



Oklahoma State Regents for Higher Education

655 Research Parkway, Suite 200
Oklahoma City, OK 73104

Liza Hanke, Director of Purchasing

Tele: 405.225.9206

Fax: 405.225.9230

Email: lhanke@osrhe.edu

Blackboard Connect Inc. C1301

Contract Title: Blackboard Connect Inc. Master Agreement

Contract Period: March 18, 2013 through March 17, 2017

Website Addresses: **OneNet:** <http://onenet.net/services/managed-contracts/>
Blackboard Connect: www.blackboardconnect.com

Authorized Customers: All Oklahoma common education, career technology, higher education institutions, municipalities and counties.

Contract Priority: This is a noncompetitive contract with established education and government discounts. Prior to issuing any orders against this contract, end user customers should ensure that they have followed their appropriate internal purchasing procedures, including any required documentation of a market value comparison or a competitive process leading to the selection of this particular vendor.

Contract Terms and Conditions: All end users agree to abide by the terms and conditions outlined in the attached contract and agreed to by the Oklahoma State Regents for Higher Education.

Contract Pricing: A fixed discount price list is provided within the Tables, attached hereto as Exhibits B through D.

Shipping: F.O.B. Destination

Contract Performance: Contract performance will be monitored and any infractions of the Contract by Manufacturer, Customers or Resellers shall be reported to the Purchasing Director for the Oklahoma State Regents for Higher Education.

Contract Administrator:

Blackboard Connect

Tele: 202.463.4860, ext 2463 or ext 2592

FEI#: 20-0597724

Fax: 818.450.0425

Attn: Toni Long

Email: Toni.Long@blackboard.com

**OKLAHOMA STATE
REGENTS FOR HIGHER EDUCATION**

Blackboard Connect Inc. Master Contract

This Master Agreement, for the acquisition of a hosted alert notification system for time-sensitive and outreach notifications, is entered into by and between Blackboard Connect Inc. located at 650 Massachusetts Ave NW, 6th floor, Washington, D.C. 20001-3796 (“Blackboard Connect”) and the Oklahoma State Regents for Higher Education located at 655 Research Parkway, Suite 200, Oklahoma City, OK 73104 (“OSRHE”).

- 1. Contract and Term.** This Master Agreement sets forth the terms and conditions under which a Customer will subscribe to the notification service from Blackboard Connect (“Blackboard Connect Service”). Terms used in this Agreement shall have the meanings set forth below in Section 2, Definitions. This Agreement is available for use by all Oklahoma common education, career technology, higher education institutions, municipalities and counties.

The term of this Master Agreement shall be for a four (4) year term commencing on the date of written approval by both parties. Upon termination of this Agreement, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

- 2. Definitions.** Terms used in this Agreement shall have the following meanings:
- A.** *Customer* – means the entity who, for the purposes of this Agreement, is a subscriber of the Blackboard Connect Service for its own internal use rather than for distribution or resale. “Customer” means all Oklahoma common education, career technology, higher education institutions, municipalities and counties.
 - B.** *Manufacturer* – Blackboard Connect Inc.
 - C.** *Manufacturer Contract Administrator* – the individual as appointed by the Manufacturer to administer this Agreement on behalf of the Manufacturer.
 - D.** *OSRHE* – the Oklahoma State Regents for Higher Education
 - E.** *Purchase Order* – The Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order or other authorized instrument).
 - F.** *State Contract Administrator* – the individual as appointed by the OSRHE to administer this Agreement on behalf of the OSRHE and the Customers.

3. **Entire Contract.** This Agreement and all attached exhibits (Exhibit A through Exhibit D) shall constitute the entire contract between the parties hereto and shall supersede any and all other agreements between the parties relating to the subject matter hereof.

The terms and conditions set forth herein shall govern all transactions by Customers under this Agreement. Customers shall not have the authority to modify the terms of this Agreement, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, the Manufacturer shall furnish a copy of such better offerings to the OSRHE upon request. No additional term or condition of a Purchase Order issued by a Customer can weaken a term or condition of this Agreement. In the event of a conflict between a Customer's Purchase Order and this Agreement, the Agreement term shall control.

