Blackboard

BLACKBOARD LICENSE AND SERVICES AGREEMENT
COVER PAGE

The attached documents describe the relationship between Blackboard and the Customer identified below. The documents attached to this cover page will consist of one (1) or more schedules describing and setting forth detail about that relationship, depending upon the particular software and/or services Blackboard will provide to the Customer.

This License and Services Agreement includes this cover page, the attached pricing summary, and all Schedules that are attached to such System Wide Master Terms, dated June 30, 2002, and are separately executed by the Parties. This Agreement will become effective when the attached Schedule is executed by authorized representatives of both Parties.

CUSTOMER INFORMATION:

Name/Company: School Board of Clay County

Principal Contact Person: Jones, Alisa

Address:
900 Walnut Street
Green Cove Springs, FL 32043
USA

Phone: 904.272.8100

Fax:

Billing Contact: Racine, Nancy

Title:

Address:
Schultz Center for Teaching &
Learning4019 Boulevard Center Drive
Jacksonville, FL 32043-3129

Email Address: nracine@mail.clay.k12.fl.us

Initial Term of Agreement: 15 months

Phone:

Fax:

School Board of Clay County Pricing Summary

Product Description	Qty.	Units	List Price	Discount	Net Price
MANAGED HOSTING SERVICE (up to5,000 active users)	15	MO	$51,874.95	<$8,875.05>	$42,999.90
MANAGED HOSTING ADD BANDWIDTH 1MBPS	15	MO	$7,200	<-$5,760>	$1,440
MANAGED HOSTING ADD BANDWIDTH 1MBPS	15	MO	$7,200	<-$5,760>	$1,440
MANAGED HOSTING ADD BANDWIDTH 1MBPS	15	MO	$7,200	<-$5,760>	$1,440
MANAGED HOSTING SERVICE TEST	15	MO	$16,249.95	<-$3,249.90>	$13,000.05
MANAGED HOSTING SETUP	1	EA	$20,000	<-$15,000>	$5,000
MANAGED HOSTING ADD BANDWIDTH 1MBPS	15	MO	$7,200	<-$5,760>	$1,440
TOTAL FEES					$66,759.95

Academic Suite-Site;

Designated Server Site (Physical Location of the Software): Hosted by Blackboard	Database Version:	Operating System:	Hardware Model:

CONTRACT: FLORIDA DISTANCE LEARNING CONSORTIUM SYSTEM WIDE MASTER TERMS[1]

BLACKBOARD MANAGED HOSTING SCHEDULE

School Board of Clay County

Blackboard is issuing this schedule for the Blackboard Managed Hosting in accordance with the System Wide Master Terms ("System Wide Master Terms" or "Master Terms") between Blackboard Inc. and Florida Distance Learning Consortium on behalf of Member Institutions, dated June 30, 2002. The Member Institution ("Customer") is referenced above and this Schedule shall be effective upon the execution of the date signed by below. Customer is required to adhere to the terms and conditions in the System Wide Master Terms including, but not limited to, Grant of License, Copies, Intellectual Property, Ownership of Software and remaining sections. The referenced System Wide Master Terms are an integral part of this Schedule and are incorporated herein by reference. Capitalized terms used in this Schedule that are not otherwise defined in this Schedule shall have the meaning set forth in the Master Terms. In consideration of the foregoing promises, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

Managed Hosting - SCHEDULE OF SERVICES

Product Description	Initial Active User Capacity	Initial Bandwidth	Initial storage
Blackboard Managed Hosting – Learning System™ Setup			
Blackboard Managed Hosting – Learning System™ Annual Use	5,000 users	1 mbps	150 GB
Additional Bandwidth		4 mbps	
Blackboard Managed Hosting- Learning System Test & Development	Less than 10 users		10 GB

