



Blackboard

San Bernardino Community College District Pricing Summary

Product Description	Product ID	Qty	Units	Annual List Price	Annual Fee
CONNECT CITL MESSAGES	BC-INTG-MSGS	1	YR	\$ 5000	\$ 5000
CONNECT CARE ANNUAL FEE HE	BC-CARE-HENA	1	YR	\$ 2500	\$ 2500
CONNECT SERVICE PER USER HE	BC-STND-HENA	22000	YR	\$ 1.70	\$ 37400
CONNECT CITL	BC-INTG-TOOLS	1	YR	\$ 7500	\$ 7500
TOTALS:					\$ 52,400

OPPORTUNITY CONTACTS:

Role	Contact	Email	Phone
System Administrator	Baron, Bruce	bbaron@sbccd.cc.ca.us	909 3824090

HIGHER-ED SERVICES AGREEMENT

EIN #20-05-97724

Services Agreement for Public Institutions

This Higher-ED Services Agreement, consisting of, in the hierarchy of precedence: (a) this Services Agreement for Public Institutions, (b) the Acceptable Use Policy and (c) Privacy Policy (collectively with the Acceptable Use Policy, the "Policies") posted on www.blackboardconnect.com (the "Website") and incorporated herein by reference (collectively, this "Agreement"), is made and entered into as of the Effective Date below, by and between San Bernardino Community College District, California ("Customer") and Blackboard Connect Inc. (a wholly-owned subsidiary of Blackboard Inc. and f/k/a The NTI Group, Inc., "Blackboard" or "Company") (collectively, with the Customer, the "Parties" and individually, the "Party"), whereby Customer wishes to utilize the Company's service called **Connect-ED**® for Higher Education (the "Service"), subject to and in accordance with the following terms and conditions. This Agreement is valid and binding the date in which both Parties sign this Agreement (the "Effective Date"). The purchase of the Service is made pursuant to the Administrative Agreement by and between the Foundation for California Community Colleges ("FCCC") and Blackboard.

ALL TERMS AND CONDITIONS IN THIS AGREEMENT ARE APPLICABLE ONLY TO THE EXTENT PERMITTED UNDER THE GOVERNING LAW.

- Service.** Customer will only utilize the Service to deliver any-time messages to a total of 22,000 enrolled students, faculty, staff, and administration counts (individually, a "Recipient" and collectively, "Recipients") and will not include any other recipient, including admission prospects or alumni. Telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees shall be payable by the Customer or Recipient. Blackboard periodically updates the Service and reserves the right to make changes, provided, however, that Blackboard shall not change any feature without providing for similar or enhanced functionality.
- Web Portal.** If Customer elects to link to and use the web interface provided by Blackboard (the "Web Portal"), the provisions in this Section 2 shall apply. Customer agrees that the Web Portal is for the sole purpose of enabling Customer's Recipients to update and add their contact information. If elected, Blackboard grants to Customer the right to link to Blackboard's Web Portal through Customer's website provided however that Customer shall: (a) use any data supplied through such Web Portal solely in connection with use of the Service, (b) not download or make copies of such data for any other purpose, (c) not be used in any manner to provide a user with access to the Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by Customer or any party other than Blackboard. Customer may not allow the link to be linked to any other web site. Blackboard is not responsible to Customer, any of Customer's Recipients or any other third party regarding the accuracy or validity of the data entered through the Web Portal and Blackboard makes no warranty that the Web Portal will be error-free or that access thereto will be uninterrupted. Upon termination of this Agreement, Customer agrees to immediately disable any embedded link(s) to the Web Portal. All rights to the Web Portal shall remain the property of Blackboard.
- Blackboard Connect Integration Tool Kit for Blackboard Learn ("Connect Tool Kit").** If Customer elects use the Connect Tool Kit, the provisions of Schedule A attached hereto and incorporated herein by reference, shall also apply.
- Service Period.** The "Service Period" will be from August 16, 2010 to August 15, 2013. Notwithstanding the Service Period or the Effective Date, Customer acknowledges that the terms of this Agreement will govern usage on the date that a Recipient's contact information provided by the Customer to Blackboard or provided through the Web Portal (the "Recipient Data") is input into the Blackboard system until the date the Recipient Data is deleted from the Blackboard active database.
- Service Fee.** Customer will pay to Blackboard the following Message Fee and Support Fee (collectively, the "Service Fee") for the Service.

Annual Support Fee	Annual Message Fee	TOTAL ANNUAL SERVICE FEE
\$2,500.00	\$1.70 per Recipient x 22,000 ⁽¹⁾ Recipients = \$37,400.00	\$39,900.00 ⁽²⁾

Service Fees are paid at the beginning of each annual period and due within thirty (30) days of invoicing. The first invoice will be sent upon receipt of a signed Agreement. The pricing and terms contained in this Agreement are valid only if the Agreement is executed by August 31, 2010.

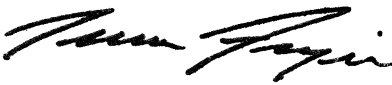
(1) Calculation of Message Fee for subsequent years will be based on the number of actual Recipients for each year of the Service Period.
(2) A discount of 15% of the Annual Service Fee is provided pursuant to the Customer's purchase of the Service pursuant to the Administrative Agreement between FCCC and Blackboard.

- Termination.** (a) Termination With Cause: Either Party may terminate this Agreement in the event of a material breach by the other Party, which breach remains uncured for thirty (30) days following written notice to the breaching Party. In the event of a termination by the Customer for an uncured material breach, Customer will receive a pro-rated refund of the Message Fee calculated from the date of termination to the end of the applicable annual period provided however that it will not receive a refund of the Support Fee. (b) Termination Without Cause: The Customer can terminate the Agreement at the end of each annual period by giving at least thirty (30) days prior written notice. (c) Effect of Termination: Any termination of this Agreement will not affect any rights or liabilities of either Party that accrued prior to such termination. Sections 3, 4, and 6-11 shall survive such termination. (d) Renewal. Customer may renew by signing the then-existing Blackboard standard contractual terms and rates prior to the expiration of the Service Period.
- Confidentiality.** Each Party agrees to maintain the confidentiality of the other Party's Confidential Information (as defined below), with no less than a reasonable degree of care. The term "Confidential Information" shall include, but not limited to, the Service and all documents relating to the provision of Service including but not limited to training manuals and the Recipient Data. Each Party agrees to limit access to the Confidential Information to those of its employees and other parties who have a business need for the access and who have entered into appropriate confidentiality agreements. Customer may disclose Confidential Information in response to a Freedom of Information Act request or if such information is deemed a public record under the California Public Records law provided however that the Customer agrees to give Blackboard notice prior to such disclosure.
- Privacy and Acceptable Use Policy.** If Blackboard amends the Policy, Blackboard will provide a written notice on the Website and member sign-in page. If such change materially impacts the Customer and the Customer desires to object, the Customer may, within fifteen (15) days of the change, provide written notice at the address below objecting to such change. Failure to do so will be deemed acceptance to the changes.