4. **Service Offerings.** The service available under this Agreement is the Blackboard Connect Service which includes the following specific services:

- A. **Connect-ED[®]**. The **Connect-ED** service provides time-sensitive notification capability to higher education and K-12 institutions;
- B. **Connect-CTY[®]**. The **Connect-CTY** service provides time-sensitive notification capability to municipalities and counties.

5. **Contract Administration.** The OSRHE and the Manufacturer will each provide a Contract Administrator to support this Agreement. Information regarding the Contract Administrators will be posted on the OneNet website designated for this Agreement.

- A. **OSRHE Contract Administrator.** The OSRHE will provide a Contract Administrator whose duties will include, but not be limited to: (i) management of this Agreement, (ii) advising of Manufacturer's performance under the terms and conditions of this Agreement and (iii) periodic verification of product pricing and quarterly reports submitted by the Manufacturer.
- B. **Manufacturer Client Care Manager.** The Manufacturer shall provide a Client Care Manager, whose duties shall include, but not be limited to: (i) supporting the services subscribed to by the Customer, (ii) facilitating dispute resolution between the Manufacturer and a Customer, and (iii) advising the OSRHE of the Manufacturer's performance and contract activity as defined in Section 14 of this agreement. The OSRHE may request a change in the Manufacturer's assigned Client Care Manager if OSRHE can demonstrate that such Client Care Manager is not, adequately serving the needs of the Customer.

6. **Pricing for Blackboard Connect Service.**

- A. **Service Fee.** Each Customer will pay a Service Fee to Blackboard Connect in accordance with the payment terms contained within Section 7 and the applicable Table contained within Exhibit B, C or D, attached hereto.

- B. Customer Pricing. Based on a quantity of one (1), the Customer Pricing for all core services will conform to the pricing outline set forth in Exhibits B, C and D, attached hereto. Customer may negotiate more advantageous pricing for large volume or project purchases with the Manufacturer.
- C. Shipping and Handling Fees. INTENTIONALLY DELETED
- D. Tax-Exempt. Customers and the OSRHE are exempt from all federal and state sales tax. When requested by Manufacturer, Customer will provide Manufacturer a copy of Customer's tax exemption certificate or number.
- E. Changes to Prices. The Manufacturer may change the price of any service at any time, by mutual written agreement, but discount levels shall remain consistent with the discount levels specified in Exhibit B, C and D. Price decreases shall take effect automatically during the term of this Agreement and the Manufacturer shall pass all price decreases on to the Customer.

7. Order Processing and Payments. All Customer Purchase Orders will be placed directly with the Manufacturer. Accurate Purchase Orders shall be effective and binding upon the Manufacturer's acceptance of the Purchase Order prior to the termination of the Agreement period. Such acceptance shall not be unreasonably withheld.

The Manufacturer shall submit invoices directly to the Customer. All payments for products and/or services purchased under this Agreement and any provision of acceptance of such products and/or services are made to the Manufacturer by the Customer. Payment terms shall be net forty-five (45) days from date of accurate invoice. Late payments may be assessed at the lesser of 1.5% per month or the maximum allowable rate under Oklahoma law.

Invoices shall be timely and accurate. Each invoice shall match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices shall include the Customer's Purchase Order number or other pertinent information for verification of receipt of the order by the Customer.

All payments to Blackboard Connect shall be made without any deduction or withholding, unless required by applicable law in which the Customer shall ensure that the net amount actually received by Blackboard Connect from the Customer equals the full amount Blackboard Connect would have received had no deduction or withholding been required. Partial payment under this Agreement shall not foreclose the right to recover wrongful payments.

8. Privacy Policy and Acceptable Use Policy. Customers purchasing services under this Agreement shall comply with the then current Acceptable Use Policy and Privacy Policy (collectively, the "Policies") (which can be found at the Blackboard Connect Website located at www.blackboardconnect.com, as amended from time to time. In the event of

an express conflict between the terms of this Agreement and the terms of the Policies, the terms of this Agreement will prevail.

