

BLACKBOARD 5™ TERMS OF USE

Your institution (“Institution”) provides the Blackboard 5™ e-Learning software platform subject to all applicable guidelines and policies of the Institution and the following Terms of Use (“TOU”). By accessing, browsing and using Blackboard 5™ and/or creating or entering a course, you accept, without limitation or qualification, these TOU.

- 1. System.** Blackboard 5™ is an e-Learning software platform of Blackboard Inc. (“Blackboard”) that, depending on the level licensed from Blackboard, delivers a course management system, customizable institution-wide portals, online communities, and an advanced architecture that allows for Web-based integration with multiple administrative systems (the “System”).
- 2. User ID, Password and Security.** Institution will provide you with a User ID and password to either create or attend an online course. You are solely responsible for maintaining the confidentiality of your ID and password. Furthermore, you are responsible for all activities, charges and/or liabilities associated with your ID. You must immediately notify the Institution of any unauthorized use of your ID and you are responsible for any unauthorized charges made on or through your ID until your Institution receives such notification. You may not transfer your ID to another person.
- 3. User Content.** The System contains online, interactive courses and other areas for both instructors and students to learn, share information, and meet others studying the same topic (“Interactive Areas”). Interactive Areas include features such as a Virtual Classroom environment with real-time chat, white board and slide creation/upload, as well as discussion boards and file sharing such as the Digital Dropbox, and may include other interactive features.

You may upload to any Interactive Area or otherwise transmit, post, publish, reproduce or distribute, on or through the System software, material, information, communications, text, graphics, links, electronic art, animations, audio, video, photos, or other data (“Content”) that is not subject to any third party’s intellectual property rights or Content in which any holder of intellectual property rights has given express authorization for distribution over the Internet and on the System without restriction whatsoever. Any Content submitted with the consent of a copyright owner other than you should contain an acknowledgment, such as “Copyright owned by [name of owner]; Used with Permission.”

You are responsible for Content that you upload, post, email or otherwise transmit, including its legality, reliability, appropriateness, originality, and copyright. You also recognize that by submitting any Content that contains personally identifiable information to an Interactive Area, it will be generally accessible by other users of the System.

By uploading, posting, sending by email, or otherwise transmitting Content to any Interactive Area, you automatically grant and/or warrant that the owner of such Content has expressly granted Institution the royalty-free, non-exclusive right and license to use,

reproduce, modify, publish, distribute, perform and display such Content, in technology now known or later developed for the full term of any intellectual property rights that may exist in such Content. You also permit any other user of the System to access, view, store and reproduce the Content to the extent permitted below.

4. Portal Content.

4.1 Use of Portal Content. You acknowledge that some of the Content displayed or available through the System contains information and other materials that are protected by copyright, trademark or other proprietary rights of third party content providers (“Portal Content”). You agree to comply with any additional copyright notices, information, or restrictions contained in any Portal Content. You may not publish, transmit, transfer or sell, reproduce, distribute, perform, display, or in any way exploit, any of the Portal Content in any other media or in any location other than the Service. You may not alter the Portal Content in any way or create derivative works from the Portal Content.

4.2 Termination of Access. Blackboard’s licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate your access to all or any part of Portal Content at any time for any reason without prior notice or liability. Blackboard’s licensors and suppliers may change, suspend or discontinue all or any aspect of Portal Content, including the availability, without prior notice or liability.

5. Copies. You acknowledge that Blackboard 5™, any underlying technology used in connection with Blackboard 5™, and all Content, including Portal Content, available within Blackboard 5™ is provided by Institution, Blackboard or third party providers and are the copyrighted works of Institution, Blackboard and/or such third parties. Except as expressly authorized by Institution, Blackboard or such third parties in this TOU or as may be posted on Blackboard 5, you may not copy, reproduce, publish, distribute, modify, create derivative works of, rent, lease, sell, transfer, display, transmit, compile or collect in a database, or in any manner commercially exploit any part of the Content or the System, in whole or in part. You may not store any significant portion of any Content or the System owned by, or licensed to, Institution or Blackboard in any form, whether archival files, computer-readable files or any other medium. You also may not “mirror” any Content or the System on any other server.

We encourage you to download and print a reasonable number of copies of Content for noncommercial personal or educational use only; provided that (i) any permitted copies of Content contain, in an unmodified form, any copyright or other proprietary rights notices contained in the Content; and (ii) no modifications of any of the Content are made except as may be expressly provided by Institution, Blackboard or the third party provider on the Web page containing the applicable Content. You acknowledge that Institution, Blackboard and/or third party providers remain the owners of the Content and that you do not acquire any intellectual property rights in such Content by downloading or printing the Content.

6. Links. The System contains a tab Blackboard's academic resource Web site and links to sites posted by independent owners. Because Institution and Blackboard have no control over such independent sites, neither Institution nor Blackboard is responsible for such sites' accessibility via the Internet and does not endorse products, services, or information provided by such sites. As such, neither Institution nor Blackboard shall be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on any such content, goods or services available on or through any such site. Further, the inclusion of these links to other sites does not imply that the other sites have given permission for inclusion of these links, or that there is any relationship among Institution, Blackboard and the linked sites. Blackboard is an independent operating company and reference to other companies do not imply any partnership, joint venture, or other legal connection where Blackboard would be responsible for the actions of their respective owners.