9. **Mutual Indemnification.** To the extent permitted under governing law and subject to limitations set forth elsewhere in this Agreement, each Party (the "Indemnifying Party") will defend, indemnify and hold harmless the other Party, its successors and assigns, officers, directors, employees, and agents (the "Indemnified Party"), from and against any and all liability, judgment, loss, damages, fines and expenses (including reasonable legal fees and costs), which the Indemnified Party may later suffer or pay out to another, due to any claim, action, or right of action of a third party, at law or in equity, based on or in any way arising out of, and which are proximately caused in whole or in part, by the breach of a warranty or obligation set forth in this Agreement.
10. **Warranties.** (a) Customer represents and warrants that: (i) the person reviewing and signing this Agreement is duly authorized to do so and upon signing, this Agreement is a valid and legal obligation of the Customer, (ii) it and its users will comply with all applicable laws and regulations in use of the Service, (iii) the Customer shall use best efforts in providing accurate and complete Recipient Data and such Recipient Data must reside and come from the United States, (iv) Customer has met all legal requirements in providing the Recipient Data, including data obtained from the Web Portal, and in using the Recipient Data in connection with the Service, including, but not limited to, obtaining consent to call a recipient or call with information regarding a student, (v) the content and transmission of its messages sent using the Service is in compliance with all laws and regulations; (vi) it will maintain the confidentiality of its password and account information, and agrees to notify Blackboard in the event of an actual or suspected unauthorized access to its account, or if it loses its account information, (vii) have in place primary safety and emergency response procedures in the event of an emergency (including, without limitation, notifying 911, fire, police, and emergency medical, altogether, "First Responder Service"), (viii) the Customer will in no event subject Blackboard to any regulations or laws due to the import of certain Recipient Data, including, but not limited to, the Health Insurance Portability and Accountability Act and the Financial Services Modernization Act; and (ix) it will not send messages to Recipients who have opted out of receiving messages from the Customer. (b) Blackboard represents and warrants that: (i) the Service contemplated by this Agreement will be performed in accordance with industry standards and (ii) it will comply with applicable laws and regulations effective on the Effective Date in providing the Service.
11. **Limitation of Liability.** In no event will either Party, its officers, or employees, be liable for any indirect, punitive, special, consequential, of indirect damages arising from or related to this Agreement including but not limited to replacement of services, loss of data or messages received or sent through the Service, losses associated with transactions entered into or not entered into through the Service, loss resulting from unauthorized access to or alteration of Customer's transmissions or data, even if a Party has been advised of the possibilities of such damages or should have foreseen such damages. Blackboard, its officers and employees will not be liable for any damages to property or injury (to third parties or otherwise) with respect to the performance of the Service, including, but not limited to, any failure of performance, error, omission, defect, delay, computer virus, or line failure. **EXCEPT FOR BLACKBOARD'S INTENTIONAL OR WILLFUL ACTS WHICH PROXIMATELY CAUSES THE DAMAGE, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF BLACKBOARD TO THE CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF THE SERVICE, EXCEED THE LESSER OF: (A) THE ACTUAL DAMAGES OR (B) THE AGGREGATE FEES PAID UNDER THIS AGREEMENT, 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 PARTIES ACKNOWLEDGE AND AGREE THAT THE FEES, LIMITATIONS OF LIABILITY AND REMEDIES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND THAT SECTIONS 8, 9 AND 10 ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. WITH THE EXCEPTION OF THE EXPRESS WARRANTY SET FORTH IN SECTION 9, THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND Blackboard EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND DATA ACCURACY. Some states or jurisdictions do not allow the exclusion of certain warranties, so some of the above limitations may not apply to the Customer. Only if this exclusion is held unenforceable under the governing law, then all express and implied warranties shall be limited in duration to the minimum period permitted under the governing law, and no warranties shall apply after that period. The Customer accepts that the Service is intended to augment and not replace, First Responder services (such as, for example purposes only, 911, fire, police, emergency medical and public health), that have already been notified and deployed and that the Service is not designed for use in any situation where failure of the Service could lead to death, personal injury, or damage to property.**
12. **Service Level.** Blackboard shall use best efforts to provide a 99.99% uptime. A violation of this service level commitment is expressly not a breach of a representation or warranty and is not a default hereunder. Customer's sole and exclusive remedy for any violation of this commitment shall be a credit or refund of a percentage of downtime in that calendar month times 1/12th of the annual Message Fee paid by Customer, except that Blackboard shall have no obligation to compensate Customer under any service level commitment while Customer is in default or not current in its payment obligations under this Agreement. Credits attributable to any SLA failure for the entire term of this Agreement shall not exceed the 1/12th of the annual Message Fee paid by Customer. Credits or refunds are not applied towards any fees payable by Customer to Blackboard under this Agreement. No credit or refund allowance will be made for: (a) failures arising from the breach by Customer of the provisions of the Agreement, or any failures due to any party other than Blackboard or for events happening on any other party's network, including but not limited to Internet service providers or telecommunications providers connected to, or providing service connected to, the Services or Blackboard's facilities; (b) failures due to the failure or malfunction of equipment not owned or operated by Blackboard, including service connected to Customer-provided electric power; (c) failure during any period in which Blackboard is not given reasonable access to its facilities and equipment for the purpose of investigating and correcting interruptions, such as during disasters; (d) failures when Customer has released service to Blackboard for maintenance purposes or for implementation of a Blackboard order for a change in service arrangements; or (e) failures due to force majeure events beyond the reasonable control of Blackboard.
13. **Miscellaneous.** Nothing in this Agreement grants or transfers to the Customer any ownership rights in the Service or materials pertaining to the provision of the Service. Each Party may seek any relief, including equitable relief provided under law. Neither Party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that Party, including, but not limited to, acts of God, labor disputes, acts of war, governmental regulations, public utilities or telecommunication providers. Blackboard will obtain the prior written consent of the Customer if it wishes to use messages for marketing, demonstration and/or training purposes relating to the Service. In no event shall such messages include personally identifiable information about a student or parent. This Agreement will be governed and interpreted in accordance with the laws of the State of California. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement. In the event that any provision of this Agreement is invalid under law, such invalidity will not invalidate the whole Agreement. The Parties will amend such provision with one that is valid. The Parties are independent contractors under this Agreement and no other relationship is implied. Unless otherwise expressly provided, no provision of this Agreement is intended or shall be construed to confer upon or give to any person or entity other than Blackboard or the Customer, any rights, remedies or other benefits under or by reason of this Agreement. All notices to Blackboard must be in writing and may be made via mail to the attention of the Legal Department at the address on the signatory page. Notices to the Customer will be sent to the address on the signature page and to the attention of the signatory. Any notices will be deemed delivered to the Party receiving such notice as stated on a written verification of receipt. Neither