9. **Participating Entity Addendum.** Customers purchasing services under this Agreement shall execute a Participating Entity Addendum with Blackboard Connect as set forth in Exhibit A, attached hereto. No changes to the Participating Entity Addendum's terms and conditions may be made unless previously agreed to by Blackboard Connect and OSRHE.
10. **Representations and Obligations.** The Customer represents that: (i) it will comply with all applicable laws, regulations and contracts in use of the Blackboard Connect Service and with respect to the content and transmission of its messages sent using the Blackboard Connect Service; (ii) it will use best efforts in providing accurate and complete data for its recipients ("Customer Data"); (iii) it has met all legal, regulatory and contractual requirements in providing, and using, the Customer Data, in connection with the Blackboard Connect Service, including, but not limited to, obtaining requisite consents to call intended recipients (each a "Recipient"); (iv) it will maintain the confidentiality of its password and account information, and agrees to notify Blackboard Connect in the event of an actual or suspected unauthorized access to its account, or if it loses its account information; (v) it will have in place primary safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical and public health, collectively, "First Responder Services") which do not utilize the Blackboard Connect Service; (vi) it will not subject Blackboard Connect to any regulations or laws due to the import of certain Recipient Data; (vii) it will not send messages to Recipients who have opted out of receiving messages from the Customer; (viii) if Customer licenses data from Blackboard Connect, it will only use such data purchased from Blackboard Connect to contact individuals pursuant to the use of the Blackboard Connect Service and is prohibited from downloading or making copies of such data purchased from Blackboard Connect if such activity would violate an applicable law, regulation, the Agreement, or the Participating Entity Addendum, and (ix) it will not use the Blackboard Connect Service in combination with products or services not provided by Blackboard Connect or in a manner for which the Blackboard Connect Service was not designed, which would cause the Blackboard Connect Service to infringe on a third party intellectual property right. To the extent permitted under Oklahoma law and subject to the Oklahoma Governmental Tort Claims Act, codified at 51 O.S. § 151, *et seq.*, the Customer agrees to defend, indemnify and hold harmless Blackboard Connect against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys' fees) in connection with any claim or action that arises from the content or effects of any messages the Customer distributes using the Blackboard Connect Service or the Customer's misuse of the Blackboard Connect Service.
11. **Internet Access to Agreement.** Access by Customers to the Agreement terms and pricing information shall be made available and posted on the OneNet website, www.onenet.net.

- A. **Use of Access Data Prohibited.** If the Manufacturer stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by the Manufacturer for the purpose of implementing or marketing the Agreement, and shall not be disseminated to third parties or used for other marketing purposes. This Agreement constitutes a public document under the laws of the State and the Manufacturer shall not restrict access to the Agreement terms and conditions, including pricing, i.e., through use of restrictive technology or passwords.

12. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be valid on (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered certified mail or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party.

If sent to the State:

Director of Purchasing
Oklahoma State Regents for Higher Education
655 Research Parkway, Suite 200
Oklahoma City, OK 73104

If sent to the Manufacturer:

Blackboard Connect Inc.
Attn: Legal Department
650 Massachusetts Ave NW, 6th Floor
Washington, D.C. 20001-3796

13. **Handling of Written Complaints.** In addition to other remedies contained in this Agreement, an individual contracting with the OSRHE may direct their written complaints to the following office:

Director of Purchasing
Oklahoma State Regents for Higher Education
655 Research Parkway, Suite 200
Oklahoma City, OK 73104
Phone: 405-225-9206
Fax: 405-225-9230
Email: lhanke@osrhe.edu

14. **Reporting and Licensing Credits.** The Manufacturer shall be responsible for reporting all services purchased under this Agreement. The OSRHE will have the right to verify required reports and to take any actions necessary to enforce its rights under this paragraph, including but not limited to, audit of the Manufacturer's books applicable to this Agreement, subject to the following conditions:

- The OSRHE will provide reasonable notice of its intent to audit and will attempt to schedule such audit so as to not unnecessarily interfere with the operations of Manufacture; and
 - Such access will be granted only during normal business hours and no more frequently than once in each calendar year; and
 - The OSRHE, to the extent permitted under Oklahoma law, will maintain the confidentiality of the information disclosed as a result of the audit; and
 - Materials may not be removed from the premises of the Manufacturer.
- A. Detailed Quarterly Report. The Manufacturer shall electronically provide the OSRHE with a detailed quarterly report in the format required by the OSRHE showing the dollar volume of any and all sales under this Agreement for the previous quarter. Reports are due on the twenty-fifth (25th) day following the close of the previous quarter. It is the responsibility of the Manufacturer to collect and compile all sales under this Agreement and submit one (1) quarterly report. The quarterly report shall include the sales for the period, the name of each Customer, the execution date of the contract, quantity, unit price, extended price, service description, Customer Purchase Order number and other information as required by the OSRHE.
- B. OSRHE Office Use of the Blackboard Service. Manufacturer will allow, the OSRHE Office to send up to 2000 notifications in support of the contract for interoperability testing and evaluation purposes during the term of the Agreement. These licensing credits also accommodate costs and overhead associated with the maintenance of the Agreement. The costs of these notifications are incorporated into the price paid by the Customers to the Manufacturer.
15. **Captions.** The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.
16. **Intellectual Property.** All intellectual property created or owned by Blackboard Connect shall remain the sole property of Blackboard Connect and Customer understands and accepts that Customer shall not acquire any ownership or other rights to any patents, copyrights or other intellectual property associated with the Blackboard Connect Service.
17. **Choice of Law and Venue.** The laws of the State of Oklahoma shall govern the construction and interpretation of this Agreement, and venue in any action to enforce the Agreement shall be in Oklahoma County, Oklahoma. Nothing herein shall be construed to waive the State's sovereign immunity.
18. **Termination.**
- A. Either party shall have the right to terminate this Agreement for cause if the other party:

- (i) Fails to perform any material term or condition of this Agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default given by the non-defaulting party; or
- (ii) Becomes insolvent, files or has filed against it a petition under applicable bankruptcy or insolvency laws, proposes any dissolution, composition or financial reorganization with creditors, makes an assignment for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property or business of the defaulting party.

B. Obligations upon Termination or Expiration. In the event of termination or expiration of this Agreement, the Customer will: (i) immediately discontinue Access to and/or use of the Blackboard Connect Service under this Agreement; (ii) pay to Blackboard Connect all amounts due and payable under this Agreement; and (iii) return all documentation and related training materials to Blackboard Connect within a reasonable time at the Customer's cost and immediately disable any embedded link(s) to the Web Portal. Any termination this Agreement will not affect any rights or liability of either Party that accrued prior to such termination.

19. Limitation of Liability. In no event will Blackboard Connect, its officers, employees, representatives or licensors be liable to a Customer for any indirect, punitive, reliance, special, consequential, exemplary, or other similar damages of any kind or nature whatsoever, suffered by the Customer or any third party (including without limitation, business interruption, downtime, or any use of, or failure to use the Blackboard Connect Service, 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 Blackboard Connect Service, or the transactions contemplated hereby, even if a Party has been advised of the possibilities of such damages or should have foreseen such damages. Blackboard Connect, its officers and employees will not be liable for any damages or injury with respect to the performance of the Blackboard Connect Service, caused by or resulting from any act, omission or condition beyond Blackboard Connect's reasonable control, whether or not foreseeable or identified, including but not limited to, transmission errors, or corruption or security of information carried over telecommunication lines, failure of digital transmission links, hostile network attacks or network congestion, or acts of 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 Customer's or any third party's applications, hardware, software or communications equipment or facilities. Under no circumstances will the aggregate liability of Blackboard Connect to the Customer or any third party arising out of or related to this Agreement or the provision of the Blackboard Connect Service, exceed the aggregate fees paid to Blackboard Connect by the affected Customer under this Agreement during the 12 month period immediately prior to the event, act or omission giving rise to such liability,

regardless of whether any action or claim is based on warranty, indemnification, contract, tort or otherwise. The existence of multiple claims will not enlarge this limit. The foregoing limitations of liability are intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective. Nothing contained in the foregoing limits or excludes the liability of Blackboard Connect for liability which cannot be excluded by law. Notwithstanding anything contained herein to the contrary, to the extent permitted under Oklahoma law, the Customer shall be responsible for all claims and damage resulting for misuse of the Blackboard Connect Service by the Customer or its users including reimbursement of any expenses incurred by Blackboard Connect in defending claims arising from such misuse. The Parties acknowledge and agree that the fees, limitations of liability and remedies reflect the allocation of risk between the Parties, and that Sections 19 and 20 are essential elements of the basis of the bargain between the Parties and that in its absence, the economic terms of this Agreement would be substantially different.

TO THE EXTENT ANY LIMITATION OF LIABILITY CONTAINED HEREIN IS CONSTRUED BY A COURT OF COMPETENT JURISDICTION TO BE A LIMITATION OF LIABILITY IN VIOLATION OF OKLAHOMA LAW, SUCH LIMITATION OF LIABILITY SHALL BE VOID.

- 20. Limited Warranty.** THE BLACKBOARD CONNECT SERVICE IS PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BLACKBOARD CONNECT EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO THE BLACKBOARD CONNECT SERVICE, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, DATA ACCURACY, SATISFACTORY QUALITY, NON-INFRINGEMENT, AND/OR QUIET ENJOYMENT, NEITHER BLACKBOARD CONNECT NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE BLACKBOARD CONNECT SERVICE WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, OR THAT THE BLACKBOARD CONNECT SERVICE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, AND BLACKBOARD CONNECT AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE BLACKBOARD CONNECT SERVICE. In the event of the Blackboard Connect Service’s failure to comply with this Agreement, the Customer’s sole remedy shall be to terminate the Agreement. The Customer acknowledges and agrees that the Blackboard Connect Service is not intended, nor designed, for use in high risk activities, or in any situations where failure of the Blackboard Connect Service could lead to death, personal injury, or damage to property, or where other damage could result if an error occurred and the parties further agree that, to the extent not prohibited by applicable law, Blackboard Connect shall not be liable for any death, personal injury or damage to property should be to contact First Responder Services and that the Blackboard Connect Service is not intended to replace First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with,

First Responder Services, which should have already been notified and deployed prior to using the Blackboard Connect Service.

TO THE EXTENT ANY LIMITATION OF LIABILITY CONTAINED HEREIN IS CONSTRUED BY A COURT OF COMPETENT JURISDICTION TO BE A LIMITATION OF LIABILITY IN VIOLATION OF OKLAHOMA LAW, SUCH LIMITATION OF LIABILITY SHALL BE VOID.

21. Confidentiality.

- A. Confidential Information. Each party agrees to maintain the confidentiality of the other Party's confidential information with no less than a reasonable degree of care. Blackboard Connect's "Confidential Information" shall include, but not be limited to, the Blackboard Connect Service and all documents relating to the provision of Blackboard Connect Service including, but not limited to, the Blackboard Connect Data, member pages of its website, training guides and manuals. Each Party agrees to limit access to the Confidential Information to those of its employees and agents who have a business need for the access and who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Blackboard Connect does not rent, trade, or sell data received from Customer, and will only disclose information as necessary to comply with applicable laws and government orders or to operate or maintain the Blackboard Connect Service.
- B. Oklahoma Open Records Act. Customers are governmental entities of the State of Oklahoma, by virtue of which they are subject to the Oklahoma Open Records Act ("ORA"), codified at 51 O.S., § 24.A.1, *et seq.* The parties agree that any provision of this Agreement which conflicts with the ORA is ineffective. The Customers do undertake to protect proprietary information provided by Blackboard Connect to the full extent permitted by the ORA.

