

This Agreement will be posted on the CPS website.

**SOFTWARE AND SERVICES AGREEMENT**  
**BLACKBOARD CONNECT, INC.**

This SOFTWARE AND SERVICES AGREEMENT ("Agreement") dated this 20 day of December, 2012 (the "Effective Date"), is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "Board" or "CPS") and Blackboard Connect, Inc. ("Vendor").

**RECITALS**

A. On May 29, 2012, the Board issued a Request for Proposals (RFP) No. 12-250027 soliciting firms interested in providing interactive voice response and out dialing services to the Board;

B. Vendor responded to the aforementioned RFP by submitting a proposal and, on the basis of Vendor's representation that it has the requisite knowledge, skill, experience and resources necessary to perform such services, Vendor was subsequently selected as a provider of interactive voice response and out dialing services under the RFP; and

C. Vendor desires to provide software and support services to the Board, and the Board desires to purchase or license the software and support services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.

2. **Definitions:**

A. "Documentation" means any and all operator's and user's manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the Software. The Board shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary.

B. "Software" means the software-as-a-service identified in Exhibit A, hosted and maintained by Vendor, and accessible to the Board via the Internet.

3. **Term of Agreement:** This Agreement is for a term commencing on the Effective Date and terminating thirty-six (36) months thereafter ("Term"), unless terminated sooner as provided herein. This Agreement shall have two (2) options to renew, each for a period of one (1) year.

4. **Scope of Services:** Vendor agrees to provide the services set forth in Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, Software, products, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties and the Board's General Counsel.

5. **Personnel:** Vendor agrees to assign and maintain during the Term of this Agreement and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. If the Board determines, in its sole discretion that any employee, subcontractor or other person providing Services hereunder for the Vendor is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct the Vendor to remove that person from performing Services under this Agreement. Vendor further agrees to bear any costs associated with the removal of such person.

6. **Compensation, Purchase Orders and Payment:**

A. **Compensation:** The total maximum compensation payable to Vendor pursuant to this Agreement during this Term shall not exceed One Million, Four Hundred Ninety-Four Thousand, Four Hundred Fifty and 00/100 Dollars (\$1,494,458.00) (Total Maximum

Compensation) in the aggregate (excluding renewal options), with no reimbursement for expenses or overtime. Compensation under this Agreement shall be made as specified in the "Pricing Schedule" attached hereto and incorporated herein as Exhibit B. The Board shall not reimburse Vendor for any expenses. Vendor is not entitled to any payment nor is the Board obligated to pay Vendor any amount solely by virtue of entering into this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered up to the date of termination. In no event shall the Board be liable for the cost of Services performed after the effective termination or expiration date of this Agreement.

B. **Purchase Orders:** Orders must be on the Board's Standard Purchase Order Form ("PO"). The pre-printed terms and conditions found on the PO shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement. In the event of a conflict between the provisions of this Agreement and those of the PO, this Agreement shall control. It is understood and agreed that Vendor shall not provide any Services without a valid purchase order. If Vendor provides any Services without a valid purchase order Vendor shall not be entitled to receive any payment for such Services.

C. **Payment:** Vendor shall submit invoices referencing this Agreement. All invoices must include: a valid purchase order number, itemized description of the Services rendered, period the Services shall be rendered, invoice date, and invoice amount. Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Vendor has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in its normal course of business after receipt of invoices and all supporting documentation necessary for the Board to verify the Services provided under this Agreement.

7. **License, Implementation, Hosting, and Support:**

A. **License:** Vendor hereby grants to the Board a non-exclusive, worldwide, nontransferable royalty-free (except for fees specified in this Agreement) license to use the Software for the Term of the Agreement. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Software except as expressly provided herein. The Software and Documentation shall at all times remain the sole and exclusive property of Vendor. The Board shall not copy or knowingly permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Software without the prior written consent of Vendor.

B. **Permissible Board Actions:** Nothing in this Section shall prevent the Board, its employees and representatives from disseminating Vendor's training materials and data to the Board's vendors who participate in Train the Trainer sessions.

C. **SECTION INTENTIONALLY DELETED.**

D. **Software Maintenance:** During the Term of this Agreement, Vendor shall be solely responsible for maintenance of the Software and its accessibility to the Board.

E. **Software Support:** Vendor shall provide the maintenance and support Services to the Board as described in Agreement.

F. **Controlling Agreement:** The Board shall not be bound by the terms and conditions contained in any clickwrap agreement, clickwrap license, clickthrough agreement, clickthrough license, end user license

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agreement or any other agreement or license contained or referenced in the Software or any quote provided by Vendor. Even if a Board User agrees to any agreement or license contained or referenced in the Software or a quote from the Vendor, Vendor acknowledges and agrees that those terms and conditions null and void and are not binding on the Board. Rather, Vendor acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Services. No additional terms or conditions shall apply to either party unless a written amendment to this Agreement is made and signed by both parties and the Board's General Counsel.

**G. Hosting of the Software and Board Data:** Subject to the terms and conditions of this Agreement, Vendor shall provide the Board with access to the Software and related materials, facilities and services and shall host the Board Data (as further described in the exhibits) through a secure online means set forth by Vendor and approved by the Board's Chief Information Officer ("CIO"), and to otherwise make the Software and the Board's data accessible on demand by the Board's designated users (collectively, the "Hosting Services"). The Hosting Services shall be included in the term "Services" as that term is defined and used herein.

**H. Compatibility and Data Flow:** Vendor must ensure that any other resources that are provided by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Software and Services, be fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board (collectively, the "Board Resources"). Vendor shall have no obligation under this section to ensure that the Board maintains an active internet connection. Any unavailability of the Software or Services due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor or Vendor's Software or Services, shall be the sole responsibility of the Board.

**8. SECTION INTENTIONALLY DELETED.**

**9. Standards of Performance:** Vendor shall devote, and shall cause all of its staff and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to supply all Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Chief Procurement Officer. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

**10. Non-appropriation:** Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Vendor and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

**11. Events of Default:** Events of default ("Events of Default") include, but are not limited to, any of the following:

A. Any material misrepresentation by a party in the inducement of the Agreement or the provision of Services;

B. Breach of any agreement, representation or warranty made by a party in the Agreement;

C. Default by Vendor under any other agreement by Vendor may have with the Board;

D. Assignment by a party for the benefit of creditors or consent by a party to the appointment of a trustee or receiver or the filing by or against a party of any petition or proceeding under any bankruptcy, insolvency or similar law; or

E. Failure of Vendor to supply the Services required hereunder in accordance with the terms and conditions of the Agreement, including, but not limited to, the following:

i. Action or failure to act which affects the safety or welfare of students or Board staff;

ii. Failure to perform in accordance with terms, conditions, and specifications of this Agreement;

iii. Failure to supply any portion of the Services herein at the time fixed for performance and in the manner specified herein;

iv. Failure to supply the Services with sufficient personnel and equipment or with sufficient material to ensure the supply of Services due to a reason or circumstances within Vendor's reasonable control;

v. Failure to supply the Services in a manner satisfactory to the Board, or inability to supply the Services satisfactorily as a result of insolvency or filing for bankruptcy;

vi. Failure to promptly re-supply Services that were determined by the Board to be defective or failing to meet the scope of Services within a reasonable time;

vii. Discontinuance of the supply of the Services for reasons not beyond Vendor's reasonable control; or

viii. Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an event of default.

**12. Remedies:** The occurrence of any Event of Default which a party fails to cure within fifteen (15) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within fifteen (15) calendar days after notice, the defaulting party fails to commence and continue diligent efforts to cure, may permit the non-defaulting party to declare the defaulting party in default. Whether to declare Vendor in default is within the sole discretion of the Chief Procurement Officer. Written notification of an intention of the Chief Purchasing Officer to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Vendor's receipt of such notice. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies:

A. The right to take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at the cost of Vendor either directly or through others. Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Vendor under this Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board;

B. The right to terminate this Agreement, in whole or in part, as to any or all of the Services yet to be supplied effective at a time specified by the Board;

C. The right to suspend the supply of Services during the fifteen (15) day cure period if the default results from Vendor's action or failure to act which affects the safety or welfare of students or Board staff;

D. The right to specific performance, an injunction or any other appropriate equitable remedy;

E. The right to receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;

F. The right to money damages;

G. The right to withhold all or part of Vendor's compensation under this Agreement; and

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H. The right to use an Event of Default as a basis to deem Vendor non-responsible in future contracts to be awarded by the Board.

The Board may elect not to declare Vendor in default or to terminate this Agreement. The parties acknowledge that if the Board permits Vendor to continue to supply the Services despite one or more Events of Default, Vendor shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination pursuant the Early Termination provision below.

**13. Termination for Convenience:** At least six (6) months after the commencement of this Agreement, the Board may terminate this Agreement in whole or in part, without cause by giving Vendor written notice to terminate upon ninety (90) days written notice.

**14. Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement without the other party's prior written consent to any entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale or otherwise; provided, however, that in the event of such an assignment, the assigning party will provide notice of such assignment to the non-assigning party.

**15. Confidential Information, Dissemination of Information, Ownership, Survival:** For purposes of this Section 15 and subsections A through J, the term "Work Product" shall exclude any and all (i) third party intellectual property and (ii) pre-existing Vendor intellectual property that is delivered to the Board as part of the Services to be provided by Vendor hereunder or are imbedded in any Work Product to be delivered to the Board by Vendor hereunder.

**A. Confidential Information:** In performance of this Agreement, Vendor may have access to or receive certain information that is not generally known to others ("Confidential Information"). Vendor shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board. Vendor shall use at least the same standard of care in the protection of the Confidential Information of the Board as Vendor uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.

**B. Highly Confidential Information:** "Highly Confidential Information" means employee, volunteer, student, or teacher data including, but not limited to name, address, student identification number, social security number, phone number, email address, gender, date of birth, ethnicity, race, foster care status, disabilities, school, grade, grade point average, standardized test scores, ISAT scores, assessment data, after school activities, highest grade completed, discipline history, criminal history, free or reduced lunch qualifications, housing status, income, household income or payroll information. In performance of this Agreement, Vendor may have access to or receive Highly Confidential Information. Vendor shall not use or disclose any Highly Confidential information without the prior written consent of the Board.

**C. Transmitting and Storing Highly Confidential Information:** Vendor shall:

i. When making physical copies of Highly Confidential Information, send the Highly Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;

ii. Only mail Highly Confidential Information on electronic media, such as CDs, DVDs, electronic tape, etc., if the Highly Confidential Information is encrypted. Encryption must utilize the Advanced Encryption Standard ("AES") algorithm with a key of 256 bits or greater ("Encrypt"). The Highly Confidential Information shall only be mailed in accordance with the provisions of Section i, above;

iii. Encrypt all Highly Confidential Information prior to transmitting it electronically. Vendor shall not transmit any unencrypted Highly Confidential Information via email, blackberry, blackjack, instant messages or any other unencrypted protocols;

iv. Not send any password or other information sufficient to allow decryption of Highly Confidential Information with the Encrypted Highly Confidential Information;

v. Keep all physical copies (paper or other physical representations) of Highly Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information unsecured and unattended at any time;

vi. Encrypt any Highly Confidential Information stored on electronic media, such as CDs, DVDs, tape, flash drives, etc. Further, such electronic media shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information in any electronic format unsecured and unattended at any time;

vii. Vendor shall password protect any laptop or computer that contains Confidential Information or Highly Confidential Information. Additionally, any laptop or computer that contains Highly Confidential Information shall have its full hard drive Encrypted. Vendor shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. Vendor shall ensure that no password or other information sufficient to access a laptop or computer containing Hardware Confidential Information is attached or located near the laptop or computer at any time.

**D. Dissemination of Information:** Vendor shall not disseminate any Confidential Information or Highly Confidential Information to a third party without the prior written consent of the Board. Vendor shall not issue publicly news releases or grant press interviews related to this Agreement, except as may be required by law or with the prior written consent of the Board. If Vendor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information, Highly Confidential Information or Work Product which may be in Vendor's possession, Vendor shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Vendor shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Vendor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Vendor under this Agreement.

**E. Ownership:** All Confidential Information and Highly Confidential Information shall at all times be and remain the property of the Board. In addition, the Board shall own any Work Product and all other data and material provided by the Board to Vendor. However, the Board will not receive ownership rights in the Services or any materials related to the Services unless expressly agreed in writing between the parties. The Board shall have the right to use the Services and materials pertaining to the Services, during the Term of, and in accordance with, this Agreement. Nothing in such contract will grant or transfer to the Board any ownership rights in the Services or materials pertaining to the provision of the Services. The Board acknowledges and agrees that the Services, the data provided by Vendor, training guides and all other materials pertaining to the use of the Services are not purchased or

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developed with Board funds, and may not be utilized or reproduced without the written permission of Vendor.

**F. Use of Confidential Information and Highly Confidential Information:** Vendor warrants and represents that it shall not use the Confidential Information or Highly Confidential Information for any purpose not specifically identified in Exhibit A, including, but not limited to any research project whether internal or external to Vendor. Any use of the Confidential Information or Highly Confidential Information not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

**G. Third Party Confidential Information and Proprietary Information:** Vendor agrees not to utilize, analyze, reverse engineer, or otherwise exploit any third party Confidential Information or proprietary information in performing the Services regardless of where Vendor obtained the third party Confidential Information or proprietary information (even if the third party Confidential Information or proprietary information was provided by the Board) unless Vendor has previously secured the appropriate authorization in writing from such third party. In accordance with the provisions of Section 14 of this Agreement, Vendor hereby agrees to indemnify and hold harmless the Board against any and all claims related to third party Confidential Information and proprietary information in connection with or arising out of the acts or omissions of Vendor or its Staff under this Agreement.

**H. Return or Destruction of Confidential Information and Highly Confidential Information:** Vendor shall, at the Board's option, destroy or return all Confidential Information and Highly Confidential Information to the Board upon demand within three (3) business days of demand. In addition, Vendor shall, at the Board's option, destroy or return all Confidential Information and Highly Confidential Information to the Board within three (3) days of the expiration or termination of this Agreement. In the event the Board elects to have Vendor destroy the Confidential Information and Highly Confidential Information, Vendor shall provide an affidavit attesting to such destruction. Notwithstanding the foregoing, the Board acknowledges that information stored in Vendor's nightly secure system back-ups shall be destroyed in accordance with Vendor's document retention policy applicable to all such data.

**I. Staff and Subcontractors:** Vendor agrees to cause its personnel, staff and subcontractors, if any, to undertake the same obligations of confidentiality and ownership agreed to herein by Vendor.

**J. Freedom of Information Act:** Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.40. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website at <http://www.cps.edu>.

**K. Survival:** The provisions of this Section shall survive the termination or expiration of this Agreement.

**16. Representations and Warranties of Vendor:** Vendor represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement and any renewal thereof:

**A. Compliance with Laws:** Vendor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace, the Illinois School Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Amendment and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all Board policies and rules. Board policies and rules are available at <http://www.cps.edu>.

**B. Good Standing:** Vendor, each of its members, if a joint venture or limited liability company, and each of its subcontractors, if any, have not been deemed by the Board's Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement, and have not been debarred under the Board's Debarment

Policy during the three (3) year period immediately preceding the effective date of this Agreement.

**C. Authorization:** Vendor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Vendor is duly authorized by Vendor and has been made with complete and full authority to commit Vendor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Vendor.

**D. Financially Solvent:** Vendor warrants that it is financially solvent, is able to pay all debts as they mature, and is possessed of sufficient working capital to supply all Services and perform all obligations under this Agreement.

**E. Gratuities:** No payment, gratuity, or offer of employment was made to or by Vendor, any of its members if a limited liability company or joint venture or, to the best of Vendor's knowledge, to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Vendor is and shall remain in compliance with all applicable anti-kickback laws and regulations.

**F. Contractor's Disclosure Form:** The disclosures in the Contractor's Disclosure Form (or any ratification thereof) submitted by Vendor are true and correct. Vendor shall promptly notify the Board of any material change in the information set forth therein, including, but not limited to, change in ownership or control, and any such change shall be subject to Board approval, which shall not be unreasonably withheld.

**G. Research Activities and Data Requests:** Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in any Board school or use Board student data for research purposes, Vendor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Board's Director of Research or her designee.

**H. Ethics:** No officer, agent or employee of the Board is or will be employed by Vendor or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy (11-0525-PO2), adopted May 25, 2011, as may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein.

**I. Intellectual Property:** That in performing and delivering the Software and Services, Vendor will not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement.

**J. No Legal Actions Preventing Performance:** As of the Effective Date, Vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Vendor's ability to perform its obligation under the Agreement.

**K. SECTION INTENTIONALLY DELETED.**

**L. Documentation Warranty:** All Documentation provided to the Board from Vendor concerning the Software and Services shall be kept current with the upgrades of the Software and Services.

**M. Ownership:** Vendor is the owner of the Services and Software or otherwise has the right to grant to the Board the License without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

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**N. Business Requirements.** Vendor is fully aware of the Board's requirements and intended uses for the Software, including any set forth in the attached exhibits, and the Software shall satisfy such requirements as set forth in the attached exhibits;

**O. Software Performance.** During the Term of the Agreement, the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and the Documentation shall completely and accurately reflect the operation of the Software. Vendor shall promptly correct any failure of the Software to perform in accordance with the current published specifications and Documentation, but in no case shall the failure be fixed in less than five (5) business days;

**P. Information Security Policy.** If at any time during the Term of this Agreement and any renewals thereof, Vendor has access to the Board's computer network, Vendor warrants that it is and will remain in compliance with the Board's Information Security Policy adopted August 25, 2004 (04-0825-PO3), as it may be amended from time to time

**Q. Free of Computer Viruses.** Vendor shall use commercially reasonable best efforts to ensure that the Software is free of Computer Viruses. Vendor shall also maintain a master copy of the appropriate versions of the Software, free of computer viruses;

**R. Not Alter Program.** Vendor shall not, directly or through a third party, knowingly remove, alter, change or interface with the Software or any other program for the purpose of preventing the Board from utilizing the Software or any other program;

**S. No Disabling Code.** Vendor shall not knowingly cause any disabling code to be incorporated into Software;

**T. Prohibited Acts:** Within the three (3) years prior to the effective date of this Agreement, Vendor or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code; and

**U. Warranty of Title:** The Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Vendor has the lawful right to dispose of and sell the Services and that Vendor shall warrant and defend its title against all claims.

All warranties will survive inspection, acceptance payment and expiration or termination of this Agreement. Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

**17. Representations and Warranties of CPS:** CPS represents and warrants that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct during the Term of this Agreement and any renewal thereof:

**A. Compliance with Laws:** CPS is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, as amended from time to time;

**B. Authorization:** CPS represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of CPS is duly authorized by CPS and has been made with complete and full authority to commit CPS to all terms and conditions of this Agreement which shall constitute valid, binding obligations of CPS.

**18. Independent Contractor:** It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's Staff shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Vendor, its agents, employees or subcontractors, and the payment of any such taxes

incurred or due by Vendor shall be the sole responsibility of Vendor. Vendor agrees that neither Vendor, nor its Staff shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a Social Security Number or a Federal Employer Identification Number.

**19. Indemnification:** Vendor agrees to indemnify and hold harmless the Board, its members, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including without limitation, costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits, judgments, settlements or causes of action of every kind, nature and character, in connection with or arising out of the negligent or willful acts or omissions of Vendor or its Staff under this Agreement.

In addition, Vendor will indemnify, hold harmless, and defend the Board from any claim, demand, cause of action, debt or liability (including reasonable attorneys' fees and expenses) that the Services infringes, misappropriates, or otherwise violates any intellectual property (patent, copyright, trade secret or trademark) rights of a third party.

Vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Vendor shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving Vendor of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Vendor, after receiving notice of any such proceeding, fails to promptly begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise or settlement of such claim or action at the expense of Vendor, subject to the right of Vendor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Vendor and Vendor shall be bound by, and shall pay the amount of any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Vendor was conducting the defense.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Vendor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2<sup>nd</sup> 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

**20. Limitation of Liability of Vendor:** In no event will Vendor, its officers, employees or representatives be liable to Board for any indirect, punitive, reliance, special, consequential or exemplary damages of any kind or nature whatsoever, suffered by the Board or any third party (including without limitation, business interruption, downtime, or any use of, or failure to use the Services, or any loss of business, contracts, profits, anticipated savings, goodwill or revenue, or any loss or corruption of data), arising out of this Agreement, the Services, or the transactions contemplated hereby, even if the Vendor has been advised of the possibilities of such damages or should have foreseen such damages. Vendor, its officers and employees will not be liable for any damages or injury with respect to the performance of the Services, including, but not limited to, any failure of performance, error, omission, defect, delay, computer virus, or line failure, interruptions or disruptions in the services contemplated under this Agreement caused by or resulting from any act, omission or condition beyond Vendor's reasonable control, whether or not foreseeable or identified, including but not limited to, hostile network attacks or network congestion, or acts of

**This Agreement will be posted on the CPS website.**

God, acts of war, governmental regulations, public utilities or telecommunication providers, shortage of equipment, materials or supplies, fire, power failure, earthquakes, severe weather, floods or other natural disaster or the Board's or any third party's applications, hardware, software or communications equipment or facilities, unless same results from the negligent, intentional or willful acts of Vendor. Vendor is not responsible to the Board or any other third party regarding the accuracy or validity of the data entered through the web portal. Under no circumstances will the aggregate liability of Vendor to the Board or any third party arising out of or related to this Agreement or the provision of the Services, exceed the amount of the insurance provided by Vendor in Section 23 that may be applicable to such claims as may arise under this Agreement, regardless of whether any action or claim is based on warranty, indemnification, contract, tort or otherwise. Nothing contained in the foregoing limits or excludes the liability of Vendor for liability which cannot be excluded by law.

Notwithstanding the foregoing, the limitations of liability set forth in this Section 20 shall not apply with respect to: (i) third party claims for trademark, patent or copyright infringement; (ii) unauthorized use of the Board's Confidential Information; or (iii) fraud, gross negligence or willful misconduct.

**21. Non-Liability of Board Officials:** Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture or any subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Vendor, its members if a joint venture or any subcontractors.

**22. Board Not Subject to Taxes:** The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The amounts to be paid to Vendor hereunder are inclusive of all other taxes that may be levied or based on this Agreement as of the Effective Date, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of Vendor. Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of Vendor.

**23. Insurance Requirements:** Vendor, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by Vendor or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Vendor shall submit to the Board satisfactory evidence of insurance coverage upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements are:

**A. Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all Vendor's employees, with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause;

**B. Commercial General Liability Insurance (Primary and Umbrella):** Commercial General Liability Insurance or equivalent with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense.

**C. Professional Liability/Errors and Omissions:** If professional services are rendered, Vendor shall maintain such coverage with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per claim for errors and omissions in conjunction with professional services inclusive of assumption of contractual liability. The policy shall have a retroactive date effective with the commencement of professional services. Subcontractors performing work for the vendor who do not render professional services are not required to provide this coverage.

**D. Umbrella/Excess Liability Insurance:** Umbrella or Excess Liability Insurance with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for Commercial General Liability Insurance and Automobile Liability Insurance and shall cover the Board and its employees, subject to that of the primary coverage;

**E. Automobile Liability Insurance:** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage; and

**F. Additional Insured:** Vendor shall have its Commercial General Liability Insurance and Automobile Liability Insurance policies endorsed to provide that "the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are listed as additional insured on a primary basis without recourse or right of contribution from the Board."

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. Vendor shall provide thirty (30) days prior written notice of material change, cancellation, or non-renewal to:

Risk Management  
Board of Education of the City of Chicago  
125 South Clark Street, 7<sup>th</sup> Floor  
Chicago IL 60603

Copy to: Chief Procurement Officer  
Board of Education of the City of Chicago  
125 South Clark Street, 10<sup>th</sup> Floor  
Chicago, IL 60603  
ATTN: Nanzi Flores, GPPB

The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided before the supply of any Services.

Vendor shall require any subcontractors under this Agreement to maintain insurance at the same levels described above and naming Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board as additional insureds. Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Vendor's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements under this Agreement. Vendor's failure to carry or document required insurance shall constitute a breach of Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board retains the right to stop the supply of Services until proper evidence of insurance is provided, or the Board may terminate this Agreement.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by Vendor under this Agreement.

The coverages and limits furnished by Vendor in no way limit Vendor's liabilities and responsibilities specified within this Agreement or by law. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Vendor agrees that insurers waive their rights of subrogation against the Board.

**This Agreement will be posted on the CPS website.**

Vendor must register with the insurance certificate monitoring company designated by the Board and must maintain a current insurance certificate on file for the duration of the Term of this Agreement. The initial certificate monitoring company designated by the Board is identified below. Vendor must register and pay the annual monitoring fee to the insurance certificate monitoring company prior to performing the Services hereunder for the Board. The annual monitoring fee is currently Twelve and 00/100 Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor shall be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that it must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company listed below.

**Certificate Monitoring Company:**  
Topleary Communications Inc.  
676 N. LaSalle - Suite 230  
Chicago, IL 60654  
Phone - (312) 494-5709  
Email - [dans@toplearycomm.net](mailto:dans@toplearycomm.net)

**24. Limitation of Liability:** IN NO EVENT SHALL THE BOARD, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY VENDOR OR ANY THIRD PARTY, EVEN IF THE BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BOARD'S TOTAL LIABILITY TO VENDOR ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL MAXIMUM COMPENSATION. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

**25. Audit and Document Retention:**

**A. Audit:** Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of supplying the Services. Vendor shall permit and cooperate in a periodic audit by Board staff or Board-appointed auditors for compliance by Vendor with this Agreement, provided that: 1) such audit or inspection occurs no more than once a year unless pursuant to inspection by the Inspector General of the Chicago Board of Education as set forth in Section 33; and 2) such audit or inspection is limited information directly applicable to the Services rendered under this Agreement. Failure of Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Vendor for the cost of such audit.

**B. Document Retention:** Vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Vendor's supplying the Services under this Agreement. All records referenced above shall be retained for five (5) years after delivery of the Services and shall be subject to inspection and audit by the Board. Vendor shall include in all subcontractor contracts for the Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.

**26. Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally; or (ii) sent by confirmed telex or facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

**IF TO THE BOARD:** Board of Education of the City of Chicago  
Information and Technology Services  
125 South Clark Street, 3<sup>rd</sup> Floor  
Chicago, IL 60603  
Attn: Lachlan Tidmarsh, Chief Information Officer  
Fax: 773.553.1301

**Copy to:** James L. Babley, General Counsel  
Board of Education of the City of Chicago  
Law Department  
125 South Clark Street, Suite 700  
Chicago, IL 60603  
Fax: 773.553.1701

**IF TO VENDOR:** Blackboard Inc.  
650 Massachusetts Avenue N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001-3796  
Attn: General Counsel  
Fax: 202.463.4863

**Copy to:** Blackboard Connect, Inc.  
15301 Ventura Boulevard, Building B Ste. 300  
Sherman Oaks, CA 91403  
Attn: President  
Fax: 818.808.4140

**27. Non-Discrimination:** It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. At all times, Vendor shall remain in compliance with, but not limited to: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, et seq., as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, et seq.; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, et seq.; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 et seq., as amended; the IL Human Rights Act, 775 ILCS 5/1-101, et seq. as amended; the IL School Code, 105 ILCS 5/1-1 et seq.; the IL Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.

**28. Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

**29. Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail to the address and to the person set forth in the Notice Provision of this Agreement, to such other address or person as may be designated by Vendor in writing, to the office actually maintained by Vendor or by personal delivery on any officer, director or managing or general agent of Vendor. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

**This Agreement will be posted on the CPS website.**

**30. Continuing Obligation To Perform:** In the event of any dispute between Vendor and the Board, Vendor shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

**31. Conflict Of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.

**32. Indebtedness:** Vendor agrees to comply with the Board's Indebtedness Policy (96-0626-PO3) as may be amended from time to time, which is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

**33. Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

**34. Waiver:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time and as often as may be deemed expedient.

**35. M/WBE Program:** Vendor acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such program.

**36. Survival Severability:** All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Services by Vendor or the termination of this Agreement for any reason. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable or illegal, such provision will be severed; and the entire Agreement will not fail, but the balance of this Agreement will continue in full force and effect. In such event, the parties agree to negotiate in good faith a substitute enforceable and legal provision that most nearly effects the intent of the parties in entering into this Agreement.

**37. Uniform Commercial Code:** In the absence of a governing provision under this Agreement or should any provision of this Agreement be construed by a court of competent jurisdiction as vague, unenforceable or illegal and the parties are unable to agree on a substitute enforceable and legal provision, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.

**38. Joint and Several Liability:** If Vendor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof); then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

**39. Participation by Other Local Government Agencies:** Other local government agencies may be eligible to purchase Services pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the Board of Education's Chief Procurement Officer, and if such purchases have no significant net adverse effect on the Board, and result in no observed diminished Services from the Vendor to the Board, and result in no observed diminished Services from the Vendor to the Board's user departments pursuant to such purchases. Examples of such agencies are: City of Chicago, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier & Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts.

**40. Debarment Policy:** Vendor acknowledges that, in supplying Services for the Board, Vendor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy and Procedures, 08-1217-PO1, as amended from time to time. If Vendor has engaged any firm to supply Services that is later debarred, Vendor shall sever its relationship with that firm with respect to supplying Services to the Board.

**41. Electronic/Facsimile Signatures:** A signature delivered by facsimile or electronic means will be considered binding for both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

BOARD OF EDUCATION  
OF THE CITY OF CHICAGO

BLACKBOARD CONNECT, INC.

By: David J. Vitale  
David J. Vitale, President

By: [Signature]

Attest: Susan J. Narrajos  
Susan J. Narrajos, Assistant Secretary

Signature: M. D. NEWTON, Assoc. Gen. Counsel

Date: 12/28/2012

Title: \_\_\_\_\_

Board Report No.: 12-1114-PR4-1

Date: 12/28/12

Approved as to legal form: [Signature]  
James L. Babbley, General Counsel

Attachments:



**This Agreement will be posted on the CPS website.**

- Exhibit A: Scope of Services**
- Exhibit B: Pricing Schedule**
- Exhibit C: Key Vendor Contacts**
- Exhibit D: Service Level Agreement**

**EXHIBIT A**  
**SCOPE OF SERVICES**  
Blackboard Connect, Inc.

Board Report No. 12-1114-PR4

**Board's Project Manager:** Katie Zalewski

**Phone:** 773-553-3060

**Vendor's Project Manager:** Erin Cummings

**Phone:** 847-477-8706

**Period of Performance:** Effective Date until thirty-six (36) months thereafter

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This Scope of Services shall be conducted pursuant to the terms and conditions of the Software and Services Agreement ("**Agreement**") dated as of the Effective Date by and between Blackboard Connect, Inc. ("**Vendor**") and the Board of Education of the City of Chicago, commonly known as Chicago Public Schools (the "**Board**" or "**CPS**"). Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Agreement.

Vendor will host and support a comprehensive, highly available, web-based, software-as-a-service (SaaS) communications solution that will provide the Board with the ability for unlimited outbound notifications by multiple users from multiple data sources. Uses include, but are not limited to, daily attendance notification calls, substitute teacher scheduling and coordination, lunch fees management, District-wide mass outcalls, site/audience specific outcalls, special events and emergency notifications.

**General**

Vendor's system and services will provide:

1. 24x7x365 accessibility via a web interface from any computer, using a phone-only dialing method or via smart phone applications.
2. Unlimited outbound notifications to landline phones, cellular phones, satellite phones, e-mail to computers, e-mail to data capable devices (e.g. PDA, alpha pager), and text messaging and two-way messaging to SMS devices (e.g. cell phone and other texting devices). Vendor also delivers notifications via RSS and CAP formats feed or email to digital signage, desktop pop-up applications, Twitter, and Facebook. Additionally, the Board is able to send messages to TTY/TDD devices and facsimiles to maximize access and outreach.
3. The ability to send unlimited notifications to, but not limited to, any of the following groups:
  - Entire Board population (students, parents, administration and staff)
  - Sub-sets of entire Board population
  - School or site-specific level staff
  - User-defined subgroups
  - Subgroups selected by data values or geo-codes
  - Groups outside the base population assuming the Board provides the numbers to be used.
4. A maximum limit of three (3) minutes for a voice message and one hundred sixty (160) characters for a text message.

5. **Prioritization of emergency notifications.** Emergency notifications will always be sent first and be sent to all contact paths for each recipient in order to ensure quick delivery. For non-emergency notifications, the recipient may choose the sequence of contact devices.
6. **No emergency call rate increase or hidden charges related to emergency messaging.**
7. **A method to send notifications in situations when a Board initiator is unable to access the Internet or has no power.** In these situations, a Board user may initiate a notification using just a telephone (land line, cell phone or satellite phone) via an automated dial-in, User ID and PIN process.
8. **Secure integration with the Board's back end applications and databases, including the Board's Chancery SMS and any other database(s).** Blackboard will utilize Secure FTP interface for secure, timely and efficient import (upload) and updates. Data is imported into the service utilizing a comma-delimited or tab-delimited file. The import process can be run daily, weekly, or monthly at the Board's discretion and all data will be automatically geo-coded with latitude and longitude coordinates.
9. **Notifications in multiple languages, including English and Spanish.** Text messaging and email is available in all Roman alphabet languages. Text-to-voice conversion is preloaded in Spanish and English and can be provided in up to 22 languages. Text-to-text translation is available from English to Spanish, French, German, Portuguese, Danish, Dutch, Norwegian and Italian.
10. **Prioritization of non-emergency notification delivery methods based on end user preference (i.e. - home phone first, if not answered then cell phone, etc.).** Vendor uses proprietary algorithms to send to all contact points in the quickest way possible.
11. **Interactive survey capabilities that allow Board users to create a message in the form of a customized survey with up to nine (9) questions to send to contacts.** The questions can be "yes or no" and/or multiple choices. The recipients respond to a message via their telephone keypad. The Interactive Survey service tabulates the results and then provides them to the Board via a website and e-mail reports. The interactive survey call type allows recipients to confirm a notification via a key press on voice-delivery devices such as telephones.
12. **Unlimited 24/7/365 live toll-free and/or web-based Customer Service Support at no additional cost to the Board.**
13. **Unlimited 24/7/365 technical programming and support for implementation and on-going requests through a 24-hour toll-free support line at (866) 435-7684 at no additional cost to the Board.**
14. **Simple management tools through an easy-to-use interface for authorized Board users.**
15. **Real time monitoring and reporting.**
16. **Real time updates to any Board source information.**
17. **Management reports on utilization, call success rates, messaging success rates, invalid phone numbers, invalid e-mail addresses and other additional information.**
18. **The capacity to support up to ten (10) contact numbers, four (4) e-mail addresses and ten (10) SMS phone numbers per recipient.**
19. **Flexible message scheduling for immediate, future, and/or reoccurring messages.** Messages can be scheduled according to specific groups, specific messages and/or emergency alerts. Messages and notifications can be scheduled up to a year in advance.

20. Granularity so that individual schools, departments or programs are able to manage and administer notification lists and sends notifications to their specific lists.
21. The ability to send unlimited Short Message Service (SMS)/text messages to cell phones, smart phones, TTY/TDD devices, PDAs and other text-based devices.
22. Notification to recipients receiving SMS/text messages that their SMS/text provider may charge a fee. Vendor offers an "opt-out" process so that these recipients avoid such fees.
23. Multiple means to exclude recipients who choose to 'opt out' of notifications or to edit specific points of contact (phone numbers) for recipients. A recipient may be removed via SMS reply, the Vendor web portal, removal from the Board's Chancery Student Information System (removed upon next scheduled upload) or a call from an authorized Board administrator to the Blackboard Connect Client Care Center.
24. The ability to send both a recorded voice message and a text message in a single notification to specified recipients for delivery to appropriate contact points.
25. The ability to pre-record standard voice messages and pre-schedule voice or text messages for planned events up to one year in advance. Messages may be stored in the library for the lifetime of the Agreement.
26. The ability for a Board user to enter a message in text and to have it converted to speech ("text-to-speech" conversion).
27. The ability to create a single notification and have it translated into the appropriate message type (voice, text, HTML, email, TTY/TDD, etc) for each recipient.
28. A message personalization tool that allows Board users to "blend" conventional text-to-speech voice simulation and the user's own voice to maximize personalization and customization.
29. The ability to send Plain and Rich text e-mail messages.
30. The ability to customize message "salutation," "from," "reply to" and "subject" fields in email and text messages.
31. The ability to add standard wording to any message (such as legal requirements to identify the message owner, etc.)
32. Spell-check for all notifications prior to sending.
33. Preview of all complete messages before delivery.
34. A notification cancellation feature that allows the Board user to stop a notification at any point in time. However, due to the speed of delivery, first attempts may already have been made.
35. Automatic retry of message delivery to specified contact points for undeliverable messages for a period of at least three (3) hours. If the notification is not successful on the first attempt, the service makes up to three (3) re-try attempts per each individual's contact point. The sender also has the option to select a one-try only delivery, which results in the delivery report being returned in short order to assess how many individuals were reached. After completion of the notification, including the standard retries, the sender has the ability to do additional "one click" retries from the delivery report to any recipients that did not receive the message (disconnected numbers, no answer, and invalid phone numbers). This function will not re-send the message to those that did receive it successfully during the initial notification period.

36. The ability to distinguish when a live recipient is reached vs. an answering machine or voice-mail on voice-delivered devices.
37. Message delivery when a voice-delivered message reaches an answering machine or voice-mail. The system determines that the recipient is an answering machine/voice mail, waits for silence and then delivers the appropriate message.
38. Board-specific web portal(s). Administrators, staff or recipients will be able to quickly and easily subscribe to specific groups or message categories and indicate precisely in what modes and on what devices they would like to receive notifications. By following a secure authentication process, users affiliate themselves with student or staff records already uploaded from the Board's database systems.
39. An implementation plan with clearly defined roles and responsibilities, training options as well as execution timeline will be presented to the Board within two weeks of Agreement signature. Phased implementation will be completed within 90 days of the date the Agreement is signed.
40. Onsite and on-line training for administrators, District-wide staff and end users. Training includes initial implementation training as well as re-training and future new user training via on-site and/or via webinar at no additional cost throughout the life of the Agreement.
41. All training materials, including hard copy and electronic copy as needed. Training materials may be made available via web portal.

#### **Substitute Teacher Scheduling and Coordination**

42. Vendor will work collaboratively with the Board to address the unique Substitute Teacher Scheduling and Coordination needs based on the capabilities of the offered outbound notification service. Some of the options available include:
  - a. The Board may utilize the Interactive Survey call type to create customized survey messages with up to nine (9) questions to send to schools, teachers, substitute teachers or any combination of these groups. The specific recipient(s) respond to the message via their telephone keypad. The Connect service tabulates the results and then provides them to the Board via the website and e-mail reports.
  - b. A unique Substitute Teacher Scheduling and Coordination portal can be created for an easy-to use web-based option to gather and disseminate scheduling and coordination information.
  - c. The Board user may create a message and insert the name of the job or school and details regarding the substitute opportunity.
  - d. The Board may utilize the Blackboard ConnectTxt text service for Substitute Services. This two-way messaging system makes it simple to send and receive text messages to a wide audience, directly from a computer or mobile device. With powerful personalization and automation tools, ConnectTxt helps users communicate in a more engaging, conversational way – fostering a more meaningful sense of connection with the Board's substitute teachers.

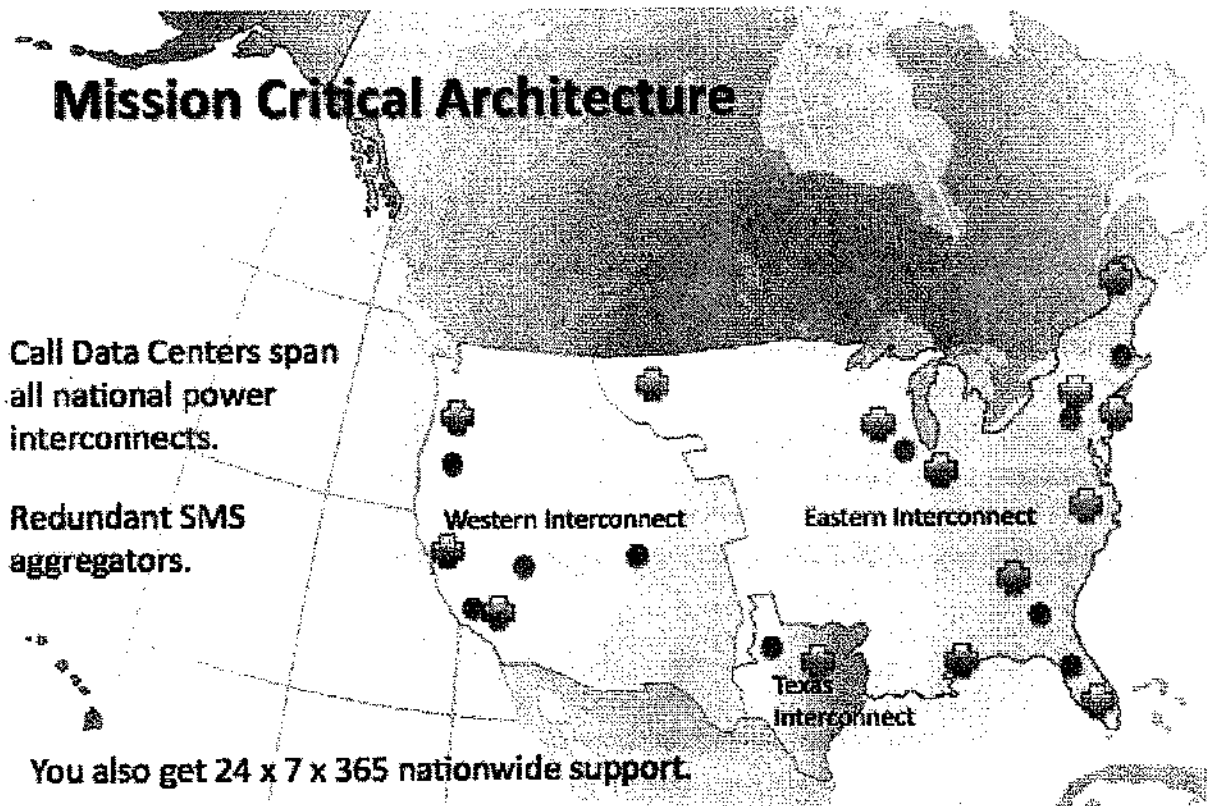
### **Architecture/Redundancy/Capacity**

Vendor acknowledges and agrees that:

43. The service is fully hosted. The Board needs no additional solution-specific voice and/or data circuits to operate the system.
44. No hardware is required beyond existing telephones, smart phone or Blackberry cellular units, PC workstations with Microsoft OS Windows 2000 and all later MS OS and with Microsoft Internet Explorer 6.0 or later.
45. The Board will not have to manage database capacity or phone ports.
46. The Board's hosted solution has 99.99% uptime, scheduled maintenance notwithstanding.
47. The system is designed with scalability for long-term viability through an open architecture that allows for system growth as the needs of the Board grow.
48. A unique Automatic Number Identification (ANI) will be associated to Board calls placed from the system to the public network.
49. The system will be able to deal with caller-ID blocking, tele-zappers and other call-blocking devices designed to restrict unsolicited inbound calls. Customized unique Caller and Email IDs will be created for all schools and specific Board departments or programs to deal with caller-ID blocking, tele-zappers, and other call-blocking devices.
50. The system supports configurable dialing prefixes and supports both seven (7) and ten (10) digit dialing.
51. Board users are able to access the system and create/send notifications remotely without special equipment. Users are able to access the system via the specific Board web interface, toll-free telephone number as well as iPhone and Android cellular phone applications.
52. The solution has the ability to prioritize emergency notifications over standard notifications in the message delivery queue. Emergency notifications are always placed first in the queue.
53. The authorization feature will allow the Board to set its own parameters around notification events to prevent users from sending unauthorized notifications or sending a call at an inopportune time. Vendor's service also includes de-duplicating technology so that a single number will not receive multiple calls regarding the same notification. Other alerts include:
  - An alert to the 24x7x365 technical support team if first attempts are not started within 15 minutes
  - An alert to the 24x7x365 technical support team if first attempts are not completed within 30 minutes
  - If all attempts are not completed within 90 minutes, our technical support team is alerted and begins monitoring
  - If all attempts are not completed within 120 minutes, our technical support team takes action
  - At 180 minutes, our telecommunication partners stop all calls for that message schedule and send Vendor a report on deliveries

This Agreement will be posted on the CPS website.

54. All upgrades, updates and enhancements to the architecture or solution shall be provided at no additional cost to the Board. All upgrades and enhancements are rolled out seamlessly into the web interface only after extensive testing. The Board will be notified prior to major upgrades and new user documentation and training will be provided as requested.
55. The solution has the capacity to support a student population of over 400,000 with 700+ site locations. Through pre-contracted service level agreements (SLAs) with multiple telecommunications providers, Vendor is able to deliver over 3.2 million 60-second voice calls per hour, 1.8 million text messages per hour and 1.8 million email messages per hour.
56. The solution has full redundancy by maintaining a zero-single point-of-failure system through utilization of redundant and distributed infrastructure (including telecommunications providers, servers, power grids, and communication streams) to support service delivery. Vendor application servers are hosted in multiple, geographically diverse, fully redundant powered data centers:



### Data Management, Security, Active Directory (AD) Integration and Auditing

Vendor acknowledges and agrees that:

57. The Board owns all data, including recipient information, message traffic data, and log data. Vendor will not sell or use data in any way other than to serve the Board.
58. Data integrity is provided via Vendor's data security policy and through the following security measures taken as it relates to the Board's data:

**Perimeter:**

- **Firewalls:** All connect environments are protected by redundant perimeter firewalls that are segregated by Vlans with traffic being controlled by strict access control lists.
- **Web Application Firewalls:** all web traffic traverses through redundant Web Application Firewalls. The traffic is inspected for anomalies and attack signatures (i.e.; SQL injection, Cross site scripting etc...) before it can proceed to the back end for processing.

**Internal:**

- **IPS:** All ingress and egress traffic traverses through IPS Sensors located in all environments. IPS signatures are automatically updated to provide protection against the most current threats.
- **Access control System:** All infrastructure equipment is locked down and controlled via an access control system to deny access to unauthorized personnel.
- **Database Firewalls:** all communication with the databases must first pass through cutting edge redundant database firewall gateways. All access and transactions are checked against an access policy and are either permitted or denied based on the current policy. All access and transactions are logged and stored for compliance and troubleshooting.

**Vulnerability discovery and mitigation**

- All external facing servers and infrastructure in every Vendor environment are scanned and audited for vulnerabilities on a weekly basis. All internal servers and infrastructure are on a tri- weekly scan rotation.
- The Blackboard Connect 5 application is scanned with a web application code scanner for security issues throughout the SDLC life cycle.

59. The service removes any duplicate records removing the possibility of duplicate notifications.
60. The service facilitates unattended, automated and secured contact data upload and update directly from the Board's Chancery SMS. The system can take information directly from the Board's student information system, including but not limited to, grade, gender, student ID, school, teachers and other information.
61. The solution provides the ability to download the Board's contact database in its entirety or by queried fields.
62. The Board can add or change all or some contact data through an imported file in .csv or .txt format or ODBC import.
63. The service provides calls results status data that can be uploaded daily to the Board's CPS Dashboard application. Vendor will provide a comma-delimited file containing call results status data that can be uploaded daily to the CPS Dashboard application so that the Board may identify invalid phone numbers that need to be corrected by Board personnel.
64. The service includes an easy to use, self-administered contact management solution that can support an unlimited number of all-purpose calling groups. This feature allows all system users the ability to create an unlimited number of groups (by school, home language, bus schedule, teacher, band parents, PTA parents, etc.) within their designated



**contact list.** Users can also organize contact data by contact types (student, faculty, administrator, gender etc.). There is no limit to the administrator's ability to target communications to select groups or subgroups of community members.

65. The service supports encryption between all server components and client-to-server connections. All data transmitted to and from the Board's administration website utilizes secure transmissions that use 128 bit SSL encryption or better. All data transfer is performed using either SSL or SFTP at the client's preference.
66. System security is a top priority, utilizing only the most current industry-standard practices, including:

**Physical Security:**

- Datacenter housed in non-descript building with 24/7 security detail.
- ID is required to sign in and personnel entering must be on the facility access list.
- Bio-metric authentication is required for entry into cage area.

**Personnel:**

- Vendor's Security Manager is NSA-IEM certified (National Security Agency-Infrastructure Evaluation Methodology), CISM (Certified Information Security Manager) CRISC (Certified Risk Manager) overseen by ISACA and AppScan certified. CISSP certified (Certified Information Systems Security Professional), The CISSP certification is overseen by the International Information Systems Security Certification Consortium or (ISC)<sup>2</sup>®, which is the internationally recognized gold standard for educating and certifying information security professionals;

**Data and Infrastructure Security:**

*Perimeter:*

- **Firewalls:** All connect environments are protected by redundant perimeter firewalls that are segregated by Vlans with traffic being controlled by strict access control lists.
- **Web Application Firewalls:** all web traffic traverses through redundant Web Application Firewalls. The traffic is inspected for anomalies and attack signatures (i.e.; SQL injection, Cross site scripting etc...) before it can proceed to the back end for processing.

**Internal:**

- **IPS:** All ingress and egress traffic traverses through IPS Sensors located in all environments. IPS signatures are automatically updated to provide protection against the most current threats.
- **Access control System:** All infrastructure equipment is locked down and controlled via an access control system to deny access to unauthorized personnel.
- **Database Firewalls:** all communication with the databases must first pass through cutting edge redundant database firewall gateways. All access and transactions are checked against an access policy and are either permitted or denied based on the current policy. All access and transactions are logged and stored for compliance and troubleshooting.

**Vulnerability discovery and mitigation**

This Agreement will be posted on the CPS website.

- All external facing servers and infrastructure in every Connect environment are scanned and audited for vulnerabilities on a weekly basis. All internal servers and infrastructure are on a tri-weekly scan rotation.
- The Connect 5 application is scanned with a web application code scanner for security issues throughout the SDLC life cycle.

**Monitoring:**

- Every server and all network equipment is monitored 24/7. Any security incidents or events are correlated and proper personnel are notified immediately.

**Forensics:**

- Vendor has an in house Enterprise Forensics Program that includes network and host forensic capabilities.

**Vendor Employees:**

- All employees of Vendor undergo and clear Vendor's rigorous comprehensive pre-employment background and reference check conducted by third party independent professionals. Only employees who have undergone and cleared background checks will have access to client data. Upon hire, all employees sign a Confidentiality Agreement, an Electronic Communications Policy, a Technology Resources Policy, and a Code of Business Conduct Policy. During the orientation process and throughout the employment period, each employee is educated and continually updated about security, confidentiality, and privacy protocols and processes.

67. Vendor is compliant with all applicable Federal and State laws and follows the strictest possible protocols to ensure data protection. Therefore:

- Vendor does not sell, trade, lease or loan any data about its customers to any third party;
- Vendor is not a source of, nor does it deliver, any unsolicited e-mail, unsolicited voice mail or unsolicited faxes
- Vendor does not sell or provide information to direct marketers or any other third parties;
- Vendor only uses the Board's contact information to correspond with Board users as necessary and if requested, to resolve problems that the Board encounters, and to improve customer service; and,
- Vendor does not disclose any client information except as mandated by law enforcement authorities and government agencies.
- Vendor follows the standards set by ISO (International Organization for Standardization), specifically ISO 17799 and ISO27001, and NIST (National Institute of Technology), which establish international guidelines and best practices for initiating, implementing, maintaining, and improving information security management in the following areas: Business continuity planning; System access control; System development and maintenance; Physical and environmental security compliance; Human resources security and personal security; Computer network management.

68. All administrators and users of the solution will be authenticated at the time of log-in using the Board's Active Directory ("AD") infrastructure, which is a single forest, multi-domain, discontinuous namespace and non-transitive trust environment.
69. The service provides a mechanism to link the application's authorization levels (also known as roles) to AD groups. Each application role will relate to an AD group (a "primary security group"). User accounts placed in primary security groups will be authorized for the corresponding application functions for that role. The system has authorization logic capable of defining these groups in such a way so they are not repeated on a per school or per department basis to reduce the overall number of groups needed for the Board. The Board will provide Proposer with the necessary AD credentials to read the forest to support the above functions.
70. Each primary security group may contain other AD groups; therefore, when a user account is placed in one of these AD groups, the user will gain the authorization of the primary security group. Each AD group may, in turn, contain other AD groups to allow multiple levels of nesting.
71. The service provides ongoing support for the AD implementation for the Board. As major Active Directory versions are released, Vendor will test and support any changes in functional operation of the directory services that could affect the application's integration within a reasonable (less than 10 business days) timeframe. Vendor will test and support point releases within six (6) months of their release. The Board will work with Vendor to ensure that any significant changes to the Board's AD configuration do not impact the ability to integrate with the service.
72. The service records an audit trail of all changes made to system data.
73. Passwords are transmitted and stored in an encrypted format. The service provides the capability to enforce maximum login attempts at 5 attempts and inactivity timeout at 59 minutes.

## **Administration**

Vendor acknowledges and agrees that the service provides the Board the ability:

74. To create a hierarchy of notification lists. The service includes an easy to use, self-administered contact management solution that can support an unlimited number of all-purpose calling groups. This feature allows all system users the ability to create an unlimited number of groups (by school, home language, bus schedule, teacher, band parents, PTA parents, etc.) within their designated contact list. Users can also organize contact data by contact types (student, faculty, administrator, etc.). There is no limit to the administrator's ability to target communications to select groups or subgroups of community members.
75. To control access to administrator tools minimally at two levels: access to all tools and access to message-send features only.
76. For each school, administrative site, department or person responsible for a group to manage its own notifications.
77. To view all elements of a subscriber record but not make changes to that record. All changes to a record must be made in the CPS Student Information System and then be uploaded into the system upon the next scheduled upload. Uploads can be scheduled at the Board's needs.

78. To search contact records by e-mail address, name, phone number, as well as date subscribed and the ability to download subscriber data in Excel format, both in its entirety and in subsets.
79. The service provides the ability to create and save sub lists of subscribers segmented by one or more of the data fields collected. The service also provides the ability to review all subscriber records in each sub list.
80. To sequence the recipient's preferred devices/paths so that recipient's messages are attempted in a prescribed order.
81. To define when notifications calls are to be made or transmitted. Administrators or users may elect to send voice, text, email, RSS, CAP, Facebook or Twitter or any combination of those for each message.
82. To identify one or more "group administrators" for any particular group or site.
83. To restrict visibility of group administrators to their groups' recipient and message information. Further, the service allows group administrators full control to add or change recipient information and to send notifications to those recipients. Vendor has administrative tools that recognize the hierarchy of school structures and facilitate centralized control with decentralized use.
84. To allow group administrators full control to add or change recipient information and to send notifications to all sub-groups of their groups. As part of the initial set-up and implementation, Vendor works with the Board's system administrator(s) to designate users by type, identify user roles, and identify which database groups those users can access, view, and/or modify based upon their specific areas of responsibility. Each user is assigned an account profile that is accessed through AD authentication and resulting in secure and appropriate data access and oversight by the appropriate user.
85. To set up an organizational hierarchy where the administrators of the primary organization can view and send notifications to all secondary organizations and their groups and recipients. Vendor has administrative tools that recognize the hierarchy of school structures and facilitate centralized control with decentralized use; roll-up reporting of call results and usage activity, district student attendance messaging, and data management.
86. For administrators to set call type priorities (i.e., an attendance call is a higher priority than a mass outcall).
87. For administrators to set default notification time periods. Notifications may either be sent immediately or be pre-recorded and scheduled for later delivery up to one year in advance. Pre-recorded messages may be stored in the library for the lifetime of the Agreement.
88. To allow authorized individuals to approve any message before it is sent through a call authorization feature. This feature prevents users from sending an unauthorized call or sending a call at an inopportune time
89. For authorized administrators to add or edit recipient and contact information directly within the interface.

### **Reporting**

Vendor acknowledges and agrees that the service provides:

90. Post-notification statistical information including number of messages sent, number of recipients, message open rate (HTML messages), click-through rate on each URL

provided in a message, message send rate, and delivery times. When a scheduled call completes, the service automatically compiles statistical results and send them to the user via an HTML e-mail. Additionally, the e-mail reports can be automatically copied to other users at the site or at the Board. All e-mail reports show a summary of the call results and provide links to Resend Calls and/or View Call Details. For security purposes, only a summary report is accessible via the e-mailed report, which does not include specific phone numbers. On the website, accessed with a valid user ID and password, more detailed information can be viewed, such as a breakdown of each phone number called, the type of number called (home, work, cell, etc.), which numbers appear on the Bad Number list, and the final status of the call (Live Delivery, Answering Machine, Busy, etc.).

91. The ability to track message information: time message was generated; real-time updating of message status (queue, mailing, sent).
92. The ability to report on bounce backs, bad e-mail addresses, and wrong or invalid phone numbers. Vendor will work with the Board to create customized email address(es) in which email notifications will appear to have originated from to the recipient to which bounce backs may return so that the Board can track incorrect e-mail addresses on every message sent.
93. On-line, e-mail, and downloadable reports that provide details on everything from call type to call status. In addition, a reporting dashboard and downloadable reports are available on the reporting tab through the web Interface. If the Board needs additional reports or information, such as Ad-Hoc reports, Blackboard Connect Client Care will customize any report desired by the Board .
  - E-mailed reports contain general information only. When the information is student specific, it is available through the web-Interface accessed after an authorized user logs into the system to maintain student privacy and data security. Several of the standard reports available include, but are not limited to:
    - Message Summary Reports
    - Interactive Survey Message Summary Reports
    - Individual Call History
    - Bad Number Report
94. If the Agreement is fully-executed and a purchase order is issued to Vendor for the Services on or before December 31, 2012, then for the first 12 months of the Agreement Term during which the Services are provided, Vendor shall also provide the following additional service to up to 3 schools designated by CPS at no additional charge:

Blackboard Connect for Teachers K-12 service. Blackboard Connect for Teachers service will enable teachers to send pre-recorded telephone comments to parents of students in a designated language. Vendor will provide support to a designated administrator ("Teacher Champion") at the CPS. The Teacher Champion will in turn support the teachers using the Blackboard Connect for Teachers service.

This Agreement will be posted on the CPS website.

**EXHIBIT B  
PRICING SCHEDULE  
Blackboard Connect, Inc.**

Board Report No. 12-1114-PR4

<b>Set-up and Training Fee</b>	
	<b>One-Time Fee</b>
Programming and Set-up	\$0.00
Initial Training	\$0.00
<b>Service Fees</b>	
<b>Year One (1) – 12 months</b>	
	<b>Monthly Fee</b>
Unlimited Calls, Unlimited Messaging and Long Distance	\$41,512.50
24/7/365 Service and Support	Included
New User and Ongoing Training	Included
Maintenance-Year One	Included
Other (describe in detail below)	Included
<b>Year Two (2) – 12 months</b>	
	<b>Monthly Fee</b>
Unlimited Calls, Unlimited Messaging and Long Distance	\$41,512.50
24/7/365 Service and Support	Included
New User and Ongoing Training	Included
Maintenance-Year Two	Included
Other (describe in detail below)	Included
<b>Year Three (3) – 12 months</b>	
	<b>Monthly Fee</b>
Unlimited Calls, Unlimited Messaging and Long Distance	\$41,512.50
24/7/365 Service and Support	Included
New User and Ongoing Training	Included
Maintenance-Year Three	Included
Other (describe in detail below)	Included
<b>TOTAL MAXIMUM COMPENSATION (This includes all total costs for Set-Up and Training Fees and total yearly Service Fee costs for the 36 monthly payments)</b>	<b>\$1,494,450.00</b>

This Agreement will be posted on the CPS website.

The payment schedule for Vendor shall be as follows:

<b>One-Time Set Up and Training Fee</b>	
<b>Programming, Set-up and Training</b>	<b>\$0.00</b>
<b>Service Fees</b>	
Services include unlimited calls, unlimited messaging, long distance, 24/7/365 service and support, new user and ongoing training and maintenance services	<b>Payment Installments</b>
36 Monthly Payments	<b>\$41,512.50</b>
<b>TOTAL MAXIMUM COMPENSATION</b>	<b>\$1,494,450.00</b>

**EXHIBIT C**  
**KEY VENDOR CONTACTS**  
Blackboard Connect, Inc.

Board Report No. 12-1114-PR4

Defined terms used in this Exhibit shall have the same meanings as those ascribed to such terms in the Agreement.

All members of the Blackboard Connect Client Care Team are full-time, Vendor employed customer service professionals. Vendor assures data security by requiring all staff to undergo and clear extensive background checks prior to employment. Additionally, all Client Care Team members are Level 1/2 cross-trained in both customer and technical support to address a variety of client needs.

In the event that an issue needs to be escalated, escalation levels are listed below. Response time from level to level is typically an hour or less, but will be dependent upon the severity of the issue. Incident resolution will be dependent upon the severity of the issue as well. The Client Care Account Manager will provide updates throughout any incident until there is incident resolution.

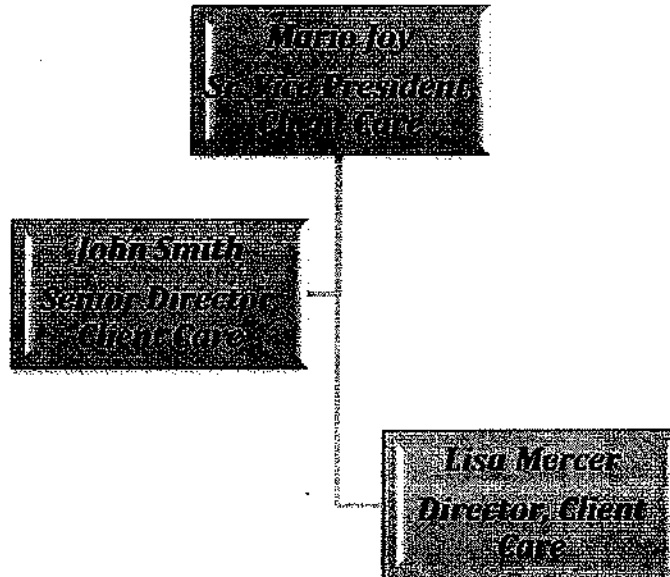
The Dedicated Project Manager, Lisa Mercer, is responsible for all day-to-day aspects of account management after contract signing. Lisa is located locally to the Board and brings a consultative approach, with a "whatever it takes" dedication towards serving the Board.

<b>Escalation Level</b>	<b>Contact</b>	<b>Contact Number</b>
Level 1	Help Desk or Client Care Manager (System & Functional Issues)	(877) 428-9411
Level 2	Client Care Director (System & Functional Issues)	(818) 808-1700 or as above
Level 3	Senior Client Care Director (Functional Issues) Technology Director – Integration Director (System Issues)	(818) 808-1700 or as above
Level 4	Chief Technology Officer (System Issues)	(818) 808-1700 or as above

The Board's account is managed through the partnership and support of the Blackboard Connect Client Care Team, who are responsible for managing all aspects of the account and the needs of the Board. The Client Care Specialists assigned to the Board's account are specialists, dedicated to K-12 accounts in the Board's particular geographic area to ensure relationship building and education specific knowledge. Vendor assures data security by requiring these Specialists, and all staff to undergo and clear extensive background checks prior to employment. Within the Team, the Board is assigned two account-specific managers so that the Board has a contact available to them that is well versed in the day-to-day needs of the Board. Managers work under the supervision of the larger Client Care leadership, who take an active role in providing a depth of day-to-day support and leadership for account management.



Account managers are supported in their efforts by a host of visible and "behind the scenes" contacts, including the Senior Vice President of Client Care, the Vice President, Senior Client Care Directors, among others. Our entire staff provides additional support. In the event that either of a CPS' two account managers are unavailable, dozens of other Client Care Specialists are available 24/7/365. To ensure that the support personnel are not impacted by a regional event, such as a power outage, our Client Care Team has members that work in several regional offices, covering all time zones of the United States. We provide a visual diagram of the Board's direct team in what follows:



All members of the team have extensive knowledge and experience in project analysis and implementation with districts of all sizes in all 50 states, encompassing both urban and rural areas in the K-12 market space. Should the Board desire additional information beyond that which has been included below, detailed resumes can be provided in closed session upon request.

**DIRECT SUPPORT:**

**Mario Joy, Senior Vice President, Client Care**

Mr. Joy, as well as his Client Care Team (discussed below) confer with the District and discuss the District's overall goals for the service, their requirements, and any special practices or policies that the District wishes and/or will wish to implement based upon best practices derived from other districts of similar size. Mr. Joy will then continue to work with the Client Care Team to regularly audit the team's progress toward each site's goals as well as toward the overall goals of the District. In his over 8 years with Vendor, Mr. Joy has overseen the successful implementation of more than 2,000 accounts.

**DIRECT PROJECT TEAM:**

**John Smith, Senior Client Care Director, K-12**

As a key member of the Client Care Team under Mr. Joy's direction, Mr. Smith is dedicated to ensuring the smooth implementation, roll-out, and ongoing usage of the Vendor service. Mr. Smith and/or his team, composed of Client Care directors and managers, deploy to CPS to

perform on-site training for the duration of initial training and is available upon request for additional training and re-training throughout the duration of the contract. Other Client Care Representatives are also cross-trained, under the supervision of Mr. Smith, to provide training and re-training if needed.

**Lisa Mercer, Client Care Director**

As a key member of the Client Care Team, Ms. Lisa Mercer will be dedicated to ensuring smooth implementation and rollout. Ms. Mercer and/or her team (Client Care Manager/Specialists) are deployed to each site for the duration of training and is available upon request for additional training and re-training throughout the duration of the contract. Other Client Care Representatives are also cross-trained, under the supervision of Ms. Mercer, to provide training and re-training if needed. Ms. Mercer is responsible for the day-to-day success of client satisfaction for the Board's rollout.

**Deanna Ellis, Vice President, Technology**

Ms. Ellis is a senior member of our integration team who works with the Board to automate the data integration process. In the event that Vendor is awarded the RFP, she will work with Board representatives to maintain integration. She is involved in all phases of design, logic, and system functionality decisions. She has assisted thousands of Institutions to securely integrate their in-house data with the Connect service, and has set up an automated, unattended data integration process for most of these institutions as well. Ms. Ellis came to the Vendor team in 2003 with over 15 years of prior experience supporting users of complex software solutions, as well as working as a programmer and database interface developer.

**Bing Chen, Vice President, Product Management**

As Vice President of Product Management, Mr. Chen is responsible for ensuring the smooth development and integration of new features and functionality throughout the system. As such, Mr. Chen will lead Blackboard Professional Services to fully understand the Board's emergency communication strengths, weaknesses, opportunities and threats and then work with the Board to plan, develop, implement and test a customizable solution that will best suit the Board's needs. Mr. Chen has been an integral part of the Vendor Team since 2001 and continues to play a key role in the design of the user-interface.

**General Staff Qualifications:** Beyond the dedicated team and those listed below in back-end support, additional staff members that will assist with the project for the Board hold the following professional certifications and degrees. This list is by no means exhaustive, but rather a representative sample of the combined expertise of the employees of Vendor who will run and support the project implementation and ongoing support of the Board. Should the Board need additional information regarding the professional qualifications of any member of the team, we would be happy to provide additional information.

**Degrees:** Within Vendor's Technology Team of 36 employees, all employees have the appropriate training, background, degrees, and certifications for their role. Team degrees include, but are not limited to the following: Bachelor of Science degrees in the areas of Engineering, Computer Science and Math. Additionally, the team includes staff with Masters of Science degrees in Electrical Engineering and several staff with Masters of Science degrees in Computer Science.

**Technology Certifications:** Members of the Technology Team hold the following certifications related to their responsibilities and experience with delivery of Mass Notification Systems:

- MCSE: Microsoft Certified Systems Engineer
- MCP: Microsoft Certified Professional

This Agreement will be posted on the CPS website.

- CCNA: Cisco Certified Network Associate
- CISSP: Certified Information Systems Security Professional
- QUALYS
- NSA – IEM
- MS Certificated Professional – Windows Clustering
- MS Certificated Professional – SQL Server Administration
- Six Sigma Green Belt Training
- U.S. Army Signal Corp (Multi-Communications)

**Project Management:** Members of the Technology Team and/or Project Management Team hold the following certifications related to their responsibilities and experience with delivery of Notification Systems:

- Project Management Professional (PMP) Certified
- Certified Information Systems Auditor (CISA) Certified
- Cal Tech/JPL Project Management Certificate

**EXHIBIT D**  
**SERVICE LEVEL AGREEMENT (SLA)**  
Blackboard Connect, Inc.

Board Report No. 12-1114-PR4

Defined terms used in this Exhibit shall have the same meanings as those ascribed to such terms in the Agreement.

Vendor uses commercially reasonable efforts to provide the Services to the Board for twenty-four (24) hours a day, seven (7) days a week throughout the Term of the Agreement. The Board accepts that from time-to-time the service may be inaccessible or inoperable for various reasons, including periodic maintenance procedures or upgrades ("scheduled downtime"), service malfunctions, and causes beyond the control of Vendor or causes that are not reasonably foreseeable by Vendor including the interruption or failure of telecommunications or digital transmission links, hostile network attacks or network congestion or other failures (collectively "downtime"). Vendor will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the service in connection with downtime, whether scheduled or not.

**Support Standards**

*Availability* Vendor will provide support to the Board on a 24/7/365 basis.

**Maintenance and Performance Standards**

*Network Server Availability*

- Vendor will exercise reasonable best efforts to maintain 99.8% availability, except for those periods during scheduled or emergency network and/or application maintenance.

*Delivery*

- An attempted Delivery will be defined as a call originated by an initial transmission of a message to a publicly switched telephone network ("PSTN").
- Vendor has Service Level Agreements ("SLAs") with redundant telecommunications providers that allow Vendor to initiate over 3.2 million 60-second voice calls per hour. Additionally, Vendor has the capacity to send 1.8 million text messages per hour and 1.8 million email messages per hour.

**Trouble Shooting**

If the Board believes that Vendor has failed to achieve its SLA in any given month, the Board must open a written trouble ticket for the failure within 5 business days of its occurrence. On receipt of the trouble ticket, Vendor's technical support staff will log the call and pursue resolution of the inquiry.

1. If the source of the problem is outside of the control of Vendor, it will use commercially reasonable efforts to notify the party/parties responsible and cooperate with the party/parties to resolve such problem as soon as possible.
2. If the source of the problem is within the control of Vendor, Vendor will use best efforts to resolve the problem as soon as is reasonably practicable.

### **Limitations Applicable to SLA Guarantee**

1. No failure to meet any of the network availability or network service guarantees set forth above will be deemed to have occurred, and no penalty shall accrue, if such failures arises from or is otherwise caused by:
2. Interruptions due to the failure or malfunction of equipment not owned or operated by Vendor, including service connected to Board-provided electric power;
3. Loss of power, local access, other connectivity or equipment failure on the Board side;
4. Any act or omission of Board or its employees, agents, contractors, or third party that causes an interruption or service degradation;
5. Interruptions during any scheduled maintenance period;
6. Interruptions due to force majeure events or events beyond the reasonable control of Vendor;
7. Interruptions arising from misuse of the Services by the Board or any interruptions due to any third party network, including but not limited to Internet service providers or telecommunications providers connected to, or providing service connected to, the Services, or Vendor facilities.