Party may assign this Agreement without the other Party's prior written consent, provided, that Blackboard may assign this Agreement without the Customer's prior consent to (i) a parent, subsidiary or affiliate of Blackboard or (ii) any entity or successor that acquires all or substantially all of the business or assets of Blackboard through any structure. Any assignment made in conflict with this provision shall be void subject to the foregoing, and this Agreement shall benefit and bind the permitted successors and assigns of the Parties. The Agreement may be executed in counterparts and a signature on a copy of this Agreement received by either Party by facsimile is binding upon the other Party as an original. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter hereof, and supersedes all prior communications between the Parties, whether written or oral with respect to the subject matter hereof and shall prevail against any purchase order terms or standard terms of the Customer. Except as stated herein, this Agreement may be amended only in writing that refers explicitly to this Agreement and that is signed by an authorized representative of both Parties.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Agreement, including the Policies.

For Customer: San Bernardino Community College District	For Blackboard:
Authorized Signatory:	Authorized Signatory: 
Print Name & Title: Steven Sutorus, Business Manager	Print Name & Title: Tess Frazier – Vice President
Billing Contact Information 114 South Del Rosa Drive San Bernardino, CA 92408-0108 Tel: (909) 382-4000	Blackboard Connect Inc. 15301 Ventura Boulevard, Bldg. B, Suite 300 Sherman Oaks, CA 91403
Date:	Date: 7/1/10

SCHEDULE A

BLACKBOARD CONNECT INTEGRATION TOOL KIT MODULE

- 1) **CONNECT TOOL KIT.** Blackboard Connect grants to the Customer a limited, non-exclusive, revocable, non-sublicensable, and non-transferable license to use the *Blackboard Connect Integration Tool Kit* (“Connect Tool Kit”) subject to the terms hereunder. The Connect Tool Kit consists of the following building blocks and modules:
 - a) **Blackboard Connect Portal Building Block**, a self-service portal, which can be installed within the Learn Service, versions 8 and 9, to enable intended message recipients to provide contact information (phone numbers, e-mail addresses and a text messaging number).
 - b) **Blackboard Connect Professor Notification Tool Building Block**, which allows professors to initiate messages in the form of SMS, e-mail and text-to-speech (TTS) modes for delivery to students. The professor has the option of selecting the mode of delivery, and chooses only from a list of enrolled students within a course.
 - c) **Connect Message Gateway for Learn 9.1**, which extends additional notification modalities to the Student Notification Framework for the Learn Service version 9.1. Students will be able to “opt-in” to subscribe to receive course alerts via SMS and TTS voice alerts. Learn administrators will be able to send system-wide announcements via SMS and TTS voice messages to alert faculty and students regarding system availability or updates.

- 2) **TERM; TERMINATION.**
 - a) **Term.** The initial term of Schedule A will be three (3) years commencing on the last date of execution of Schedule A (“Schedule A Effective Date”) (the “Schedule A Initial Term”). Thereafter, this Schedule A will renew automatically at the then-current Blackboard Connect pricing, for successive one (1) year periods (each, a “Schedule A Renewal Term”), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Schedule A Initial Term or then-current Schedule A Renewal Term, as applicable.
 - b) **Termination.**
 - i) Notwithstanding the foregoing, either Party may terminate this Schedule A in the event of a breach by the other Party, which breach remains uncured for fifteen (15) days following written notice to the breaching Party (“Cure Period”); or
 - ii) The Customer accepts that it must be a client of the Blackboard Learn Service in order to use the Connect Tool Kit. Accordingly, in the event that the Customer’s agreement for the Learn Service expires (and is not renewed) during the applicable term of this Schedule A, the Customer will not be entitled to a refund of the compensation paid under this Schedule A.
 - c) **Effect of Termination.** Upon termination of this Schedule A, all licenses granted under this Schedule A shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Connect Tool Kit; (ii) pay to Blackboard Connect all amounts due and payable under this Schedule A; and (iii) return all user guides, training materials, and other documents, to Blackboard Connect within a reasonable time at Customer’s cost. Termination of this Schedule A shall not act as a waiver of any breach of this Schedule A or as a release of either Party from any liability for breach of such Party’s obligations under this Schedule A. Sections 2, 3, and 4, of this Schedule A will survive the expiration or termination of this Schedule A for any reason.

- 3) **COMPENSATION.** The Connect Tool Kit Fee for Schedule A Initial Term is based on the table below. For subsequent Schedule A Renewal Terms, compensation will be at the then-current pricing.

Annual Service Fee	\$7,500.00
Annual Support Fee	Waived
*Message Fee per ‘bucket’ of 125,000 messages (phone and SMS)	\$5,000.00
**CONNECT TOOL KIT FEE = \$7,500 ++ \$5,000 (for first 125,000 messages*)	\$12,500.00

NOTE

* A ‘bucket’ of messages contains 125, 000 messages. During an annual period, the Customer will be invoiced for messages in excess of 125,000 at a rate of \$5,000.00 per 125,000 messages (each, an “Additional Bucket”). Payment for each Additional Bucket is due within 30 days of invoicing. Unused messages from the Schedule A Initial Term or a Schedule A Renewal Term will forfeit and may not be carried into the following year. The Customer will not receive a refund for unused messages upon termination of the Schedule A.

**The Connect Tool Kit Fee for the Schedule A Initial Term will be invoiced upon execution of the Schedule A and is due within 30 days of invoicing. For a Schedule A Renewal Term, the Connect Tool Kit Fee will be invoiced at the beginning of the Schedule A Renewal Term and is due within 30 days of invoicing.

- 4) **OWNERSHIP.** The Connect Tool Kit, user guides, and all attendant materials pertaining thereto, are and shall remain the sole and exclusive property of Blackboard Connect (“Proprietary Material”). Nothing in this Schedule A grants or transfers to the Customer any ownership rights in the Proprietary Material. The Customer may not copy the Proprietary Material, in whole or in part, and may not modify, create derivative works, loan, rent, lease, sublicense, transfer, publish, disclose, display, reverse engineer, decompile, translate, adapt, or disassemble, the Proprietary Material or otherwise make

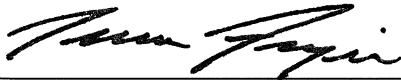
available the Proprietary Material, in whole or in part, to any other person or entity without the express written consent of Blackboard Connect. The Customer acknowledges that Blackboard Connect shall be entitled to equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that it breaches this Schedule A. The Customer will maintain the confidentiality of the Proprietary Material, its functionality, and the Customer's experiences with the Proprietary Material as 'Confidential Information'.

