but in no event later than thirty (30) days after the date of an invoice from Blackboard. Blackboard expressly reserves the right to change the fees payable under any Order Form with respect to any renewal of such Order Form upon expiration of its then-current term. All fees for any annual term Software license or annual Services shall be due and payable upon the date of execution of the applicable Order Form. Customer will pay all fees in U.S. dollars unless otherwise set forth in the applicable Order Form. Payments shall be sent to the address indicated on the invoice.

**6.2 Late Fees.** Blackboard may charge interest on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. Customer acknowledges that any delay in payment for any Initial Term or Renewal Term may result in termination of the Blackboard license and/or an interruption in service at Blackboard's sole discretion.

**6.3 Taxes.** The fees hereunder do not include any sales, use, excise, import or export, value-added ("**VAT**"), goods and services ("**GST**"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("**Taxes**") levied on the delivery of any Software or Equipment or the performance of Services by Blackboard to Customer. Customer will be responsible for payment of such Taxes at point of sale. If Customer is exempt from any such Taxes, then such Taxes shall not be charged to Customer upon Blackboard's receipt of a copy of documentation acceptable to Blackboard that satisfies the requirements of the relevant tax authority to exempt such fees from such Tax (such as Customer's tax exemption certificate, or VAT Registration Number.) All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law, regulation, or rule then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, timely pay the required amount to the relevant tax authority, provide Blackboard with an official receipt, certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard the amount to which Blackboard is otherwise entitled under this Agreement, less the amount required to be deducted or withheld. In the event, and to the extent, that Blackboard is unable to claim an income tax credit for the full amount deducted or withheld (the "**Unrecouped Withholding**"), Customer shall pay Blackboard, within sixty (60) days following receipt of an invoice from Blackboard, the Unrecouped Withholding.

**6.4 Expenses.** Except as provided in this Agreement, each party will be responsible for its own expenses incurred in rendering its performance or exercising its rights under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. In addition, if Blackboard is required by applicable law, legal process or government action or for a Customer audit to produce information, files, documents or personnel as witnesses with respect to this Agreement or the products or services provided to Customer by Blackboard, Customer shall reimburse Blackboard for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless Blackboard is a party to the proceeding or the subject of the investigation.

**6.5 Purchase Orders.** Customer agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Blackboard, it will timely issue such purchase order and inform Blackboard of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations under this Agreement, including payment of amounts owed to Blackboard.

**7. WARRANTIES, LIMITATIONS OF LIABILITY AND INDEMNIFICATION.**

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

**7.2 Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OFFERINGS, WHETHER OR NOT SUCH PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). EXCEPT FOR THE INDEMNITY SET FORTH IN SECTION 8.1, IN NO EVENT SHALL BLACKBOARD OR ITS LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE AFFECTED OFFERING DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

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

**7.4. Indemnification.**

**a. Indemnification by Customer.** In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Customer will indemnify, defend and hold harmless Blackboard, its affiliates and their respective directors, officers, employees, agents, successors and



assigns (each a “**Blackboard Indemnitee**”) from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Blackboard Indemnitee arising out of Customer’s (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.

**b. Indemnification by Blackboard.** In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Blackboard will indemnify, defend and hold harmless Customer, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a “**Customer Indemnitee**”) from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Customer Indemnitee arising out of Blackboard’s (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.

**c. Inapplicability to Infringement.** For the avoidance of doubt, the indemnification obligations set forth in this Section 7.4 shall not apply to infringement, which is addressed under Section 8 hereof.

## **8. INFRINGEMENT.**

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

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

**8.3 Customer Infringement Obligations.** Customer shall, at its own expense, indemnify and, at Blackboard’s option, defend Blackboard and each other Blackboard Indemnitee against any losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Blackboard Indemnitee arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter (any of the foregoing indemnifiable matters, each a “**Blackboard Claim**”), provided that Customer will not settle any Blackboard Claim unless such settlement completely and forever releases each Blackboard Indemnitee with respect thereto or unless Blackboard provides its prior written consent to such settlement. Blackboard agrees (a) to provide Customer with prompt written notice of any Blackboard Claim, and (b) to provide such assistance as Customer may reasonably request, at Customer’s expense, in order to settle or defend any such Blackboard Claim.

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

## **9. CONFIDENTIALITY.**

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

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

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

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

**9.5 Contact Information.** Customer hereby authorizes Blackboard to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from Blackboard relating to Blackboard-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services Customer has purchased through Blackboard for the purpose of providing those products and services or support or maintenance for the products and services. Customer acknowledges that it has the right to provide such consent, and Blackboard acknowledges that it will not use or distribute the contact information except as explicitly set forth above.



**9.6 Other Rights.** Customer hereby grants Blackboard the limited right to collect aggregated usage statistics with respect to the Offerings. Such usage statistics are and shall be aggregated and not identifiable of any individual, including any Authorized End User. To the extent that any Offering contains an Auto Report feature for this purpose, Customer will not disable the Auto Report feature of the Offering, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Offering in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

## **10. MISCELLANEOUS MATTERS.**

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

**10.2. Conflict Resolution.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of New York. In the event of any dispute between the parties which arises out or relates to this Agreement, such disputes shall be finally determined by binding arbitration in Washington, D.C., in accordance with the law of the State of New York and the rules of the American Arbitration Association ("AAA"). All such disputes shall be determined by three arbitrators selected jointly by the parties, and in the event that the parties cannot agree on one or more arbitrators, such arbitrators shall be selected by AAA. All proceedings and documentation arising out of relating to such arbitration shall be considered Confidential Information hereunder. Each Party irrevocably submits to the exclusive jurisdiction of such arbitration panel. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

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

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

**10.5. Marketing/PR.** Customer agrees to be included and/or actively participate in public relations activities, including, but not limited to, press releases, traditional and social media engagement, blogs, etc. All activities are at the discretion of Blackboard and will be approved by the customer before publication. Customer and Blackboard shall work together to ensure completion of all PR/media activities as soon as practical after contract Effective Date.

**10.6. Remedies.** The Parties agree that any breach of confidentiality or proprietary rights would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any such breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Section 8. If any formal dispute resolution is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, costs and other collection expenses, in addition to any other relief it may receive.

**10.7. Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to Blackboard, sent to Blackboard Inc., Attn: General Counsel, 650 Massachusetts Avenue NW, 6<sup>th</sup> Floor, Washington DC, 20001 or to such other address as shall be given in accordance with this Section 10.6, and, in the case of Customer, to the address on the applicable Order Form, and shall in each case be effective upon receipt. Alternatively, Customer may provide notices to [GeneralCounsel@Blackboard.com](mailto:GeneralCounsel@Blackboard.com), provided that Customer provides an email address to Blackboard for notices which Blackboard may send to Customer.

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

**10.9. U.S. Government Users.** The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue NW, 6<sup>th</sup> Floor, Washington, DC 20001. All rights not specifically granted in this Agreement are reserved by Blackboard.

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

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

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