22. Electronic and Information Technology Accessibility.

- (a) The Manufacturer shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Manufacturer shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems or applications not requiring development and/or customization by the Manufacturer from any claim arising out of the Manufacturer's failure to comply with applicable Oklahoma Information Technology Accessibility Standards, subsequent to providing certification of compliance to such Standards.

(b) The requirements of this Section 22 shall apply to the extent the underlying technical requirements are applicable to Customer and the Products provided hereunder. The relevant Standards shall be those in effect as of date of this contract and as may be amended thereafter. Manufacturer's obligations under Section 22 are also subject to Customer's compliance with any other accessibility obligations of Customer. Manufacturer assumes no responsibility or liability for accessibility compliance relating to content, third party products or the institutional policies of Customer.

(c) The parties have agreed that in the event that a court or administrative body of competent jurisdiction, or the attorney general's office of the state of Oklahoma determines that the Products purchased hereunder are exempt from §85.7d of Title 74 of the Oklahoma Statutes due to any of the exceptions stipulated in the Oklahoma Department of Central Services, Central Purchasing Administrative Rules OAC 580:16-7-56 as the same may be amended from time to time, then this Section 22 of this Agreement shall be deemed deleted in its entirety.

23. **Laws and Regulations.** All applicable state and federal laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over the project shall apply to this Agreement throughout and they will be deemed to be included in this Agreement the same as though written out in full herein.
24. **Equal Opportunity Employer.** The Manufacturer must maintain the status of an Equal Opportunity Employer, a provider of services and/or assistance, and in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375.
25. **Americans with Disabilities Act.** The Manufacturer must comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this Act.
26. **Federal, State and Local Taxes, Licenses and Permits.** The Manufacturer shall comply with all applicable laws and regulations on taxes, licenses and permits.
27. **Insurance Requirements.** The Manufacturer shall maintain the insurance specified in the ACORD certificate attached as Exhibit E, for the protection of itself and its officers, employees, agents, while carrying out its service responsibilities, under the provisions of this Agreement.
 - A. Workers' Compensation and Employer's Liability Insurance
 - B. Commercial General Liability Insurance
 - C. Comprehensive Automobile Liability Insurance

The Manufacturer shall provide the OSRHE or Customer with a Certificate of Insurance upon request and shall endeavor to provide the OSRHE or Customer written notification of any cancellation or termination of the above policies.

28. **Liens.** The Manufacturer shall keep the OSRHE free and clear from all liens asserted by any person or firm for any reason arising from the furnishing of services or materials by or to the Manufacturer.
29. **Force Majeure.** Neither party shall be liable to the other for any alleged loss or damages resulting from the delivery or warranty of the Products, or performance of Services being delayed by acts of the OSRHE or Customer, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of the Manufacturer.
30. **Survival.** The sections of this Agreement which by their essential purpose shall survive any expiration or termination, will survive such expiration or termination.
31. **Waiver.** A waiver by either party of any default, or of any of the terms and conditions of this Agreement shall not be deemed to be a waiver of any other default or of any other term or condition. Either party's exercise of any right or remedy provided in this Agreement shall be without prejudice to its right to exercise any other right or remedy.
32. **Severability.** In the event any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the obligations of the parties shall remain in full force and effect and the rights of the parties shall not in any way be affected or impaired thereby.
33. **Assignment.** This Agreement and the licenses granted hereunder are personal to the OSRHE or Customer. No party shall assign, sublicense or transfer this Agreement or any of the licenses without prior written approval of the other applicable party, such approval shall not be unreasonably withheld. Any attempt to assign without prior written approval will be void.
34. **Independent Contractors.** Both parties are acting solely as independent contractors and not as an agent of the other party. Consultants and independent contractors furnished by the respective parties shall be solely the employees or agents of such parties, respectively, and shall be under the sole and exclusive direction and control of such parties. They shall not be considered employees of the other party for any purpose.
35. **No Third Party Rights.** Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Blackboard Connect or the Customer, any rights, remedies or other benefits under or by reason of this Agreement.

36. **Non-Exclusivity.** For the duration of the contractual agreement, the OSRHE will retain the right to utilize the services of other vendors, including in-house resources, for projects not assigned to the Manufacturer.
37. **Access to Records.** Manufacturer shall maintain all fiscal records and any other records relating to this Agreement in such a manner as to clearly document the Manufacturer's performance hereunder. The OSRHE or any of its duly authorized representatives shall have access to any books, documents, papers and records of the Manufacturer which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions, subject to the following:
- OSRHE will provide reasonable notice of its intent to audit and will attempt to schedule such audit so as to not unnecessarily interfere with the operations of the Manufacturer; and
 - Such access will be granted only during normal business hours and no more frequently than once in each calendar year; and
 - OSRHE, to the extent permitted under Oklahoma law, will maintain the confidentiality of the information disclosed as a result of the audit; and
 - Materials may not be removed from the premises of the Manufacturer.
38. **Conflict Between Master Agreement and Participating Entity Addendum.** A Participating Entity Addendum shall supersede the provisions of this Master Agreement where the documents are in conflict.
39. **Counterparts; Facsimile.** This Agreement may be executed in counterparts. A signature on a copy of this Agreement received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

IN WITNESS WHEREOF, the authorized representatives of the parties therefore hereby execute their mutual agreement to the terms of this Agreement. This Agreement shall be executed and shall be a binding Agreement between the parties.

Blackboard Connect Inc.

By:_____

Name:_____

Title:_____

Date:_____

Oklahoma State Regents for Higher Education

By:_____

Name: Amanda Paliotta

Title: Vice Chancellor for Budget and
Finance and Vice Chancellor for IT,
Telecommunications and OneNet

Date:_____

EXHBIT B

TABLE 1

Higher Education Pricing for Participating Entity Customers

	NEW BLACKBOARD CONNECT CLIENT	EXISTING BLACKBOARD CONNECT CLIENT
Annual Support Fee	\$2,000	\$2,000
	Contracts signed after December 18, 2009 Annual Message Fee = \$1.85 per recipient for unlimited use. There is no emergency only option	Existing clients may renew for 3 additional years at the time of their standard contract anniversary and renewal date. The Annual Message Fee will be \$1.85 per Recipient for unlimited usage. The pricing is locked for 3 years
Additional Conditions	Recipient count must be a minimum of 5,000 recipients, or the entire population of faculty, staff, and students; whichever is less. The pricing is locked for 3 years First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01	Recipient count must be a minimum of 5,000 recipients, or the entire population of faculty, staff, and students; whichever is less. First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01

PAYMENT TERMS

Upon full execution of the Participating Entity Addendum by Blackboard Connect and the Higher Education Customer, Blackboard Connect will send the Higher Education Customer an invoice for the first year's annual Support Fee and annual Message Fee (collectively, the "Service Fee"), or pro-rated portion thereto. Thereafter the Service Fee will be invoiced on an annual basis.

The Service Fee is paid at the beginning of each annual period and is due in no event later than forty-five (45) days after the date of an invoice from Blackboard Connect. Late payments may be assessed at the lesser of 1.5% per month or the maximum allowable rate under applicable law.

The Service Fee does not include any sales, use, or other taxes, government fees or levies on the provision of the **Connect-ED** Service. The Higher Education Customer will be responsible for payment of all applicable taxes, fees or levies, unless the Higher Education client is exempt therefrom and provides Blackboard Connect with a copy of Higher Education Customer's tax exemption certificate or number. All payments to Blackboard Connect shall be made without any deduction or withholding, unless required by applicable law in which case the Higher Education client shall ensure that the net amount actually received by Blackboard Connect from the Higher Education Customer equals the full amount Blackboard Connect would have received had no such deduction or withholding been required.

EXHIBIT C

TABLE 2

K-12 Pricing for Participating Entity Customer

	NEW BLACKBOARD CONNECT CLIENT	EXISTING BLACKBOARD CONNECT CLIENT
Annual Support Fee	Less than 5,000 students = \$500 5,000 students to 14,999 students = \$1,000 15,000 students to 24,999 students = \$2,000 Over 25,000 students = \$3,000	Less than 5,000 students = \$500 5,000 students to 14,999 students = \$1,000 15,000 students to 24,999 students = \$2,000 Over 25,000 students = \$3,000
Annual Message Fee	The Annual Message Fee = \$2.25 per student for unlimited usage \$1.25 per student for emergency usage The pricing is locked for 3 years	Existing clients may renew for 3 additional years at the time of their standard contract anniversary and renewal date. The Annual Message Fee = \$2.25 per student for unlimited usage The pricing is locked for 3 years
Additional Conditions	Must sign entire student population. Faculty and staff are included. First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01	Must sign entire student population. Faculty and staff are included. First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01

PAYMENT TERMS

Upon full execution of the Participating Entity Addendum by Blackboard Connect and the K-12 Customer, Blackboard Connect will send the K-12 Customer an invoice for the first year's annual Support Fee and annual Message Fee (collectively, the "Service Fee"), or pro-rated portion thereto. Thereafter the Service Fee will be invoiced on an annual basis.

The Service Fee is paid at the beginning of each annual period and is due in no event later than forty-five (45) days after the date of an invoice from Blackboard Connect. Late payments may be assessed at the lesser of 1.5% per month or the maximum allowable rate under applicable law.

The Service Fee does not include any sales, use, or other taxes, government fees or levies on the provision of the **Connect-ED** Service. The K-12 Customer will be responsible for payment of all applicable taxes, fees or levies, unless the K-12 Customer is exempt therefrom and provides Blackboard Connect with a copy of K-12 Customer's tax exemption certificate or number. All payments to Blackboard Connect shall be made without any deduction or withholding, unless required by applicable law in which case the K-12 Customer shall ensure that the net amount actually received by Blackboard Connect from the K-12 Customer equals the full amount Blackboard Connect would have received had no such deduction or withholding been required.

EXHIBIT D

TABLE 3

Municipalities and Counties Pricing for Participating Entity Customer

	NEW BLACKBOARD CONNECT CLIENT	EXISTING BLACKBOARD CONNECT CLIENT
Annual Support Fee	Waived	Waived
Annual Message Fee	The Annual Message Fee = \$2.00 per recipient for unlimited usage The pricing is locked for 3 years	Existing clients may renew for 3 additional years at the time of their standard contract anniversary and renewal date. The Annual Message Fee = \$2.00 per recipient for unlimited usage The pricing is locked for 3 years
Additional Conditions	Must sign entire population. First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01	Must sign entire population. First year contract may be prorated if started after July 1 in order for the renewal and anniversary date to be 07/01

PAYMENT TERMS

Upon full execution of the Participating Entity Addendum by Blackboard Connect and the Customer, Blackboard Connect will send the Customer an invoice for the first year's annual Support Fee and annual Message Fee (collectively, the "Service Fee"), or pro-rated portion thereto. Thereafter the Service Fee will be invoiced on an annual basis.

The Service Fee is paid at the beginning of each annual period and is due in no event later than forty-five (45) days after the date of an invoice from Blackboard Connect. Late payments may be assessed at the lesser of 1.5% per month or the maximum allowable rate under applicable law.

The Service Fee does not include any sales, use, or other taxes, government fees or levies on the provision of the **Connect-CTY** Service. The Customer will be responsible for payment of all applicable taxes, fees or levies, unless the Customer is exempt therefrom and provides Blackboard Connect with a copy of Customer's tax exemption certificate or number. All payments to Blackboard Connect shall be made without any deduction or withholding, unless required by applicable law in which case the Customer shall ensure that the net amount actually received by Blackboard Connect from the Customer equals the full amount Blackboard Connect would have received had no such deduction or withholding been required.