The Schedule A may be executed in counterparts and a signature on a copy of this Schedule A received by either Party by facsimile is binding upon the other Party as an original.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Schedule A.

BLACKBOARD CONNECT INC.

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT



Signature

Signature

Tess Frazier - Vice President

Steven Sutorus- Business Manager

Print Name and Title

PRINT NAME AND TITLE

Date:

7/1/10

Date:



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- Privacy and Acceptable Use Policy.** If Blackboard amends the Policy, Blackboard will provide a written notice on the Website and member sign-in page. If such change materially impacts the Customer and the Customer desires to object, the Customer may, within fifteen (15) days of the change, provide written notice at the address below objecting to such change. Failure to do so will be deemed acceptance to the changes.

9. **Mutual Indemnification.** To the extent permitted under governing law and subject to limitations set forth elsewhere in this Agreement, each Party (the "Indemnifying Party") will defend, indemnify and hold harmless the other Party, its successors and assigns, officers, directors, employees, and agents (the "Indemnified Party"), from and against any and all liability, judgment, loss, damages, fines and expenses (including reasonable legal fees and costs), which the Indemnified Party may later suffer or pay out to another, due to any claim, action, or right of action of a third party, at law or in equity, based on or in any way arising out of, and which are proximately caused in whole or in part, by the breach of a warranty or obligation set forth in this Agreement.
10. **Warranties.** (a) Customer represents and warrants that: (i) the person reviewing and signing this Agreement is duly authorized to do so and upon signing, this Agreement is a valid and legal obligation of the Customer, (ii) it and its users will comply with all applicable laws and regulations in use of the Service, (iii) the Customer shall use best efforts in providing accurate and complete Recipient Data and such Recipient Data must reside and come from the United States, (iv) Customer has met all legal requirements in providing the Recipient Data, including data obtained from the Web Portal, and in using the Recipient Data in connection with the Service, including, but not limited to, obtaining consent to call a recipient or call with information regarding a student, (v) the content and transmission of its messages sent using the Service is in compliance with all laws and regulations; (vi) it will maintain the confidentiality of its password and account information, and agrees to notify Blackboard in the event of an actual or suspected unauthorized access to its account, or if it loses its account information, (vii) have in place primary safety and emergency response procedures in the event of an emergency (including, without limitation, notifying 911, fire, police, and emergency medical, altogether, "First Responder Service"), (viii) the Customer will in no event subject Blackboard to any regulations or laws due to the import of certain Recipient Data, including, but not limited to, the Health Insurance Portability and Accountability Act and the Financial Services Modernization Act; and (ix) it will not send messages to Recipients who have opted out of receiving messages from the Customer. (b) Blackboard represents and warrants that: (i) the Service contemplated by this Agreement will be performed in accordance with industry standards and (ii) it will comply with applicable laws and regulations effective on the Effective Date in providing the Service.
11. **Limitation of Liability.** In no event will either Party, its officers, or employees, be liable for any indirect, punitive, special, consequential, or indirect damages arising from or related to this Agreement including but not limited to replacement of services, loss of data or messages received or sent through the Service, losses associated with transactions entered into or not entered into through the Service, loss resulting from unauthorized access to or alteration of Customer's transmissions or data, even if a Party has been advised of the possibilities of such damages or should have foreseen such damages. Blackboard, its officers and employees will not be liable for any damages to property or injury (to third parties or otherwise) with respect to the performance of the Service, including, but not limited to, any failure of performance, error, omission, defect, delay, computer virus, or line failure. **EXCEPT FOR BLACKBOARD'S INTENTIONAL OR WILLFUL ACTS WHICH PROXIMATELY CAUSES THE DAMAGE, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF BLACKBOARD TO THE CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF THE SERVICE, EXCEED THE LESSER OF: (A) THE ACTUAL DAMAGES OR (B) THE AGGREGATE FEES PAID UNDER THIS AGREEMENT, 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 PARTIES ACKNOWLEDGE AND AGREE THAT THE FEES, LIMITATIONS OF LIABILITY AND REMEDIES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND THAT SECTIONS 8, 9 AND 10 ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. WITH THE EXCEPTION OF THE EXPRESS WARRANTY SET FORTH IN SECTION 9, THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND Blackboard EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND DATA ACCURACY. Some states or jurisdictions do not allow the exclusion of certain warranties, so some of the above limitations may not apply to the Customer. Only if this exclusion is held unenforceable under the governing law, then all express and implied warranties shall be limited in duration to the minimum period permitted under the governing law, and no warranties shall apply after that period. The Customer accepts that the Service is intended to augment and not replace, First Responder services (such as, for example purposes only, 911, fire, police, emergency medical and public health), that have already been notified and deployed and that the Service is not designed for use in any situation where failure of the Service could lead to death, personal injury, or damage to property.**
12. **Service Level.** Blackboard shall use best efforts to provide a 99.99% uptime. A violation of this service level commitment is expressly not a breach of a representation or warranty and is not a default hereunder. Customer's sole and exclusive remedy for any violation of this commitment shall be a credit or refund of a percentage of downtime in that calendar month times 1/12th of the annual Message Fee paid by Customer, except that Blackboard shall have no obligation to compensate Customer under any service level commitment while Customer is in default or not current in its payment obligations under this Agreement. Credits attributable to any SLA failure for the entire term of this Agreement shall not exceed the 1/12th of the annual Message Fee paid by Customer. Credits or refunds are not applied towards any fees payable by Customer to Blackboard under this Agreement. No credit or refund allowance will be made for: (a) failures arising from the breach by Customer of the provisions of the Agreement, or any failures due to any party other than Blackboard or for events happening on any other party's network, including but not limited to Internet service providers or telecommunications providers connected to, or providing service connected to, the Services or Blackboard's facilities; (b) failures due to the failure or malfunction of equipment not owned or operated by Blackboard, including service connected to Customer-provided electric power; (c) failure during any period in which Blackboard is not given reasonable access to its facilities and equipment for the purpose of investigating and correcting interruptions, such as during disasters; (d) failures when Customer has released service to Blackboard for maintenance purposes or for implementation of a Blackboard order for a change in service arrangements; or (e) failures due to force majeure events beyond the reasonable control of Blackboard.
13. **Miscellaneous.** Nothing in this Agreement grants or transfers to the Customer any ownership rights in the Service or materials pertaining to the provision of the Service. Each Party may seek any relief, including equitable relief provided under law. Neither Party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that Party, including, but not limited to, acts of God, labor disputes, acts of war, governmental regulations, public utilities or telecommunication providers. Blackboard will obtain the prior written consent of the Customer if it wishes to use messages for marketing, demonstration and/or training purposes relating to the Service. In no event shall such messages include personally identifiable information about a student or parent. This Agreement will be governed and interpreted in accordance with the laws of the State of California. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement. In the event that any provision of this Agreement is invalid under law, such invalidity will not invalidate the whole Agreement. The Parties will amend such provision with one that is valid. The Parties are independent contractors under this Agreement and no other relationship is implied. Unless otherwise expressly provided, no provision of this Agreement is intended or shall be construed to confer upon or give to any person or entity other than Blackboard or the Customer, any rights, remedies or other benefits under or by reason of this Agreement. All notices to Blackboard must be in writing and may be made via mail to the attention of the Legal Department at the address on the signatory page. Notices to the Customer will be sent to the address on the signature page and to the attention of the signatory. Any notices will be deemed delivered to the Party receiving such notice as stated on a written verification of receipt. Neither