1. ADDITIONAL DEFINITIONS
1.1 **"Active User Capacity"** means the number of Authorized End Users, at any particular time, permitted to be registered to access one (1) or more educational courses provided through the Hosted Software. As of the Schedule Effective Date (as defined below), the initial Active User Capacity will be equal to the number indicated in the table above.
1.2 **"Managed Hosting Services"** means the services provided by Blackboard pursuant to this Managed Hosting Schedule. The initial Managed Hosting Services are indicated in the table above.
1.3 **"Authorized End User"** will have the meaning set forth in the Software Schedule, as defined below.
1.4 **"Available Date"** means, for purposes of this Managed Hosting Schedule, the date upon which Customer receives notice from Blackboard that the Hosted Software is available for access by Customer's Authorized End Users.
1.5 **"Hosted Software"** means the Software licensed to Customer pursuant to the Software Schedule for which Blackboard is to provide the Managed Hosting Services.
1.6 **"Test Copy Hosted Software"** means the Test Copy Software licensed to Customer pursuant to the Software Schedule which Blackboard is hosting. Test Copy Hosted Software is to be used solely for the purposes of testing the Software and is not to be used for production purposes and unless otherwise indicated in Exhibit A of the Managed Hosting Schedule is not covered by Service Level specifications described in Exhibit B.
1.7 **"Schedule Effective Date"** means the later of: (i) the date on which this Managed Hosting Schedule has been executed by authorized representatives of both Parties; and (ii) the Effective Date of the Agreement.
1.8 **"Software Schedule"** means the Software Schedule that has been executed by Blackboard and Customer for which Customer seeks to have Blackboard provide Managed Hosting Services, and that is in effect during the term of this Managed Hosting Schedule.
1.9 **"Staging Environment"** means that hosted additional test copy of the licensed Blackboard Software used for Customer to test new updates/upgrades to the Software. The staging environment may not be used for production purposes.

2. BLACKBOARD RESPONSIBILITES.
2.1 **Provision of Access to Hosted Software.** As soon as commercially practicable after the Schedule Effective Date, Blackboard will make access to the features and functions of the Hosted Software available to Customer's Authorized End Users. Blackboard will specify to Customer procedures according to which Customer and/or its Authorized End Users may establish and obtain such access.
2.2 **Responsibility for Hosting.** Blackboard shall install and operate the Hosted Software on computer servers and systems under its direct or indirect control. Blackboard will also install and store the Customer Content for purposes of access by the Hosted Software, provided that nothing in this Managed Hosting Schedule shall be construed to require Blackboard to provide for, or bear any responsibility with respect to, the design, development, operation or maintenance of any Web site owned or operated by Customer, or with respect to any telecommunications or computer network hardware required by Customer to provide access from the Internet to any such Customer Web site. Nothing in this Managed Hosting Schedule shall be construed to grant to Customer a license to access and/or use Blackboard's systems except for purposes of accessing and using the Hosted Software and except pursuant to the procedures and protocols specified by Blackboard pursuant to Section 2.1. Solely to the extent necessary to perform Blackboard's obligations pursuant to this Managed Hosting Schedule, Customer grants to Blackboard a royalty-free, non-exclusive, worldwide license to use, reproduce, transmit, distribute, perform, display, and, to the extent required by the Hosted Software, modify and create derivative works from the Customer Content. As between Customer and Blackboard, Customer retains ownership of the Customer Content. Blackboard shall maintain the confidentiality of all Customer Content that is stored on its servers in accordance with Section 4 of the Master Terms.
2.3 **Availability and Operational Specifications.** Blackboard will undertake commercially reasonable measures to ensure that, from and after the Available Date and for so long as this Managed Hosting Schedule remains in effect, the Managed Hosting Services provided pursuant to this Managed Hosting Schedule will: (i) be available and accessible as contemplated in this Managed

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[1] Pursuant to the Blackboard System Wide Master Terms dated June 30, 2002, Blackboard agrees to the terms and conditions stated on the School Board of Clay County, Florida's purchase order attached hereto.