7. Conduct. You may only access and use the System for lawful purposes. You are solely responsible for the knowledge of and adherence to any and all laws, statutes, rules and regulations pertaining to your use of the System, including any Interactive Area. You agree that you will not: (i) use the System to commit a criminal offense or to encourage conduct that would constitute a criminal offense or give rise to a civil liability, or otherwise violate any local, state, Federal or international law or regulation, including, but not limited to, export control laws and regulations; (ii) upload, post, e-mail or otherwise transmit any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane, or otherwise objectionable Content; (iii) upload, post, e-mail, or otherwise transmit any Content that you do not have a right to transmit under any law or contractual or fiduciary relationships; (iv) upload, post, e-mail, or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any party; (v) alter, damage or delete any Content or other communications that are not your own or to otherwise interfere with the ability of others to access or use the System; (vi) disrupt the normal flow of communication in any Interactive Area or otherwise act in a manner that negatively affects other users' ability to engage in real-time exchanges; (vii) claim a relationship with or to speak for any individual, business, association, institution or other organization for which you are not authorized to claim such a relationship; (viii) upload, post, e-mail or otherwise transmit any unsolicited advertising, promotional materials, or other forms of solicitation to other users including, without limitation, "junk mail," "spam," "chain letters," or "pyramid schemes"; (ix) interfere with or disrupt the System or servers or networks connected to the System, or disobey any requirements, procedures, policies or regulations of networks connected to the System; (x) collect or store personal data about other users; or (xi) reproduce, duplicate, copy, use, distribute, sell, resell, or otherwise exploit for any commercial purposes, any portion of Blackboard 5™ or the System, use of Blackboard 5™ or the System, or access to Blackboard.comSM or the System.

8. Disclaimer of Warranty. NEITHER BLACKBOARD NOR ITS LICENSORS OR SUPPLIERS IS RESPONSIBLE FOR ANY INFORMATION OR CONTENT CONTAINED WITHIN THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY INTERACTIVE AREA, AND MAKES NO REPRESENTATIONS ABOUT THE

SUITABILITY OF THE INFORMATION CONTAINED IN THE SYSTEM FOR ANY PURPOSE OR ABOUT ITS LEGITIMACY, LEGALITY, VALIDITY, ACCURACY, CORRECTNESS, RELIABILITY, QUALITY, STABILITY, COMPLETENESS OR CURRENTNESS. ALL SUCH INFORMATION IS SOLELY PROVIDED BY INSTITUTION, THIRD PARTIES OR OTHER USERS OF THE SYSTEM.

YOU AGREE THAT YOUR ACCESS TO THE SYSTEM, INCLUDING ANY COURSE, AND YOUR USE OF THE SYSTEM IS AT YOUR OWN RISK. NEITHER BLACKBOARD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, LICENSORS OR SUPPLIERS WARRANT THAT THE SYSTEM WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SYSTEM OR AS TO THE ACCURACY, RELIABILITY, OR CONTENT OF THE SYSTEM.

BLACKBOARD 5 AND THE SYSTEM ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

IN NO EVENT WILL BLACKBOARD OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, LICENSORS OR SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF YOUR USE OF OR INABILITY TO ACCESS OR USE THE SYSTEM, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOSS OF GOODWILL, LOST BUSINESS, LOST DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO INSTITUTION'S RECORDS, PROGRAMS, OR SERVICES. YOU AGREE THAT THE FOREGOING LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK.

9. Indemnification. You agree to indemnify and hold Blackboard, and its affiliates, officers, agents, partners, and employees, harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Content you submit, post to, e-mail or otherwise transmit through the System, your use of the System, your connection to the System, or your breach of these TOU.

10. Service Mark Notice. Blackboard 5 may contain certain trademarks, service marks, and logos, of Blackboard. All other trademarks, service marks, and logos used on Blackboard 5 are the trademarks, service marks, and logos of the Institution or their respective owners.

11. Modifications to the Service. Institution reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, Blackboard 5 (or any part thereof) with or without notice. You agree that neither the Institution nor Blackboard will be liable to you or to any third party for any modification, suspension, or discontinuance of the Blackboard 5.

12. Changes to the Terms of Use. Institution reserves the right to modify the Terms of Use at any time. Any modifications shall be effective upon the posting by Institution of the modified Terms of Use on the My Institution page. You agree to review these Terms of Use periodically so that you are aware of any modifications. Your continued use of the Service shall be deemed your acceptance of the modified Terms of Use.

13. Third Party Beneficiary. To the extent permitted by applicable law, Blackboard shall be a third party beneficiary of this Agreement.

14. Arbitration. Any dispute concerning the parties' duties under this Agreement which the parties cannot resolve within thirty (30) days shall be directed to binding arbitration administered by, and pursuant to the rules of, the American Arbitration Association ("AAA"), with all expenses being shared equally by the parties, provided however, in the event of the threat of immediate and irreparable harm, the threatened party thereby may seek injunctive relief (but no other relief) in court. Judgment upon any AAA award may be entered in any court having jurisdiction. Any costs incurred in the enforcement of the arbitration award shall be paid by the party against whom enforcement is sought.

15. General. By accessing Blackboard 5, you agree to the above stated Terms of Use. In any action to enforce this Terms of Use, the prevailing party will be entitled to costs and attorney fees. In the event that any provisions of this Terms of Use are held to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Terms of Use shall otherwise remain in full force and effect.