Party may assign this Agreement without the other Party's prior written consent, provided, that Blackboard may assign this Agreement without the Customer's prior consent to (i) a parent, subsidiary or affiliate of Blackboard or (ii) any entity or successor that acquires all or substantially all of the business or assets of Blackboard through any structure. Any assignment made in conflict with this provision shall be void subject to the foregoing, and this Agreement shall benefit and bind the permitted successors and assigns of the Parties. The Agreement may be executed in counterparts and a signature on a copy of this Agreement received by either Party by facsimile is binding upon the other Party as an original. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter hereof, and supersedes all prior communications between the Parties, whether written or oral with respect to the subject matter hereof and shall prevail against any purchase order terms or standard terms of the Customer. Except as stated herein, this Agreement may be amended only in writing that refers explicitly to this Agreement and that is signed by an authorized representative of both Parties.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Agreement, including the Policies.

For Customer: San Bernardino Community College District	For Blackboard:
Authorized Signatory: 	Authorized Signatory: 
Print Name & Title: Steven Sutorus, Business Manager	Print Name & Title: Tess Frazier – Vice President
Billing Contact Information 114 South Del Rosa Drive San Bernardino, CA 92408-0108 Tel: (909) 382-4000	Blackboard Connect Inc. 15301 Ventura Boulevard, Bldg. B, Suite 300 Sherman Oaks, CA 91403
Date:	Date: 7/1/10

SCHEDULE A

BLACKBOARD CONNECT INTEGRATION TOOL KIT MODULE

- 1) **CONNECT TOOL KIT.** Blackboard Connect grants to the Customer a limited, non-exclusive, revocable, non-sublicensable, and non-transferable license to use the *Blackboard Connect Integration Tool Kit* ("Connect Tool Kit") subject to the terms hereunder. The Connect Tool Kit consists of the following building blocks and modules:
 - a) **Blackboard Connect Portal Building Block**, a self-service portal, which can be installed within the Learn Service, versions 8 and 9, to enable intended message recipients to provide contact information (phone numbers, e-mail addresses and a text messaging number).
 - b) **Blackboard Connect Professor Notification Tool Building Block**, which allows professors to initiate messages in the form of SMS, e-mail and text-to-speech (TTS) modes for delivery to students. The professor has the option of selecting the mode of delivery, and chooses only from a list of enrolled students within a course.
 - c) **Connect Message Gateway for Learn 9.1**, which extends additional notification modalities to the Student Notification Framework for the Learn Service version 9.1. Students will be able to "opt-in" to subscribe to receive course alerts via SMS and TTS voice alerts. Learn administrators will be able to send system-wide announcements via SMS and TTS voice messages to alert faculty and students regarding system availability or updates.

- 2) **TERM; TERMINATION.**
 - a) **Term.** The initial term of Schedule A will be three (3) years commencing on the last date of execution of Schedule A ("Schedule A Effective Date") (the "Schedule A Initial Term"). Thereafter, this Schedule A will renew automatically at the then-current Blackboard Connect pricing, for successive one (1) year periods (each, a "Schedule A Renewal Term"), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Schedule A Initial Term or then-current Schedule A Renewal Term, as applicable.
 - b) **Termination.**
 - i) Notwithstanding the foregoing, either Party may terminate this Schedule A in the event of a breach by the other Party, which breach remains uncured for fifteen (15) days following written notice to the breaching Party ("Cure Period"); or
 - ii) The Customer accepts that it must be a client of the Blackboard Learn Service in order to use the Connect Tool Kit. Accordingly, in the event that the Customer's agreement for the Learn Service expires (and is not renewed) during the applicable term of this Schedule A, the Customer will not be entitled to a refund of the compensation paid under this Schedule A.
 - c) **Effect of Termination.** Upon termination of this Schedule A, all licenses granted under this Schedule A shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Connect Tool Kit; (ii) pay to Blackboard Connect all amounts due and payable under this Schedule A; and (iii) return all user guides, training materials, and other documents, to Blackboard Connect within a reasonable time at Customer's cost. Termination of this Schedule A shall not act as a waiver of any breach of this Schedule A or as a release of either Party from any liability for breach of such Party's obligations under this Schedule A. Sections 2, 3, and 4, of this Schedule A will survive the expiration or termination of this Schedule A for any reason.

- 3) **COMPENSATION.** The Connect Tool Kit Fee for Schedule A Initial Term is based on the table below. For subsequent Schedule A Renewal Terms, compensation will be at the then-current pricing.

Annual Service Fee	\$7,500.00
Annual Support Fee	Waived
*Message Fee per 'bucket' of 125,000 messages (phone and SMS)	\$5,000.00
**CONNECT TOOL KIT FEE = \$7,500 + + \$5,000 (for first 125,000 messages*)	\$12,500.00

NOTE

* A 'bucket' of messages contains 125, 000 messages. During an annual period, the Customer will be invoiced for messages in excess of 125,000 at a rate of \$5,000.00 per 125,000 messages (each, an "Additional Bucket"). Payment for each Additional Bucket is due within 30 days of invoicing. Unused messages from the Schedule A Initial Term or a Schedule A Renewal Term will forfeit and may not be carried into the following year. The Customer will not receive a refund for unused messages upon termination of the Schedule A.

** The Connect Tool Kit Fee for the Schedule A Initial Term will be invoiced upon execution of the Schedule A and is due within 30 days of invoicing. For a Schedule A Renewal Term, the Connect Tool Kit Fee will be invoiced at the beginning of the Schedule A Renewal Term and is due within 30 days of invoicing.

