

ITEM RES 2015-6053

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**2/17/2015**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Blackboard Inc. Contract Renewal	Douglas Kozlowski Communications Director

**SYNOPSIS**

A resolution has been prepared authorizing an agreement for three years between the Village of Downers Grove and Blackboard, Inc. for the community-wide notification system in the amount of \$29,473.50 per year.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011-2018 include *Exceptional Municipal Services*.

**FISCAL IMPACT**

The FY15 General Fund budget includes \$42,000 for this project. The total cost of the proposed three-year contract for the Community Wide Notification System would be \$88,420.50.

**RECOMMENDATION**

Approval on the February 17, 2015 consent agenda.

**BACKGROUND**

In February 2009, the Village entered into a three-year agreement with Blackboard Connect Inc. to purchase a community-wide emergency and non-emergency notification service. Blackboard Connect was selected following an extensive review and demonstration of similar products by Village staff, in addition to the review and approval of the Technology Commission. The contract was extended for three years in January 2012.

This system allows the Village to send unlimited messages to the entire community via telephone, cellular phone, email or SMS (text messaging). The database provided by the system includes one listed phone number per physical address. Users may then provide additional phone numbers and email addresses by accessing their accounts through the Village's website.

Over the past three years the Village has activated the system a total of 51 times to communicate a variety of emergency and non-emergency messages regarding, missing persons, residential burglaries, gas leaks, garbage collection and SWU implementation. Construction updates were also provided using the geo-calling feature to alert residents about construction schedule changes that impacted only small areas within the scope of larger projects.

At present there are 19,649 records in the system database which includes households and businesses within the Village's jurisdiction. Below is a complete list of system features:

- Unlimited service at a fixed annual price. This includes unlimited calls, text messages, e-mails, minutes, training, support, and a database of listed residential and business telephone numbers.
- Voice and text delivery to multiple communication devices.
- Geo-Calling feature lets you target recipients using a map.
- 24/7/365 proactive Client Care support.
- Initial set-up, on-site training and refresher training sessions.
- Delivery to up to 3 (three) phones, 2 (two) e-mail addresses, and 1 (one) SMS phone per contact.
- Superior call routing, throttling, and load balancing expertise.
- Fully hosted service with no maintenance required.
- Message delivery tracking with comprehensive reporting.
- Data provision, geo-coding, and monthly updates at no additional cost.

## **ATTACHMENTS**

Resolution

Contract Documents

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION AUTHORIZING AN  
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND BLACKBOARD, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Customer") and Blackboard, Inc. ("Blackboard"), for a community-wide emergency and non-emergency notification service, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

VOID IF EXECUTED AFTER: March 31, 2015  
CUSTOMER: Village of Downers Grove

Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Village of Downers Grove ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Table"). This Order Form shall become effective on the later of: (i) the last signature date indicated below; or (ii) the date specified in the Product and Pricing Table ("Effective Date"). This Order Form, together with the Blackboard Master Agreement attached as Exhibit A and incorporated by this reference, and Addendum A attached to this Order Form, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Exhibit. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

#### A. Product and Pricing Summary

Product Name	Description	Units	2015 Renewal Term Fee (USD) Period 1: (12 months) 2-24-15 to 2-23-16	2015 Renewal Term Fee (USD) Period 2: (12 months) 2-24-16 to 2-23-17	2015 Renewal Term Fee (USD) Period 3: (12 months) 2-24-17 to 2-23-18
CONNECT STND UNLTD -RUC	Blackboard Connect Unlimited Emergency and Outreach Messaging Service Per Recipient License Fee - \$2.15 per recipient	19649	\$29,473.50	\$29,473.50	\$29,473.50
Sales Order Total Fee (2015 Renewal Term):			\$29,473.50	\$29,473.50	\$29,473.50

#### B. Term

- 2015 Renewal Term: Unless otherwise specified in the Product or Service Description above, the 2015 Renewal Term shall be three (3) year following the Effective Date.
- Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the 2015 Renewal Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the 2015 Renewal Term or Renewal Term, as applicable.
- Effective Date: February 24, 2015.

#### C. Payment Terms

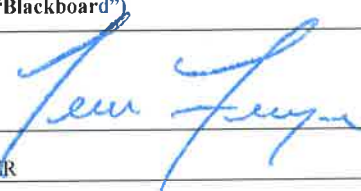
- All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
- Customer shall be invoiced for amounts due in respect of the first period of the 2015 Renewal Term upon execution of this Order Form.
- Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

#### D. Special Provisions

- The terms and conditions at <http://agreements.blackboard.com/bbinc/connectschedule.aspx> are incorporated herein.
- Upon the Effective Date, this Order Form replaces in its entirety Customer's existing Connect Services Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the final signature date below.

Customer: Village of Downers Grove
Signature
Name (printed)
Title (printed)
Date

Blackboard ("Blackboard")
Signature 
Name TESS FRAZIER
Title VICE PRESIDENT
Date

VOID IF EXECUTED AFTER: March 31, 2015  
CUSTOMER: Village of Downers Grove

**EXHIBIT A  
BLACKBOARD MASTER AGREEMENT**

**1. SCOPE OF AGREEMENT.**

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

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

**2. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3. PROPRIETARY RIGHTS**

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

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

**3.3 Vesting of Rights.** To the extent, if any, that ownership of any of the Blackboard Property does not reside or automatically vest in Blackboard, Customer hereby transfers and assigns to Blackboard all rights, title interest and goodwill which Customer may have in and to Blackboard Property. Without prejudice to the generality of the foregoing, in the event that ownership of any Blackboard Property vests in Customer for any reason, Customer agrees to execute all such instruments and do all such things as Blackboard may require of it to transfer or assign such ownership to Blackboard.

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

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

**3.6 General Usage Restrictions.** Customer agrees not to use any Offering for purposes beyond the scope of this Agreement. Without limiting the foregoing, Customer shall not: (a) modify the Offering or create any derivative product of the Software or SaaS Service, except with the prior written consent of Blackboard,

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CUSTOMER: Village of Downers Grove

provided that the foregoing shall not be construed to prohibit Customer from configuring the Software or SaaS Service to the extent permitted by the solution's standard user interface, (b) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the Agreement other than as expressly provided for herein, or (c) use the Offering to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the Software or SaaS Service, nor will Customer add any other notices or markings to the Software or SaaS Service or any portion thereof except as permitted by the solution's standard user interface. Customer shall not use the Software or SaaS Service in violation of Blackboard's obligations to any third party incurred prior to the Effective Date, provided that Blackboard has notified Customer of such obligation. Further, in the event that Customer exceeds its license limitations, as set forth in an applicable Schedule or Order Form, additional fees may apply, and Customer shall, on an annual basis, provide Blackboard with documentation as reasonably required by Blackboard to verify its compliance with such license limitations.

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

#### 4. REPRESENTATIONS.

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

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

#### 5. TERM; TERMINATION.

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

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

**5.3 Effect of Termination.** Upon termination of this Agreement, all Order Forms shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Blackboard all amounts due and payable hereunder. Also, in the event of any termination prior to the end of any Order Form's term, Customer shall immediately pay Blackboard all fees which are then due or would become due had no termination occurred. Each Party: (a) will immediately cease any use of the other Party's Confidential Information, (b) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.

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

#### 6. FEES; EXPENSES.

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

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

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

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withheld. In the event, and to the extent, that Blackboard is unable to claim an income tax credit for the full amount deducted or withheld (the "Unrecouped Withholding"), Customer shall pay Blackboard, within sixty (60) days following receipt of an invoice from Blackboard, the Unrecouped Withholding.

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

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

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

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

**7.2 Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OFFERINGS, WHETHER OR NOT SUCH PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). EXCEPT FOR THE INDEMNITY SET FORTH IN SECTION 8, OR FOR MATTERS ARISING FROM A BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR SOFTWARE USAGE RESTRICTIONS IN THE APPLICABLE SOFTWARE SCHEDULE(S), IN NO EVENT SHALL BLACKBOARD, ITS LICENSORS' OR CUSTOMER'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE AFFECTED OFFERING DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

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

### 7.4. Indemnification.

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

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

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

## 8. INFRINGEMENT.

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

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

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

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

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## 9. CONFIDENTIALITY.

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

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

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

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

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

**9.6 Other Rights.** Customer hereby grants Blackboard the limited right to collect aggregated usage statistics with respect to the Offerings. Such usage statistics are and shall be aggregated and not identifiable of any individual, including any Authorized End User. To the extent that any Offering contains an Auto Report feature for this purpose, Customer will not disable the Auto Report feature of the Offering, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby.

## 10. MISCELLANEOUS MATTERS.

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

**10.2 Conflict Resolution.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Illinois. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

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

**10.4 Assignment.** Neither Party shall be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, except with the written consent of the other Party; provided, however, that either Party may assign this Agreement without the consent of the other Party to any entity that is the successor corporation in any merger or consolidation of either Party, or any entity that purchases a majority of the voting securities of either Party, or all or substantially all of the assets of either Party, or of a specific division or group of such Party. This Agreement shall insure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**10.5** Intentionally Deleted.

**10.6 Remedies.** The Parties agree that any breach of confidentiality or proprietary rights would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any such breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Section 8.

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

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

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

**10.10 Export Control.** Customer shall not export or allow the export or re-export the Offering, any components thereof or any Confidential Information of Blackboard without the express, prior, written consent of Blackboard and except in compliance with all export laws and regulations of the U.S. Department of Commerce



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and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.

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

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

## **ADDENDUM A TO BLACKBOARD MASTER AGREEMENT**

**The following additional terms shall apply to the Blackboard Master Agreement to provide community wide notification services between Blackboard Inc. ("Provider") and the Village of Downers Grove ("Village"):**

### **VILLAGE ORDINANCES**

The Provider agrees to comply with all applicable ordinances of the Village of Downers Grove and laws of the State of Illinois.

### **USE OF VILLAGE'S NAME**

The Provider is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

**LIABILITY NOT EXCLUDED.** Nothing in Section 7 of the Provider's Master Agreement excludes or limits the liability of either party for death or personal injury caused by the negligence of the other Party or any other liability which cannot be excluded by law.

### **NONDISCRIMINATION**

Provider shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) By submission of this Proposal, the Provider certifies that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11136 and #11375, which are incorporated herein by reference.

It is unlawful to discriminate on the basis of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, sexual identity, or an unfavorable discharge from military service. Provider shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq., and, to the extent applicable and described in Provider's Documentation, Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C., section 794d), and its implementing regulations set forth at 36 Code of Federal Regulations Part 1194.

### **SEXUAL HARASSMENT POLICY**

The Provider, as a party to a public contract, shall have a written sexual harassment policy in accordance with applicable Federal laws that:

- Notes the illegality of sexual harassment;
- Sets forth the applicable definition of sexual harassment;
- Describes sexual harassment utilizing examples;
- Describes the Provider's internal complaint process including penalties;

Describes the legal recourse, investigative and complaint process; and  
Describes the protection against retaliation afforded under the applicable Federal law.

### **EQUAL EMPLOYMENT OPPORTUNITY**

In the event of the Provider's non-compliance with the provisions of this Equal Employment Opportunity ("EEO") Policy Statement or applicable Federal equal employment opportunity laws, the Provider may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Provider agrees as follows:

#### **EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT**

PROVIDER SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

PROVIDER AGREES TO AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. THE AFFIRMATIVE ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATES OF PAY, OR OTHER FORMS OR COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

PROVIDER AGREES TO POST IN CONSPICUOUS PLACES THE PROVISIONS CONCERNING NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

PROVIDER SHALL STATE THAT ALL QUALIFIED APPLICANTS FOR POSITIONS RELATING TO ITS CONTRACT WITH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA WILL RECEIVE CONSIDERATION FOR EMPLOYMENT PURSUANT TO SUBSECTION 1103.2 THROUGH 1103.10 OF MAYOR'S ORDER 85-85; "EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS."

PROVIDER AGREES TO PERMIT ACCESS TO ALL BOOKS, IF REQUIRED BY THE CONTRACT WITH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA, PERTAINING TO ITS EMPLOYMENT PRACTICES, AND TO REQUIRE EACH SUBCONTRACTOR TO PERMIT ACCESS TO BOOKS AND RECORDS.

PROVIDER AGREES TO COMPLY WITH ALL GUIDELINES FOR EQUAL EMPLOYMENT OPPORTUNITY APPLICABLE IN THE DISTRICT OF COLUMBIA, AS APPLICABLE.

PROVIDER SHALL INCLUDE IN EVERY SUBCONTRACT RELATING TO ITS CONTRACT WITH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA THE EQUAL OPPORTUNITY CLAUSES,

SUBSECTION 1103.2 THROUGH 1103.10 SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

That it will furnish reports and relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with EEO.

That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with this Addendum A.

### **DRUG FREE WORK PLACE**

Provider, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or Provider's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Provider's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.

Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace from an employee or otherwise receiving actual notice of such conviction.

Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.

Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

**PATRIOT ACT COMPLIANCE**

The Provider represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Provider further represents to the Village that the Provider and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly engaged in, and are not facilitating, the transactions contemplated by this Contract on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Provider hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or directly related to any breach of the foregoing representations.

**INSURANCE REQUIREMENTS**

The Provider shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, in the amounts required to adequately cover its personnel during performance under this Agreement.

As evidence of said coverages, and after the Blackboard Order Form is signed, Provider agrees to provide the Village with a certificate of insurance naming the Village of Downers Grove as an additional insured with respect to liability arising out of the operations of Provider in connection with this contract, except for Provider's workers' compensation and E&O policies.

**CAMPAIGN DISCLOSURE**

The Provider shall be required to submit with its submission, an executed Campaign Disclosure Certificate, attached hereto.

**TERMINATION OF CONTRACT**

In the event sufficient funds to complete the Contract are not appropriated by the Village, the Contract may be canceled, in whole or in part, upon the Village's written notice to the Provider. The Village will pay the Provider's costs actually incurred as of the date of receipt of notice of default.

**GOVERNING LAW**

This Contract will be governed by and construed in accordance with the laws of the State of Illinois without regard for the conflict of laws provisions.

**AMENDMENT**

This Contract will not be subject to amendment unless made in writing and signed by all parties.

**NOT TO EXCEED CONTRACT**

The contract price is a "not-to-exceed" cost. At any time additional work is necessary or requested, and the not-to-exceed price is increased thereby, any change, addition or price increase must be agreed to in writing by all parties who have executed the Contract.

**COOPERATION WITH FOIA COMPLIANCE**

Provider acknowledges that the Freedom of Information Act may apply to public records in possession of the Provide. Provider shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. (5 ILCS 140/1 et. seq.)

**EXHIBIT A - CAMPAIGN DISCLOSURE CERTIFICATE**

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the agreements, Contractor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Contractor/vendor has not contributed to any elected Village position within the last five (5) years.

Tess Frazier  
Signature

Tess Frazier  
Print Name 2-10-15

Contractor/vendor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: \_\_\_\_\_  
(company or individual)

To whom contribution was made: \_\_\_\_\_

Year contribution made: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name