Hosting Schedule twenty-four (24) hours per day, seven (7) days per week within the parameters set forth in Exhibit B; and (ii) conform in all material respects to the technical specifications and performance parameters set forth in Exhibit B. Exhibit B may be modified from time to time, upon notice to Customer. Notwithstanding the foregoing, Blackboard will have no liability under this Section 2.3 to the extent any nonconformity with the standards set forth in Exhibit B arises, in whole or in part, from: (i) any use of the Hosted Software by Customer or any Authorized End User other than in accordance with the terms and conditions set forth in this Agreement; (ii) any failure by Customer or any Authorized End User to comply with any procedures, technical standards and/or protocols specified by Blackboard pursuant to Section 2.1 of this Managed Hosting Schedule; or (iii) any causes beyond the control of Blackboard or which are not reasonably foreseeable to Blackboard, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. It is agreed and acknowledged that the service credits referred to in Exhibit B shall be Customer's sole remedy, and Blackboard's sole obligation, with respect to failures of the Managed Hosting Services to meet the technical specifications and performance parameters set forth in Exhibit B. Blackboard does not warrant or guarantee the Managed Hosting Services except as expressly stated in this Managed Hosting Schedule.

2.4   Data Restoration Policy. Blackboard will back-up and archive Customer Content at a secure location for the retention period(s) specified in Exhibit B. In the event that Customer requests recovery of any lost or damaged Customer Content, Blackboard will exercise reasonable efforts to restore the relevant data from the most recently archived copies (or such earlier copies as requested by Customer), provided that such data is, at the relevant time, still available pursuant to the applicable retention policy and Customer has provided to Blackboard all information necessary to enable Blackboard to perform such services. Blackboard shall perform up to four (4) data restorations at no charge to Customer; thereafter, except with respect to restoration of data that are lost or damaged as a result of Blackboard's error or a failure of the Managed Hosting Services, Customer agrees to pay Blackboard its then-standard applicable rates for such restoration services.

2.5   Data Archiving and Cleanup Policy. Blackboard will undertake commercially reasonable efforts to accommodate Customer's request for data archiving and cleanup. These tasks regularly require expert knowledge of Blackboard application and database structure and command-line access to Customer's Blackboard servers under Blackboard's control. Common types of data archiving and cleanup tasks that require database/application engineering expertise and command-line access to servers include (but are not limited to) the following: batch copying of courses for a new semester; batch export, import, and archive of courses; batch removal of courses; batch disabling or deleting of users; exporting usernames / courses from a database query. Blackboard will make reasonable efforts to perform up to eight (8) data archiving and cleanup related tickets per Customer per year (the tasks can be grouped together as one support ticket to be addressed at once per semester or per quarter). After eight (8) free services per year, Blackboard reserves the right to charge a flat fee of $800 per ticket created for data archiving and cleanup related tasks. If Customer requires Blackboard to batch archive data on to a hard-drive and ship to Customer, Blackboard will charge $200 for the cost of each of 200 GB hard-drive required. The hard-drive can be shipped back to Managed Hosting at the time of next task for reuse.

2.6   Additional Storage and Bandwidth Policy. As a normal operating procedure Blackboard does not cap storage and bandwidth. Blackboard will, no less than quarterly, monitor Customer's storage and bandwidth usage. In the event Customer has exceeded Initial Storage and/or Initial Bandwidth in a sustained period of sixty (60) days or more, Blackboard will provide a report to Customer concerning the current storage and bandwidth usage. In the event Customer has not purchased additional storage and/or bandwidth within thirty (30) days of receiving the report, Blackboard reserves the right to charge Customer additional fees at then-standard applicable rates.

2.7   Migration Policy. In the event Customer requests an Update/Upgrade of the Hosted Software, Blackboard and Customer shall engage in commercially reasonable migration planning. In the event that the migration planning requires an expanded or new hardware environment not covered by the then-current Hosted Software environment (defined here as "Migration"), Customer shall pay a Migration Set Up fee as mutually negotiated. Blackboard will be obligated to perform no more than one successful test migration per a six (6)-month period. If Customer requires more than one Migration test or more than one Migration within a six-month period, it must execute a copy of Blackboard's Professional Services Agreement for the services.

2.8   Additional Managed Hosting Services. In the event that Customer desires to receive Managed Hosting Services in addition to the particular services specified in the table above, including, by way of example, incremental storage capacity and/or additional bandwidth capacity and/or higher Active User Capacity, Customer may submit a written and executed purchase order requesting such additional Managed Hosting Services. Subject to Customer's payment of all applicable fees required by Section 4, and further subject to all applicable provisions of this Agreement, including, without limitation, the Master Terms and this Managed Hosting Schedule, Blackboard agrees to make such additional Managed Hosting Services available to Customer for so long as this Managed Hosting Schedule remains in effect after acceptance of such purchase order. For the avoidance of doubt, no such purchase order shall be binding upon Blackboard unless and until Blackboard accepts such purchase order in writing and further provided that Blackboard will have no liability to Customer with respect to any purchase orders that are not accepted or for any terms contained in the purchase order other than the type of service and the payment amount.

2.9   IP Addresses. Any IP addresses assigned or allocated to Customer by Blackboard shall remain, at all times, the property of Blackboard and shall be nontransferable and Customer shall have no right to use such IP addresses upon termination of this Agreement. Any change requested by Customer to the Blackboard allocated addresses must be agreed to by the Parties. Customer understands that the IP Services provided under this Agreement (including Internet use) may require registrations and related administrative reports that are public in nature.

3.   CUSTOMER RESPONSIBILITIES.

3.1   General Usage Limitations. Customer acknowledges that use and operation of the Hosted Software by Customer and/or any Authorized End User is subject to the terms of the Software Schedule. Notwithstanding the Software Schedule, for so long as this Managed Hosting Schedule remains in effect, Customer may not install, host or operate the Hosted Software, nor may Customer or its Authorized End Users otherwise use the Hosted Software, except as hosted and made available by Blackboard under this Agreement. In the event that Customer has installed the Hosted Software upon any computer server(s) prior to the Schedule Effective Date (as defined below), Customer agrees promptly to remove the Hosted Software from such computer server(s). Customer agrees that it may not cause or permit any third parties to access the Hosted Software other than Authorized End Users, nor may Authorized End Users in excess of the then-current Active User Capacity access and use the Hosted Software at any time, provided that the Active User Capacity may be modified in accordance with Section 2.6. Customer shall refrain from, and shall ensure that Authorized End Users refrain from, using the Managed Hosting Services in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Managed Hosting Services or the resources available through the Managed Hosting Services. Customer will take appropriate steps to ensure that it and its Authorized End Users do not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement. Customer warrants that its Authorized End Users will comply with the provisions of this Managed Hosting Schedule in all respects.

3.2 **Customer Content.** Customer represents and warrants that: (i) Customer owns or has sufficient rights in and to the Customer Content, including, without limitation, personal, educational and financial information contained within the Customer Content, in order to use, and permit use of, the Customer Content as contemplated in this Managed Hosting Schedule and to grant the license granted in Section 2.2; and (ii) the Customer Content 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 Content 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 only provides access to the Hosted Software; Blackboard does not operate or control the information, services, opinions or other content of the Internet. Blackboard does not monitor and shall have no liability or responsibility whatsoever for the Customer Content of any transmissions or communications transmitted or otherwise disseminated via the Hosted Software. Customer agrees that it shall make no claim whatsoever against Blackboard relating to the Customer Content or content of the Internet or respecting any information, product, service or software ordered through or provided via the Internet, and Customer shall indemnify and hold Blackboard harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related, directly or indirectly, to such Customer Content.

4. **FEES**

4.1 In consideration for provision of the Managed Hosting Services, Customer shall, during the Initial Term (as defined below) pay to Blackboard: (i) an annual fee in an amount set forth in the Pricing Summary with respect to the particular Managed Hosting Services provided under this Managed Hosting Schedule, which fees shall be due and payable upon Agreement execution; as well as (ii) any other fees otherwise required by this Managed Hosting Schedule (for additional services, additional bandwidth, or additional users). In the event that Customer requests additional Managed Hosting Services as contemplated in Section 2.8, applicable fees shall be due and payable from and after the month during which such additional services are first made available. All fees payable under this Managed Hosting Schedule shall be non-cancelable and non-refundable.

4.2 Blackboard reserves the right to temporarily suspend the Managed Hosting Services if Customer's account becomes more than sixty (60) days past due. The act of suspending Managed Hosting Services does not, in itself, constitute a termination or suspension of this Agreement nor does such suspension of Service alleviate Customer's obligation to pay past, current, or future charges incurred hereunder. Once Customer pays in full the past due fees, Blackboard may resume services.

4.3 With respect to each Renewal Term (as defined below), if any, Customer shall pay to Blackboard the then-current fees for such Managed Hosting Services upon commencement of the Renewal Term. Except as provided above, each party will be responsible for its own expenses incurred in rendering performance under this Managed Hosting Schedule, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. Except as otherwise required by this paragraph, all amounts payable under this Managed Hosting Schedule shall be subject to applicable provisions of the Master Terms.

5. **TERM**

This Managed Hosting Schedule shall become effective on the Schedule Effective Date, and shall continue in effect for a period of fifteen (15) months (the "Initial Term"), unless earlier terminated or otherwise specified in Exhibit A. Thereafter, the Managed Hosting Schedule will renew automatically upon the conclusion of each twelve month period following the Schedule Effective Date for successive one (1)-year periods (each, a "Renewal Term"), at Blackboard's then current pricing for Customer's then current usage level, unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial Renewal Term or then-current Renewal Term, as applicable. Upon termination of this Managed Hosting Schedule, all licenses granted under this Managed Hosting Schedule shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Hosted Software under this Managed Hosting Schedule; (ii) pay to Blackboard all amounts due and payable under this Managed Hosting Schedule; and (iii) return all Documentation and related training materials to Blackboard within a reasonable time at Customer's cost.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof.

BLACKBOARD   **CUSTOMER: School Board of Clay County**

Signature TESS FRAZIER-VICE PRESIDENT	**Signature**
Print Name and Title	**Print Name and Title**
Date:	**Date:**

EXHIBIT A
MANAGED HOSTING SPECIFICATIONS

+
+ Blackboard Learning System™:- Enterprise License
- Set Up Fee includes service for each installation of the Software or update/upgrade requiring a revised or new hardware and/or software configuration.
- Initial Term Annual Fee includes service for up to 5,000 Users, **150 GB** of storage, and **1 mbps** of bandwidth measured using the 95th percentile calculation (as defined below) delivered via redundant Internet uplink and Managed Firewall Service. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Additional storage and bandwidth are separately charged
- Additional Service units for 5,000 additional Users, additional **512 kbps** bandwidth and **20 GB** additional storage are separately charged. (Storage and Bandwidth should be adjusted to reflect the Schedule)
- Application Specific Oracle License

*95th Percentile calculation – 95th Percentile calculation is performed by: 1) collecting IP traffic samples (both inbound and outbound traffic) every five (5) minutes over the course of a month; 2) discarding the top 5 percent of the highest peak samples; and 3) measuring the peak usage from the remaining samples.

+ Blackboard Non-Production Test Environment:
- Initial Term is a minimum of fifteen (15) months and renew automatically for successive 6-month terms (each, a "Renewal Term"), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Initial-Term o r then-current Renewal Term.
- Setup Fee includes installation of Test Copy Hosted Software on computer servers and systems in Blackboard's non-production environment.
- Initial Term Fee includes 10 GB of server storage and burstable bandwidth provided through Blackboard's broadband connection, and grants Customer full root access to servers.
- The Non-Production Environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure
- Non-Production Test Environment by its nature DOES NOT meet the Service Level specifications under Exhibit B, and therefore, DOES NOT qualify for Service Level Guarantees.

Data Restoration Policy – per restore fees are separately charged per chargeable restore incident

Additional Storage and Bandwidth Annual Fees are separately charged

***User is defined as a person enrolled in one or more active courses, or part of one or more organization.**

EXHIBIT B
MANAGED HOSTING SERVICES SPECIFICATIONS- As of the Available Date

NOTE: CUSTOMER ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT B CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE MANAGED HOSTING SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE MASTER TERMS, AS APPLICABLE.

SERVICE LEVEL

Security:
- Single point of entry to co-location is guarded 24 hours a day with access controlled by an access database and video surveillance
- Monitoring of the co-location area and only those persons authorized by Blackboard's access list are allowed past a central point.
- Surveillance cameras located throughout the facility capture activity to help ensure no unauthorized entry to protected areas.

Power:
- State-of-the-art generators clean and condition commercial electrical power to remove irregularities in the signal. Power is run through the generators before being passed into the facility.
- In the event of a loss of power from the grid, power backups are utilized in the following order: commercial utility underground conduits, two-hour battery backup (industry standard only 15 minutes), diesel generator with full-load capability and additional fuel supply.

Network:
- Redundant Internet connections through dual Tier-1 Internet Service Providers

Startup:
Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Customer server(s). This includes but not limited to, the server hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Hosted Software.

Initial Access Date:
The Hosted Software is typically accessible from the hosting site within 7 business days after execution of the Managed Hosting Schedule, provided that the Master Terms and the relevant Software Schedule have been executed, and provided that Customer has provided to Blackboard a URL and any other information required by Blackboard. Blackboard shall provide Customer with procedures for access; the procedures may include, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Customer to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Managed Hosting Schedule.

Availability/Service Credit:
The Hosted Software is accessible 24/7, with a 99.7% targeted uptime. 99.7% uptime means that for 99.7% of the time during any calendar month, the Managed Hosting Services shall be available. Unavailability is a condition in which there is unavailability of the Hosted Software due to hardware failure OR sustained packet loss in excess of fifty percent within the Blackboard hosting facilities for at least fifteen consecutive minutes due to a failure of Blackboard to provide Managed Hosting Services during such period; unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the control of Blackboard. In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. The aggregate maximum number of service credits to be issued by Blackboard to Customer for any and all downtime periods and performance problems during any given calendar month shall not exceed one month of service. Service credits are issued as followed:

Length of Unavailability (per calendar month)	Service Credit
1 to 4 hours of aggregate unavailability below 99.7%	1 day of service fees credited (i.e., 1/30 monthly fees)
4 to 48 hours of aggregate unavailability below 99.7% fees)	2 days of services fees credited (i.e., 1/15* monthly
48 to 96 hours of aggregate unavailability below 99.7% 5 days of service fees credited (i.e., 1/6 * monthly fees)	

*Each block of 96 hours of aggregate unavailability thereafter shall be credited 5 days of service fees.
*All Service Credit shall be applied to the next period's Managed Hosting fees.

Backup and Disaster Recovery:
Blackboard provides comprehensive redundant backups which are stored online and at a separate facility. Blackboard retains backup data for one month. In the event of a disaster, Blackboard will use reasonable efforts to restore service. Blackboard will not attempt to restore service if such attempt shall put Blackboard, its employees or its agents at risk for injury.

Outages
If a system outage occurs, Blackboard will notify Customer's designated technical contact via email. This notice will include the reason for the system outage and estimated time for restoration of Managed Hosting Services if Blackboard knows this information when it gives this notice.

Following recovery from any particular system outage, Blackboard will provide Customer with a post-incident summary that will include:

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

Upon receipt of notification of a problem with the Blackboard system or the Managed Hosting Services, Blackboard will investigate the problem and determine if a system outage exists. If a system outage exists, Blackboard will provide Customer

with a time estimate for resolution of the problem, if known at that time. Blackboard will promptly commence remedial activities and use commercially reasonable efforts to resolve the system outage within the time estimate provided to Customer.

MONITORING AND PERFORMANCE

Blackboard will make network performance reports available to the customer via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment.. Upon request by Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Customer with the following report:

> Specific System Outage Details:
> Time of outage
> Length of outage
> Affected areas
> Reason for outage
> Customer contact notified (if any)
> Remedy to prevent outage reoccurrence (if any)

Customer acknowledges and agrees that any of the foregoing reports shall constitute Blackboard's Confidential Information for purposes of this Agreement.

Ongoing:

The hardware, software and network are monitored and maintained by Blackboard and will be accessible twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which the Customer shall be notified by email.

- Blackboard maintains responsibility for all day-to-day server maintenance. Server maintenance may include, but is not limited to, hardware upgrades, OS upgrades, patch installations, database administration, server user administration and performance tuning.
- Blackboard maintains a software monitoring system to provide real-time information about the Managed Hosting environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the Managed Hosting environment.
- Blackboard maintains the functioning of all hardware components for which it is responsible under this Exhibit and will replace any failed components. Hardware replacement will begin immediately upon identification of the hardware failure and if cannot be completed with a reasonable amount of time, the access to the Hosted Software will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily backups with a retention period of 1 month. Where possible, data is replicated to an offsite location.
- Blackboard collects bandwidth usage and web hit statistics on all Customer-hosted machines. This information will be provided upon request.

DATA CENTER SPECIFICATIONS

Blackboard houses servers in a facility that offers environment control, security, and backup power, as more specifically described below:

Environment:
  o The data center is designed to maintain a constant temperature of 68¼F, plus or minus 2¼F, with humidity of 45%.
Server Setup:
The servers are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and 99.7% uptime.

CUSTOMER RESPONSIBILITES. Blackboard is not responsible for management and actual use of the features and function of the Hosted Software. Customer bears all responsibility for such management and actual use, including, without limitation:

- The Customer has full access to the Administrator Menu and is responsible for the following:
- Creating/Removing Users including Students, Teachers, System Administrators, etc.
- Modifying all User Information
- Creating/Removing all Course Web Sites
- Building and Managing all Course Web Sites
- Customization to the Site
- System Usage Tracking Reports
- Deciding which product features will be available or unavailable, how much functionality instructors will be allowed, etc.
- Choosing Icon Themes
- All changes to the Blackboard-named URL. All Blackboard Customers are assigned a URL that reads http://institutionname.blackboard.com. The institution is allowed to pick the "institutionname". However, any re-directs to other URLs are the responsibility of the Customer and not Blackboard. For example, if the Customer chooses the URL http://institutionname.org, the institution is responsible for the redirect to the http://insitutionname.blackboard.com site using a CNAME record. Any IP addresses are allocated by Blackboard to Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

BUILDING BLOCKS POLICY. If Customer has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to a implement a Building Block, Blackboard recommends the following steps before installing a Building Block on a production system: 1) apply and thoroughly test all Building Blocks in Customer's test/development environment prior to implementing the Building Block in the production environment; and 2) before requesting an update/upgrade to Blackboard on Customer's production environment, Customer contacts the vendor of the Building Block or check the Building Blocks Catalog to ensure that Customer has the latest version prior to upgrading Customer's Hosted Software. If an issue arises with Customer's Hosted Software, Managed Hosting Service Support will work with Customer to troubleshoot the problem. If Managed Hosting Service Support isolates the problem as related to one or several Building Blocks, Managed Hosting may need to disable the Building Block to further troubleshoot the issue or to restore overall service.

1. The School Board of Clay County (SBCC) purchase order number shall appear on each invoice, delivery papers, bills of lading, packages and/or correspondence.

2. Original invoices shall serve as the SBCC basis for payment.

3. All deliveries are to be F.O.B. destination unless otherwise specified.

4. Do not back order without prior approval.

5. C.O.D. orders shall not be accepted – including freight charges.

6. Equipment, materials, supplies and/or services delivered on this order shall be subject to inspection and test upon receipt and, if rejected, shall remain the property of the vendor

7. The SBCC issues payments in accordance with the "Florida Prompt Payment Act", Florida Statutes, Chapter 218.

8. BACKGROUND INVESTIGATION: Any employee, principle, or agent of the contractor, vendor, entity or service provider which is a party to this agreement shall, prior to being permitted access to school grounds when students are present or being allowed direct contact with students or being granted access to or control of school funds, submit to and pass a Level II background screening requirements or otherwise meet the requirements of and be bound by the terms of Florida Statutes 1012.465, 1012.467 or 1012.468. The cost of screening shall be the responsibility of the contractor, vendor, entity or service provider and not the SBCC

NOTICE: REQUIREMENTS WHEN USING FEDERAL FUNDING:

This purchase order constitutes a contract. Upon acceptance of a purchase order, the vendor certifies that their firm meets and agrees to the following provisions, which shall become a part of the contract.

PARTIES RECEIVING PAYMENT VIA PURCHASE ORDER ISSUED BY THE SBCC FOR GOODS AND/OR SERVICES SHALL BE SUBJECT TO ALL REMEDIES ALLOWED BY LAW FOR ANY DEFAULTS, BREACHES, VIOLATIONS OR OTHER FAILURES TO PERFORM AS AGREED WHETHER OR NOT AN EXPRESS WRITTEN AGREEMENT EXISTS FOR THE PROVISION OF SUCH GOODS AND/OR SERVICES.

FISCAL NON-APPROPRIATIONS CLAUSE: In the event sufficient budgeted funds are not available for a new fiscal period, the purchasing department shall notify the vendor of such an occurrence and this contract shall terminate on the last day of the current fiscal period without penalty or expense to the SBCC.

ACCESS TO RECORDS: (34 CFR 80.36 (i)(10): All vendors, contractors and subcontractors shall give access to the SBCC, the appropriate Federal agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions.

RECORDS RETENTION: As required by Federal law (34 CFR 80.36 (i)(11) and Florida law (F.S. 257.36) all vendors, contractors and subcontractors must retain all records pertaining to this contract for five (5) years after the SBCC makes final payments and all other pending matters are closed.

CLEAR AIR ACT (34 CFR 80.36(i)(12)): All vendors, contractors and subcontractors must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 11857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Applies to contract, subcontracts and subgrants of amounts in excess of $100,000).

ENERGY EFFICIENCY (34 CFR 80.36(i)(13): All vendors, contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (pub. L. 94-163, 89 Stat.871).

SUSPENSION AND DEBARMENT: In accordance with the United States Office of Management and Budget (OMB) Circular A-133 regarding procurements contracts equal to or exceeding $25,000 vendors, contractors and subcontractors certify they are not listed on the Excluded Parties Listing System (EPLS) issued by the General Services Administration (GSA).

EQUAL EMPLOYMENT OPPORTUNITY (34 CFR 80.36(i)(3)): All vendors, contractors and subcontractors must comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applied to all construction contracts awarded in excess of $10,000 by the district and their contractors or sub-grantees).

COPELAND "ANTI-KICKBACK" ACT (34 CFR 80.36(i)(4)): All vendors, contractors and subcontractors must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFT part 3). (Applies to all contracts and sub-grants for construction or repair).

DAVIS-BACON ACT (34 CFR 80.36(i)(5)): All vendors, contractors and subcontractors must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and sub-grantees when required by Federal grant program legislation). (Applies to construction contracts in excess of $2000 awarded by the district and sub-grantees when required by Federal grant program legislation).

CONTRACT WORK HOURS & SAFETY STANDARDS ACT (34 CFR 80.36(i)(6)): All vendors, contractors and subcontractors must comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Applies to all construction contracts awarded by the district and sub-grantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers).

CANCELLATION/TERMINATION (34 CFR 80.36(i) For all purchased involving Federal funds in excess of $10,000, the SBCC reserves the right to terminate this contract for cause, as well as for convenience, by issuing a certified notice to the vendor. If terminated, the SBCC shall be responsible only for goods and services already delivered to it on the date of such termination and shall not be responsible for any consequential damage, future damages or damages caused by lost profits, inconvenience or overhead expense to the vendor.

11/08