- 4) **OWNERSHIP.** The Connect Tool Kit, user guides, and all attendant materials pertaining thereto, are and shall remain the sole and exclusive property of Blackboard Connect ("Proprietary Material"). Nothing in this Schedule A grants or transfers to the Customer any ownership rights in the Proprietary Material. The Customer may not copy the Proprietary Material, in whole or in part, and may not modify, create derivative works, loan, rent, lease, sublicense, transfer, publish, disclose, display, reverse engineer, decompile, translate, adapt, or disassemble, the Proprietary Material or otherwise make

available the Proprietary Material, in whole or in part, to any other person or entity without the express written consent of Blackboard Connect. The Customer acknowledges that Blackboard Connect shall be entitled to equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that it breaches this Schedule A. The Customer will maintain the confidentiality of the Proprietary Material, its functionality, and the Customer's experiences with the Proprietary Material as 'Confidential Information'.

The Schedule A may be executed in counterparts and a signature on a copy of this Schedule A received by either Party by facsimile is binding upon the other Party as an original.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Schedule A.

BLACKBOARD CONNECT INC.

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT



Signature

Signature

Tess Frazier - Vice President

Steven Sutorus- Business Manager

Print Name and Title

PRINT NAME AND TITLE

Date:

7/1/10

Date:



Blackboard

San Bernardino Community College District Pricing Summary

Product Description	Product ID	Qty	Units	Annual List Price	Annual Fee
CONNECT CITL MESSAGES	BC-INTG-MSGS	1	YR	\$ 5000	\$ 5000
CONNECT CARE ANNUAL FEE HE	BC-CARE-HENA	1	YR	\$ 2500	\$ 2500
CONNECT SERVICE PER USER HE	BC-STND-HENA	22000	YR	\$ 1.70	\$ 37400
CONNECT CITL	BC-INTG-TOOLS	1	YR	\$ 7500	\$ 7500
TOTALS:					\$ 52,400

OPPORTUNITY CONTACTS:

Role	Contact	Email	Phone
System Administrator	Baron, Bruce	bbaron@sbccd.cc.ca.us	909 3824090

HIGHER-ED SERVICES AGREEMENT

EIN #20-05-97724

Services Agreement for Public Institutions

This Higher-ED Services Agreement, consisting of, in the hierarchy of precedence: (a) this Services Agreement for Public Institutions, (b) the Acceptable Use Policy and (c) Privacy Policy (collectively with the Acceptable Use Policy, the "Policies") posted on www.blackboardconnect.com (the "Website") and incorporated herein by reference (collectively, this "Agreement"), is made and entered into as of the Effective Date below, by and between San Bernardino Community College District, California ("Customer") and Blackboard Connect Inc. (a wholly-owned subsidiary of Blackboard Inc. and f/k/a The NTI Group, Inc., "Blackboard" or "Company") (collectively, with the Customer, the "Parties" and individually, the "Party"), whereby Customer wishes to utilize the Company's service called **Connect-ED**® for Higher Education (the "Service"), subject to and in accordance with the following terms and conditions. This Agreement is valid and binding the date in which both Parties sign this Agreement (the "Effective Date"). The purchase of the Service is made pursuant to the Administrative Agreement by and between the Foundation for California Community Colleges ("FCCC") and Blackboard.

ALL TERMS AND CONDITIONS IN THIS AGREEMENT ARE APPLICABLE ONLY TO THE EXTENT PERMITTED UNDER THE GOVERNING LAW.

- Service.** Customer will only utilize the Service to deliver any-time messages to a total of 22,000 enrolled students, faculty, staff, and administration counts (individually, a "Recipient" and collectively, "Recipients") and will not include any other recipient, including admission prospects or alumni. Telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees shall be payable by the Customer or Recipient. Blackboard periodically updates the Service and reserves the right to make changes, provided, however, that Blackboard shall not change any feature without providing for similar or enhanced functionality.
- Web Portal.** If Customer elects to link to and use the web interface provided by Blackboard (the "Web Portal"), the provisions in this Section 2 shall apply. Customer agrees that the Web Portal is for the sole purpose of enabling Customer's Recipients to update and add their contact information. If elected, Blackboard grants to Customer the right to link to Blackboard's Web Portal through Customer's website provided however that Customer shall: (a) use any data supplied through such Web Portal solely in connection with use of the Service, (b) not download or make copies of such data for any other purpose, (c) not be used in any manner to provide a user with access to the Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by Customer or any party other than Blackboard. Customer may not allow the link to be linked to any other web site. Blackboard is not responsible to Customer, any of Customer's Recipients or any other third party regarding the accuracy or validity of the data entered through the Web Portal and Blackboard makes no warranty that the Web Portal will be error-free or that access thereto will be uninterrupted. Upon termination of this Agreement, Customer agrees to immediately disable any embedded link(s) to the Web Portal. All rights to the Web Portal shall remain the property of Blackboard.
- Blackboard Connect Integration Tool Kit for Blackboard Learn ("Connect Tool Kit").** If Customer elects use the Connect Tool Kit, the provisions of Schedule A attached hereto and incorporated herein by reference, shall also apply.
- Service Period.** The "Service Period" will be from August 16, 2010 to August 15, 2013. Notwithstanding the Service Period or the Effective Date, Customer acknowledges that the terms of this Agreement will govern usage on the date that a Recipient's contact information provided by the Customer to Blackboard or provided through the Web Portal (the "Recipient Data") is input into the Blackboard system until the date the Recipient Data is deleted from the Blackboard active database.
- Service Fee.** Customer will pay to Blackboard the following Message Fee and Support Fee (collectively, the "Service Fee") for the Service.

Annual Support Fee	Annual Message Fee	TOTAL ANNUAL SERVICE FEE
\$2,500.00	\$1.70 per Recipient x 22,000 ⁽¹⁾ Recipients = \$37,400.00	\$39,900.00 ⁽²⁾

Service Fees are paid at the beginning of each annual period and due within thirty (30) days of invoicing. The first invoice will be sent upon receipt of a signed Agreement. The pricing and terms contained in this Agreement are valid only if the Agreement is executed by August 31, 2010.


(1) Calculation of Message Fee for subsequent years will be based on the number of actual Recipients for each year of the Service Period.
 (2) A discount of 15% of the Annual Service Fee is provided pursuant to the Customer's purchase of the Service pursuant to the Administrative Agreement between FCCC and Blackboard.

- Termination.** (a) Termination With Cause: Either Party may terminate this Agreement in the event of a material breach by the other Party, which breach remains uncured for thirty (30) days following written notice to the breaching Party. In the event of a termination by the Customer for an uncured material breach, Customer will receive a pro-rated refund of the Message Fee calculated from the date of termination to the end of the applicable annual period provided however that it will not receive a refund of the Support Fee. (b) Termination Without Cause: The Customer can terminate the Agreement at the end of each annual period by giving at least thirty (30) days prior written notice. (c) Effect of Termination: Any termination of this Agreement will not affect any rights or liabilities of either Party that accrued prior to such termination. Sections 3, 4, and 6-11 shall survive such termination. (d) Renewal. Customer may renew by signing the then-existing Blackboard standard contractual terms and rates prior to the expiration of the Service Period.
- Confidentiality.** Each Party agrees to maintain the confidentiality of the other Party's Confidential Information (as defined below), with no less than a reasonable degree of care. The term "Confidential Information" shall include, but not limited to, the Service and all documents relating to the provision of Service including but not limited to training manuals and the Recipient Data. Each Party agrees to limit access to the Confidential Information to those of its employees and other parties who have a business need for the access and who have entered into appropriate confidentiality agreements. Customer may disclose Confidential Information in response to a Freedom of Information Act request or if such information is deemed a public record under the California Public Records law provided however that the Customer agrees to give Blackboard notice prior to such disclosure.
- Privacy and Acceptable Use Policy.** If Blackboard amends the Policy, Blackboard will provide a written notice on the Website and member sign-in page. If such change materially impacts the Customer and the Customer desires to object, the Customer may, within fifteen (15) days of the change, provide written notice at the address below objecting to such change. Failure to do so will be deemed acceptance to the changes.

9. **Mutual Indemnification.** To the extent permitted under governing law and subject to limitations set forth elsewhere in this Agreement, each Party (the "Indemnifying Party") will defend, indemnify and hold harmless the other Party, its successors and assigns, officers, directors, employees, and agents (the "Indemnified Party"), from and against any and all liability, judgment, loss, damages, fines and expenses (including reasonable legal fees and costs), which the Indemnified Party may later suffer or pay out to another, due to any claim, action, or right of action of a third party, at law or in equity, based on or in any way arising out of, and which are proximately caused in whole or in part, by the breach of a warranty or obligation set forth in this Agreement.
10. **Warranties.** (a) Customer represents and warrants that: (i) the person reviewing and signing this Agreement is duly authorized to do so and upon signing, this Agreement is a valid and legal obligation of the Customer, (ii) it and its users will comply with all applicable laws and regulations in use of the Service, (iii) the Customer shall use best efforts in providing accurate and complete Recipient Data and such Recipient Data must reside and come from the United States, (iv) Customer has met all legal requirements in providing the Recipient Data, including data obtained from the Web Portal, and in using the Recipient Data in connection with the Service, including, but not limited to, obtaining consent to call a recipient or call with information regarding a student, (v) the content and transmission of its messages sent using the Service is in compliance with all laws and regulations; (vi) it will maintain the confidentiality of its password and account information, and agrees to notify Blackboard in the event of an actual or suspected unauthorized access to its account, or if it loses its account information, (vii) have in place primary safety and emergency response procedures in the event of an emergency (including, without limitation, notifying 911, fire, police, and emergency medical, altogether, "First Responder Service"), (viii) the Customer will in no event subject Blackboard to any regulations or laws due to the import of certain Recipient Data, including, but not limited to, the Health Insurance Portability and Accountability Act and the Financial Services Modernization Act; and (ix) it will not send messages to Recipients who have opted out of receiving messages from the Customer. (b) Blackboard represents and warrants that: (i) the Service contemplated by this Agreement will be performed in accordance with industry standards and (ii) it will comply with applicable laws and regulations effective on the Effective Date in providing the Service.
11. **Limitation of Liability.** In no event will either Party, its officers, or employees, be liable for any indirect, punitive, special, consequential, of indirect damages arising from or related to this Agreement including but not limited to replacement of services, loss of data or messages received or sent through the Service, losses associated with transactions entered into or not entered into through the Service, loss resulting from unauthorized access to or alteration of Customer's transmissions or data, even if a Party has been advised of the possibilities of such damages or should have foreseen such damages. Blackboard, its officers and employees will not be liable for any damages to property or injury (to third parties or otherwise) with respect to the performance of the Service, including, but not limited to, any failure of performance, error, omission, defect, delay, computer virus, or line failure. **EXCEPT FOR BLACKBOARD'S INTENTIONAL OR WILLFUL ACTS WHICH PROXIMATELY CAUSES THE DAMAGE, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF BLACKBOARD TO THE CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF THE SERVICE, EXCEED THE LESSER OF: (A) THE ACTUAL DAMAGES OR (B) THE AGGREGATE FEES PAID UNDER THIS AGREEMENT, 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 PARTIES ACKNOWLEDGE AND AGREE THAT THE FEES, LIMITATIONS OF LIABILITY AND REMEDIES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND THAT SECTIONS 8, 9 AND 10 ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. WITH THE EXCEPTION OF THE EXPRESS WARRANTY SET FORTH IN SECTION 9, THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND Blackboard EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND DATA ACCURACY. Some states or jurisdictions do not allow the exclusion of certain warranties, so some of the above limitations may not apply to the Customer. Only if this exclusion is held unenforceable under the governing law, then all express and implied warranties shall be limited in duration to the minimum period permitted under the governing law, and no warranties shall apply after that period. The Customer accepts that the Service is intended to augment and not replace, First Responder services (such as, for example purposes only, 911, fire, police, emergency medical and public health), that have already been notified and deployed and that the Service is not designed for use in any situation where failure of the Service could lead to death, personal injury, or damage to property.**
12. **Service Level.** Blackboard shall use best efforts to provide a 99.99% uptime. A violation of this service level commitment is expressly not a breach of a representation or warranty and is not a default hereunder. Customer's sole and exclusive remedy for any violation of this commitment shall be a credit or refund of a percentage of downtime in that calendar month times 1/12th of the annual Message Fee paid by Customer, except that Blackboard shall have no obligation to compensate Customer under any service level commitment while Customer is in default or not current in its payment obligations under this Agreement. Credits attributable to any SLA failure for the entire term of this Agreement shall not exceed the 1/12th of the annual Message Fee paid by Customer. Credits or refunds are not applied towards any fees payable by Customer to Blackboard under this Agreement. No credit or refund allowance will be made for: (a) failures arising from the breach by Customer of the provisions of the Agreement, or any failures due to any party other than Blackboard or for events happening on any other party's network, including but not limited to Internet service providers or telecommunications providers connected to, or providing service connected to, the Services or Blackboard's facilities; (b) failures due to the failure or malfunction of equipment not owned or operated by Blackboard, including service connected to Customer-provided electric power; (c) failure during any period in which Blackboard is not given reasonable access to its facilities and equipment for the purpose of investigating and correcting interruptions, such as during disasters; (d) failures when Customer has released service to Blackboard for maintenance purposes or for implementation of a Blackboard order for a change in service arrangements; or (e) failures due to force majeure events beyond the reasonable control of Blackboard.
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Party may assign this Agreement without the other Party's prior written consent, provided, that Blackboard may assign this Agreement without the Customer's prior consent to (i) a parent, subsidiary or affiliate of Blackboard or (ii) any entity or successor that acquires all or substantially all of the business or assets of Blackboard through any structure. Any assignment made in conflict with this provision shall be void subject to the foregoing, and this Agreement shall benefit and bind the permitted successors and assigns of the Parties. The Agreement may be executed in counterparts and a signature on a copy of this Agreement received by either Party by facsimile is binding upon the other Party as an original. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter hereof, and supersedes all prior communications between the Parties, whether written or oral with respect to the subject matter hereof and shall prevail against any purchase order terms or standard terms of the Customer. Except as stated herein, this Agreement may be amended only in writing that refers explicitly to this Agreement and that is signed by an authorized representative of both Parties.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Agreement, including the Policies.

For Customer: San Bernardino Community College District	For Blackboard:
Authorized Signatory: 	Authorized Signatory: 
Print Name & Title: Steven Sutorus, Business Manager	Print Name & Title: Tess Frazier – Vice President
<u>Billing Contact Information</u> 114 South Del Rosa Drive San Bernardino, CA 92408-0108 Tel: (909) 382-4000	Blackboard Connect Inc. 15301 Ventura Boulevard, Bldg. B, Suite 300 Sherman Oaks, CA 91403
Date:	Date: 7/1/10

SCHEDULE A

BLACKBOARD CONNECT INTEGRATION TOOL KIT MODULE

- 1) **CONNECT TOOL KIT.** Blackboard Connect grants to the Customer a limited, non-exclusive, revocable, non-sublicensable, and non-transferable license to use the *Blackboard Connect Integration Tool Kit* (“Connect Tool Kit”) subject to the terms hereunder. The Connect Tool Kit consists of the following building blocks and modules:
- a) **Blackboard Connect Portal Building Block**, a self-service portal, which can be installed within the Learn Service, versions 8 and 9, to enable intended message recipients to provide contact information (phone numbers, e-mail addresses and a text messaging number).
 - b) **Blackboard Connect Professor Notification Tool Building Block**, which allows professors to initiate messages in the form of SMS, e-mail and text-to-speech (TTS) modes for delivery to students. The professor has the option of selecting the mode of delivery, and chooses only from a list of enrolled students within a course.
 - c) **Connect Message Gateway for Learn 9.1**, which extends additional notification modalities to the Student Notification Framework for the Learn Service version 9.1. Students will be able to “opt-in” to subscribe to receive course alerts via SMS and TTS voice alerts. Learn administrators will be able to send system-wide announcements via SMS and TTS voice messages to alert faculty and students regarding system availability or updates.
- 2) **TERM; TERMINATION.**
- a) **Term.** The initial term of Schedule A will be three (3) years commencing on the last date of execution of Schedule A (“Schedule A Effective Date”) (the “Schedule A Initial Term”). Thereafter, this Schedule A will renew automatically at the then-current Blackboard Connect pricing, for successive one (1) year periods (each, a “Schedule A Renewal Term”), unless either Party provides notice of its desire not to renew more than thirty (30) days prior to the end of the Schedule A Initial Term or then-current Schedule A Renewal Term, as applicable.
 - b) **Termination.**
 - i) Notwithstanding the foregoing, either Party may terminate this Schedule A in the event of a breach by the other Party, which breach remains uncured for fifteen (15) days following written notice to the breaching Party (“Cure Period”); or
 - ii) The Customer accepts that it must be a client of the Blackboard Learn Service in order to use the Connect Tool Kit. Accordingly, in the event that the Customer’s agreement for the Learn Service expires (and is not renewed) during the applicable term of this Schedule A, the Customer will not be entitled to a refund of the compensation paid under this Schedule A.
 - c) **Effect of Termination.** Upon termination of this Schedule A, all licenses granted under this Schedule A shall immediately cease, and Customer will: (i) immediately discontinue access to and/or use of the Connect Tool Kit; (ii) pay to Blackboard Connect all amounts due and payable under this Schedule A; and (iii) return all user guides, training materials, and other documents, to Blackboard Connect within a reasonable time at Customer’s cost. Termination of this Schedule A shall not act as a waiver of any breach of this Schedule A or as a release of either Party from any liability for breach of such Party’s obligations under this Schedule A. Sections 2, 3, and 4, of this Schedule A will survive the expiration or termination of this Schedule A for any reason.
- 3) **COMPENSATION.** The Connect Tool Kit Fee for Schedule A Initial Term is based on the table below. For subsequent Schedule A Renewal Terms, compensation will be at the then-current pricing.

Annual Service Fee	\$7,500.00
Annual Support Fee	Waived
*Message Fee per ‘bucket’ of 125,000 messages (phone and SMS)	\$5,000.00
**CONNECT TOOL KIT FEE = \$7,500 + + \$5,000 (for first 125,000 messages*)	\$12,500.00

NOTE

* A ‘bucket’ of messages contains 125, 000 messages. During an annual period, the Customer will be invoiced for messages in excess of 125,000 at a rate of \$5,000.00 per 125,000 messages (each, an “Additional Bucket”). Payment for each Additional Bucket is due within 30 days of invoicing. Unused messages from the Schedule A Initial Term or a Schedule A Renewal Term will forfeit and may not be carried into the following year. The Customer will not receive a refund for unused messages upon termination of the Schedule A.

** The Connect Tool Kit Fee for the Schedule A Initial Term will be invoiced upon execution of the Schedule A and is due within 30 days of invoicing. For a Schedule A Renewal Term, the Connect Tool Kit Fee will be invoiced at the beginning of the Schedule A Renewal Term and is due within 30 days of invoicing.

- 4) **OWNERSHIP.** The Connect Tool Kit, user guides, and all attendant materials pertaining thereto, are and shall remain the sole and exclusive property of Blackboard Connect (“Proprietary Material”). Nothing in this Schedule A grants or transfers to the Customer any ownership rights in the Proprietary Material. The Customer may not copy the Proprietary Material, in whole or in part, and may not modify, create derivative works, loan, rent, lease, sublicense, transfer, publish, disclose, display, reverse engineer, decompile, translate, adapt, or disassemble, the Proprietary Material or otherwise make


available the Proprietary Material, in whole or in part, to any other person or entity without the express written consent of Blackboard Connect. The Customer acknowledges that Blackboard Connect shall be entitled to equitable relief, including preliminary and permanent injunctive relief, in addition to other legal remedies, in the event that it breaches this Schedule A. The Customer will maintain the confidentiality of the Proprietary Material, its functionality, and the Customer's experiences with the Proprietary Material as 'Confidential Information'.

The Schedule A may be executed in counterparts and a signature on a copy of this Schedule A received by either Party by facsimile is binding upon the other Party as an original.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Schedule A.

BLACKBOARD CONNECT INC.

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT



Signature

Signature

Tess Frazier - Vice President

Steven Sutorus- Business Manager

Print Name and Title

PRINT NAME AND TITLE

Date:

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Date: