

## Software Services Agreement

This Software Services Agreement (“**Agreement**”) is entered into effective as of May 8, 2020 (“**Effective Date**”) by and between Illuminate Education, Inc., a California corporation (“**Illuminate**”), and Mount Diablo Unified School District (“**District**”).

### RECITALS

WHEREAS, District desires to implement a web-based software system for student data and assessment management;

WHEREAS, Illuminate has developed, owns and supports various assessment platforms and/or content (the “**System**”);

WHEREAS, District desires to access and use the System and obtain the other services as provided herein.

NOW, THEREFORE, in consideration of the mutual representations, warranties and agreements contained herein, the parties hereto agree as follows:

### AGREEMENT

1. Term of Agreement. Unless earlier terminated as provided herein, the initial term of this Agreement shall be from the Effective Date through June 30, 2023. (“**Term**”).
2. System Services; Third Party Services.
  - (a) System Services. Subject to the terms of this Agreement, during the Term, District and District Users (as defined below) may access and use the System for the benefit of District’s students. District is responsible for the actions of all District Users and other District teachers and authorized personnel, for ensuring that only District Users are provided access to the System (including ensuring ID and password security), and that access of District Users is limited to that portion of the System and District Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. “**District Users**” means District employees, students and such students’ parents or guardians holding a valid ID and password to use the System issued by the District.
3. Fees.
  - (a) Annual Fee. District agrees to pay to Illuminate an annual fee (the “**Annual Fee**”) for access and use of the System and applicable third-party services each school year during the Term

in accordance with Client Order Q-74856, which is attached hereto as Exhibit A. In the event of any conflicting terms or conditions, this Agreement shall prevail over Exhibit A.

- (b) Student Count. The parties agree that the number of students to be used in calculating the Annual Fee for each school year (the “**Student Count**”) shall be the number of students during the preceding school year based upon the official California state website for schools in the District in grades K-12.
  - (c) Payment. The Annual Fee for each school year and fees for training and services shall be paid by District within 30 days of receipt of an invoice from Illuminate.
  - (d) Failure to Make Payment. In the event District fails to pay the Annual Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon written notice from Illuminate, District agrees to immediately cease, and to cause District Users to immediately cease, using the System and Illuminate will have no further obligation to provide any maintenance or support to District or District Users.
  - (e) Taxes. The fees in this Section 3 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to Illuminate under this Agreement, excluding taxes based on Illuminate’s overall net income.
4. Ownership of System; Third Party Materials. Illuminate and its third party providers are and will remain the exclusive owners of all right, title and interest in and to the System and all derivative works, and in the materials licensed or provided by such third parties to Illuminate (“**Third Party Materials**”), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components. In addition, Illuminate shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by Illuminate pursuant to this Agreement (“**Specific Developments**”). District will have no rights in the System, any derivative works, the Specific Developments or Third Party Materials, except the right to access and use them as expressly set forth in this Agreement. District agrees not to (i) alter, merge, modify, adapt or translate the System or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the System or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or license the System or Third Party Materials, (iii) create derivative works based upon the System or Third Party Materials or (iv) permit anyone other than District Users to use the System. District acknowledges that the System is confidential in nature and constitutes a trade secret of Illuminate and agrees to use reasonable efforts to prevent inadvertent disclosure of the System, or elements thereof, to any third party during the Term or thereafter.

5. System Maintenance and Support. Illuminate agrees to provide maintenance and support of the System to District. Maintenance and support of the System is provided at no additional cost to District. Illuminate is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the System or databases by District or District Users, District employees or agents, unless such modification or alteration is approved in writing by Illuminate, or (b) any failure of District equipment or software.
6. Responsibilities of District. District agrees to prepare and furnish to Illuminate upon request such information as is reasonably requested by Illuminate in order for Illuminate to perform its obligations under this Agreement.
7. District Data.
  - (a) Ownership and Control. District will retain ownership of, and the ability to control, all District information, including Pupil Records (as defined below), imported into the System ("***District Data***"). Illuminate may, however, internally use District Data that has been de-identified, including aggregated information, in order to improve its educational products, to demonstrate the effectiveness of its products, and in the development and improvement of educational sites, services, or applications.
  - (b) Sharing of District Data. Illuminate will not share District Data with or disclose it to any third party, except (i) to District Users, (ii) as directed by District or District Users, (iii) to Illuminate's subcontractors who need access to fulfill Illuminate's obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When Illuminate believes that any disclosure is required by applicable law, it will promptly notify District, as is reasonable under the circumstances and permitted by law, prior to the disclosure and give District a reasonable opportunity to object to the disclosure.
  - (c) Storage and Process. Illuminate will store and process District Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.
  - (d) Social Security Numbers. District agrees that it will not collect or store as part of the District Data or otherwise any social security numbers.
8. Privacy and Security of Student Data.
  - (a) Definitions.

- (i) **“Pupil-Generated Content”** means materials created by a pupil, excluding pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.
- (ii) **“Pupil Records”** means any information (i) directly related to a pupil that is maintained by District or (ii) acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee, but does not include de-identified information, including aggregated information, used by Illuminate to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services or applications.
- (b) Ownership and Control of Pupil Records. Pupil Records obtained by Illuminate from District will continue to be the property of and under the control of the District.
- (c) Possession and Control of Pupil-Generated Content. Pupils may retain possession and control of their own Pupil-Generated Content, and may transfer their own Pupil-Generated Content to a personal account, by submitting a written request directly to the District. Said personal account will not be held in or associated with Illuminate products or services.
- (d) Use of Pupil Records. Illuminate will not use any information in a Pupil Record for any purpose other than those required or specifically permitted by this Agreement and specifically will not use personally identifiable information in a student’s Pupil Records to engage in targeted advertising.
- (e) Correction of Pupil Records. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student’s Pupil Records and correct erroneous information contained therein by submitting a written request for access or a written description of the erroneous information and request for correction to District and furnishing District, upon request, such information as is reasonably required to respond to the request. District is responsible for correcting all such erroneous information.
- (f) Security and Confidentiality. Illuminate will take all legally required actions to ensure the security and confidentiality of Pupil Records within Illuminate’s exclusive control, including but not limited to the designation and training of responsible individuals. Illuminate will identify those employees and subcontractors who will have access to Pupil Records and ensure that such individuals receive instructions as to compliance with the security and confidentiality requirements of this Agreement with respect to Pupil Records. Illuminate warrants that all Pupil Records will be encrypted in transmission. Illuminate further warrants that it will deploy electronic security tools and technologies, including anti-virus protection and intrusion-detection methods in providing the services under Agreement.

- (g) Notice of Unauthorized Access. In the event of an unauthorized access of Pupil Records, each party agrees to advise the other promptly upon discovery of such access and, if required by law, District will notify affected parents, legal guardians, or students who have reached 18 years of age, as applicable, in writing of such unauthorized access.
- (h) Certification of Non-Retention. Illuminate certifies that, in accordance with this Agreement, Pupil Records will not be retained or available to Illuminate upon completion of the terms of this Agreement; however, this does not include backups or archives used in the ordinary course of Illuminate's business that are permanently destroyed on a regular cadence. This certification may be enforced through any lawful means, including but not limited to civil action.
- (i) FERPA and State Equivalent Compliance. District and Illuminate each represents and warrants that it and its agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect Pupil Records from unauthorized access.
- (j) Other Third-Party Content. Nothing in this Section shall be construed to impose liability on Illuminate for content provided by any third party.

9. Illuminate Warranty.

- (a) System Warranty. Illuminate warrants to District that the System as delivered, will materially comply with the published specifications of Illuminate for such System. Illuminate does not warrant that the operation of the System will be uninterrupted or error-free.
- (b) IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, ILLUMINATE AND DISTRICT ACKNOWLEDGE THAT THE SYSTEM IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SYSTEMS OF THIS TYPE.
- (c) Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THE SYSTEM AND ALL ILLUMINATE SERVICES ARE PROVIDED "AS IS" AND ILLUMINATE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND ILLUMINATE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL

WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

10. Indemnification.

- (a) By Illuminate. If a third-party claims that a Licensed Product (other than related to any Licensee Content) infringes that party's U.S. patent, copyright or other proprietary right, Illuminate will defend District against that claim at Illuminate's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Illuminate, provided that Licensee:
- i. promptly notifies Illuminate in writing of the claim; and
  - ii. allows Illuminate to control, and cooperates with Illuminate in, the defense and any related settlement.

If such a claim is made, Illuminate may continue to enable Licensee to use the Licensed Product or to modify it such that it becomes non-infringing. If Illuminate determines that these alternatives are not reasonably available, Illuminate may terminate the Licensed Product without any liability to Licensee upon notice to Licensee and with the return of any prepaid and unused fees. The infringement indemnity obligations do not apply to the extent the infringement claim arises from: (a) any technology not provided by Illuminate or otherwise identified by Illuminate in writing as interoperable; (b) use of the Licensed Products other than in accordance with this Agreement; (c) the Licensee's content and/or data; or (d) modification or alteration to the Licensed Products by anyone other than Illuminate.

- (b) Indemnification Procedure. The parties' obligation to indemnify is subject to the conditions that the party with the obligation to indemnify ("**Indemnifying Party**") is given prompt notice of any such claims and is given primary control of and all reasonably requested assistance (at the other party's cost) for the defense of such claims (with counsel reasonably satisfactory to the party being indemnified ("**Indemnified Party**"), provided that the Indemnified Party shall under no circumstances be required to admit liability, and provided further that any delay in notification shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the delay materially impairs its ability to indemnify. Without limiting the foregoing, the Indemnified Party may participate in the defense at its own expense and with its own counsel; provided that if the Indemnified Party reasonably concludes that the Indemnifying Party has conflicting interests or different defenses available with respect to such claim, the reasonable fees and expenses of one counsel to the Indemnified Party shall be borne by the Indemnifying Party. The Indemnifying Party shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, liability, or wrongdoing on the part of the Indemnified Party or which would otherwise adversely affect the Indemnified Party without the Indemnified Party's prior written consent (which shall not be unreasonably withheld).

The Indemnifying Party shall keep the Indemnified Party advised of the status of the claims and the defense thereof, as is reasonable under the circumstances and to the extent it does not interfere or jeopardize the underlying defense.

11. Insurance. Illuminate agrees to carry a comprehensive general liability (including cyber) insurance with limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury and property damage. Illuminate agrees to maintain workers' compensation insurance as required under applicable law.
12. Termination.
  - (a) Termination by District. District may terminate this Agreement without cause prior to the expiration of the Term, effective upon the end of a District fiscal year (June 30), by giving Illuminate written notice of its intent to so terminate at least sixty (60) days prior to the end of such District fiscal year.
  - (b) Termination for Cause. Either party may terminate this Agreement prior to the expiration of the Term, upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, which breach remains uncured for more than thirty (30) days after written notice thereof or a reasonable amount of time under the given circumstances.
  - (c) Rights in Law and Equity Remain. The foregoing rights to terminate are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.
  - (d) Survival. The obligations in the following Sections will survive any expiration or termination of this Agreement: Sections 4, 7, 8, 9, 10, 12, and 13 and any obligations to pay for license fees, services, training, or taxes pursuant to Section 3 that were earned or payable relating to the period prior to termination.
13. Miscellaneous.
  - (a) Entire Agreement; Counterparts. This Agreement and the Exhibits hereto contain the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior negotiations, commitments, agreements and understandings between them with respect thereto. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, digital DocuSign, or by e-mail delivery of a ".pdf" data file, such signature will create a valid and binding obligation

of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

- (b) Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto pursuant to this Agreement will be in writing and will be sufficiently given if personally delivered, sent by other means of electronic transmission (including electronic mail) or sent by mail, postage prepaid to the party at the following addresses or to such other address as either party may hereafter designate to the other in accordance herewith:

If to Illuminate:  
Illuminate Education, Inc.  
6531 Irvine Center Drive, Suite 100  
Irvine, California 92618  
Attention: Legal Department  
E-mail: [Contracts@IlluminateEd.com](mailto:Contracts@IlluminateEd.com)

If to District:  
Mount Diablo Unified School District  
1936 Carlotta Dr.  
Concord, California 94519  
Attention: Dr. Lisa Gonzales  
E-mail: [gonzaleslm@mdusd.org](mailto:gonzaleslm@mdusd.org)

- (c) Assignment, Successors and Assigns. Neither party may assign this Agreement or its obligations hereunder without the prior written consent of the other party hereto, except that either party may assign this Agreement in connection with a sale of all or substantially all products or services relating to this Agreement without the consent of the other party hereto. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, each of the parties hereto and, except as otherwise expressly provided herein, their respective legal representatives, successors, and assigns.
- (d) Amendments, Waivers and Severability. Except as otherwise provided herein, this Agreement may be amended, and compliance with any provision of this Agreement may be omitted or waived, only by written agreement duly signed by Illuminate and District. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will not invalidate or render unenforceable the remaining provisions of this Agreement.
- (e) Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws.



- (f) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.
- (g) Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.
- (h) No Third-Party Beneficiaries. Except for the indemnification rights of certain directors, officers, employees, and agents expressly set forth in Section 11, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (i) Improper Payments. Illuminate represents and warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent or representative of District any cash or noncash gratuity or payment with a view toward securing any business from District or influencing such person with respect to the conditions, or performance of any contracts with or orders from District, including without limitation this Agreement.
- (j) EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER DISTRICT OR ILLUMINATE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SYSTEM, (b) LOSS, DAMAGE OR CORRUPTION OF DATA OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THIS EXCLUSION WILL NOT EXTEND TO DISTRICT'S INTENTIONAL THEFT, RESALE, OR GRANTED UNAUTHORIZED ACCESS TO ILLUMINATE'S COMPETITORS OF ILLUMINATE'S PRODUCTS.
- (k) CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS

AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE ANNUAL FEE FOR ONE YEAR SET FORTH IN SECTION 3. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THIS CAP WILL NOT EXTEND TO DISTRICT'S INTENTIONAL THEFT, RESALE, OR GRANTED UNAUTHORIZED ACCESS TO ILLUMINATE'S COMPETITORS OF ILLUMINATE'S PRODUCTS.

- (l) Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstance beyond such party's reasonable control (a "*Force Majeure Event*"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, or national or regional shortage of adequate power or telecommunications. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

I hereby affirm that I am authorized to execute this Agreement and commit to the obligations set forth herein, including but not limited to, remit payment for all Licensed Products and/or Services procured.

MOUNT DIABLE UNIFIED  
SCHOOL DISTRICT

ILLUMINATE EDUCATION, INC.

DocuSigned by:  
 By: Lisa M. Gonzales  
 Name: Lisa M. Gonzales  
 Title: Chief Business Officer  
 Date: 5/11/2020

DocuSigned by:  
 By: Dick Davidson  
 Name: Dick Davidson  
 Title: CFO  
 Date: 5/11/2020



## EXHIBIT A

## Client Order

Q-74856

6531 Irvine Center Drive Suite 100  
Irvine, California 92618  
(949) 656-3133  
<https://www.illuminateeducation.com/>

Prepared Date: 5/7/2020  
Valid Through: 6/6/2020  
  
Prepared By: Scott Odegard  
  
Start Date: 7/1/2020  
End Date: 6/30/2023  
Quote Term: 36

Customer: Mt. Diablo Unified School District  
Address: 1936 Carlotta Dr  
Concord, California 94519-1358  
  
Contact: Shannon Ortland  
Phone: 925. 473.2326

## Year 1

Dates: 7/1/2020 - 6/30/2021

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
30,111	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	\$3.75	\$112,916.25
30,111	Inspect Plus	Access to Key Data Systems' KDS Inspect Plus	\$1.50	\$45,166.50
3	Onsite Training, DnA	One day (up to six hours) onsite training and/or technical assistance for DnA.	\$2000.00	\$6,000.00
1	DnA Premium Package		\$0.00	\$0.00
1	»» Product Implementation	Product implementation, setup and configuration support.	\$0.00	\$0.00
30,111	Data Integration, DnA	Data support for initial setup	\$0.00	\$0.00
<b>Year 1 Subtotal:</b>				\$164,082.75
<b>Year 1 Grand Total:</b>				\$164,082.75

## Year 2

Dates: 7/1/2021 - 6/30/2022

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
30,111	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	\$4.38	\$131,886.18
30,111	Inspect Plus	Access to Key Data Systems' KDS Inspect Plus	\$1.88	\$56,608.68
<b>Year 2 Subtotal:</b>				\$188,494.86
<b>Year 2 Grand Total:</b>				\$188,494.86

## Year 3

Dates: 7/1/2022 - 6/30/2023

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
30,111	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	\$5.00	\$150,555.00
30,111	Inspect Plus	Access to Key Data Systems' KDS Inspect Plus	\$2.25	\$67,749.75
<b>Year 3 Subtotal:</b>				\$218,304.75
<b>Year 3 Grand Total:</b>				\$218,304.75

On-Going Illuminate subscription license and/or support fees are invoiced at then current rates & enrollment per terms of the Master Subscription Licenses & Services Agreement, which may be subject to an annual increase after the first year for non-multi-year contracts and/or enrollment increases (i.e., as your student count increases or decreases, the quantity will be adjusted in accordance with the terms of the Agreement).

Any applicable state sales tax that has been added to this Client Order is an estimated amount for Client's convenience that is subject to verification and modification based on current state required tax at the time of invoicing. Subscription Start and Expiration Dates shall be as set forth above, which may be delayed based upon the date that Illuminate receives your purchase order or signed Client Order.

In the event that this Client Order includes promotional pricing, said promotional pricing is only valid for the select term(s), product(s), and/or service(s) as shown in this Client Order. The promotional pricing may also be limited in availability to you through the date on this Client Order that is shown as the "Valid Through" period.

All invoices shall be paid within thirty (30) days of the date of invoice.

**All purchase orders must contain the exact Client Order number stated within.**

**To accept and finalize this Client Order, please remit a purchase order to:**

**Orders@illuminateEd.net  
or  
6531 Irvine Center Drive #100  
Irvine, CA 92618**



## Master Subscription Licenses & Services Agreement

This Master Subscription Licenses & Services Agreement (“Agreement”) is hereby entered into as of the date of receipt of purchase order and/or enforcement of any and all product and/or service orders (the “Effective Date”) between the purchasing agency (“Client”) and Illuminate Education, Inc., a California corporation having its principal place of business at 6531 Irvine Center Drive, Irvine, CA 92618, and wholly-owned subsidiaries, including, but not limited to Adrylan Communications, LLC, eduCLIMBER, LLC, eSchoolData, LLC, FastBridge Learning, LLC, IO Education, LLC, Sanford Systems, Inc. dba Key Data Systems, SchoolCity, Inc., and The Learning Egg, LLC (collectively “Illuminate”) (Client and Illuminate are referenced herein as each a “Party” and collectively the “Parties”).

### Definitions.

(a). “**Client Order**” means the Illuminate document attached hereto (or subsequently produced invoice), which lists the Licensed Product(s), current pricing, Service(s), Software, Subscription Period, Third Party Software, and/or applicable financial terms related to this Agreement, and is hereby incorporated into this Agreement upon receipt of Client’s purchase order as specified herein.

(b). “**Documentation**” means technical materials provided by Illuminate to Client in hard copy or electronic form describing the use and operation of the Software, which does not include any sales and/or marketing materials that Illuminate may provide Client to describe functionality intended for sales and/or marketing purposes.

(c). “**Licensed Product(s)**” means all software (including Embedded Applications, which is software licensed by Illuminate and provided to Client as part of the terms of this Agreement), subsequent versions provided during an active Subscription Period and/or in relation to Support Services, assessment content owned or licensed by Illuminate, and all related Documentation licensed to Client pursuant to this Agreement, now or in the future.

(d). “**Services**” means the service(s) described in the applicable Client Order attached hereto or an executed statement of work (“SOW”), associated with the Software and the Documentation, including any applicable software hosting or Professional Services, as defined herein, and/or provided by Illuminate to Client.

(e). “**Software**” means the Illuminate software programs described in the applicable Client Order.

(f). “**Subscription Period**” means the period commencing upon the start date set forth in the applicable Client Order and continuing until terminated in accordance with Section 14 (“**Termination**”).

(g). “**Third Party Software**” means any software product designated as Third Party Software by Illuminate, and any related documentation supplied to Client, which is licensed directly between Client and a third party. Third Party Software is different than Embedded Applications in that Illuminate licenses the Embedded Applications to Client as part of Licensed Product (but in some cases, such Embedded Applications may be subject to additional license terms as identified herein). Illuminate is not a licensor of Third Party Software.

**1. Subscribing to the Service(s).** Client will subscribe to the Licensed Product(s) and/or Services by: (i) providing a purchase order displaying the unique identifier contained within the Client Order attached hereto; (ii) having an authorized Client representative execute a Client Order with this Agreement and receiving a countersigned copy by an authorized Illuminate representative; and, if applicable for custom services, (iii) executing a written SOW for such customized Licensed Product(s) and/or Services with Illuminate. The Parties explicitly agree that, regardless of the confirmation of subscription method discussed herein that is utilized by Client, any additional and/or varying terms

included in the Client’s purchase order are hereby deemed null and void, including terms that attempt to override this specific provision. Upon mutual consent, each SOW will be incorporated into this Agreement. Each Client Order and/or SOW will specify the Licensed Product(s) and/or Services and specific terms and conditions applicable to that order. In the event of any conflict between this Agreement and a SOW, the mutually agreed upon and executed SOW shall control, except this Agreement shall govern all terms relating to intellectual property rights, confidential information, warranty, indemnity, and liability. Subject to the terms and conditions of this Agreement [including all incorporated documents as set forth in Section 15(k) herein], Illuminate will provide the Licensed Product(s) and/or Services described in the initial Client Order. Additional Client Orders and/or SOWs may be entered into by the Parties to subscribe to additional or different features of the Licensed Product(s) and/or Services. Unless designated as replacing a specific Client Order and/or SOW, subsequent Client Orders and SOWs will be considered in addition to currently effective Client Orders and SOWs.

### 2. License.

(a). **License Grant.** Subject to the terms and conditions of this Agreement, including Illuminate’s Privacy Policy, which is incorporated fully herein by reference, Illuminate grants to Client a limited, revocable, annual (or multi-year as specified in Illuminate’s Client Order), non-exclusive, non-transferable license during the Subscription Period, to access the Licensed Product(s) and/or Services through the User IDs and to operate the features of the Licensed Product(s) and/or Services according to the Documentation under normal circumstances. Client is only granted licensed access to any customized software and/or content delivered in accordance with a valid Client Order and/or SOW during the Term of said Client Order. Termination of the Client Order or underlying Licensed Product will terminate access to customized content. No source code or technical-level documentation to the Licensed Product(s) and/or Services is licensed under this Agreement.

(b). **User IDs.** Illuminate will issue Client’s system administrator access to Client’s designated user(s) that will have the ability to issue a singular User ID and password to each student, teacher, and administrator for access to and to utilize the Licensed Product(s) and/or Service(s) specified in the applicable Client Order and/or SOW. Client shall limit the total number of issued User IDs and passwords to the student count noted for each Licensed Product and/or Service on the Client Order; provided that said student count does not limit the total number of teacher and administrator User IDs and passwords that Client may issue. Each User ID may only be used to access the Services during one (1) concurrent login session. Client shall not allow Client Personnel and/or students to share User IDs with any third parties, which require prior written approval for access by Illuminate. “Client Personnel” is defined as Client’s internal employees, who shall be bound by confidentiality restrictions at least as restrictive as this Agreement provides, explicitly excluding contractors and/or vendors that are not granted access herein. Client is responsible for all activity occurring under its User IDs and control of said User IDs, including the corresponding password credentials. Client is responsible for all use of the Licensed Product(s)

and/or Services by Client Personnel, students Client grants access to, for maintaining the confidentiality of all User IDs, and promptly notifying Illuminate of any actual or suspected unauthorized use of the Licensed Product(s) and/or Services. Illuminate reserves the right to suspend or terminate any Client user that Illuminate determines may have been used for an unauthorized purpose.

(c). **Limitations.** Client agrees that it will not and will not permit any Client Personnel or other party to: (i) permit any party to access or use the Licensed Product(s) and/or Services, Software, or Documentation, other than Client Personnel explicitly authorized by Illuminate; (ii) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed hereunder; (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Licensed Product(s) and/or Services, Software, or Documentation to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or algorithms, structure or organization) of the Software; (v) use or copy the Software or Documentation except as expressly allowed hereunder; (vi) disclose or transmit any data contained in the Software to any individual other than Client Personnel. To the extent permitted under the law, Client shall hold Illuminate harmless from any and all claims relating to Client's misuse of Licensed Product(s) and/or Services rendered by Illuminate to Client, including Illuminate's intellectual property.

(d). **Client Responsibility.** Client shall perform the responsibilities necessary to establish Client's use of the Licensed Product(s) and/or Services, including (i) providing Client Personnel lists to setup User IDs, (ii) properly maintaining all associated equipment, software and environmental conditions in accordance with applicable industry standards and/or specifications Illuminate may provide Client, and (iii) designating Client Personnel to participate in training.

**3. Acceptable Use Policy.** Client acknowledges and agrees that Illuminate does not monitor or police the content of communications or data of Client or its users transmitted through the Licensed Product(s) and/or Services, and that Illuminate shall not be responsible for the content of any such communications or transmissions. In using the Software, Licensed Product(s), and/or Services, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software, Licensed Product(s), and/or Services any content that violates or infringes the rights of others, including without limitation any material that: (A) may be abusive, indecent, threatening, obscene, harassing, violent, defamatory, libelous, fraudulent, or otherwise objectionable; (B) encourages or otherwise promotes conduct that would constitute a criminal offense or give rise to civil liability; (C) impersonates any person or entity or that otherwise misrepresents Client's affiliation with a person or entity; (D) contains malicious code; (E) is in violation of the CAN-SPAM Act or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications, or the transmission of emails to an individual or entity with which Client has no preexisting relationship; (F) includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable individual would consider private in nature, (G) violates any privacy, intellectual property or proprietary right of another; (H) is pornographic or sexual in nature; (I) expressly targets children under the age of 13; or (J) is unlawful or otherwise objectionable, in Illuminate's sole opinion; and (ii) Client shall ensure that Client's use of the Software and/or Services is at all times compliant with all applicable local, state, federal and international law, regulations and conventions, including without limitation, those related to data privacy, international communications, and the

exportation of data of any kind, regulations of the U.S. Securities and Exchange Commission and/or any rules of a securities exchange in the U.S. or elsewhere.

#### **4. Reservation of Rights.**

(a). **Illuminate.** Illuminate expressly reserves all rights in the Licensed Product(s), Services, Software, Documentation, and all other materials provided by Illuminate hereunder not specifically granted to Client. It is acknowledged that all right, title and interest in the Licensed Product(s), Services, Software, Documentation, and all other materials provided by Illuminate hereunder, including, but not limited to any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with Illuminate (or third party suppliers, if applicable) and that the Licensed Product(s), Services, Software, Documentation, and all other materials provided by Illuminate hereunder are licensed on a subscription basis and not transferred to Client apart from the temporary license(s) discussed herein.

(b). **Client.** Client expressly reserves all rights in any data that Client (or Client Personnel/student users) loads or enters into the Licensed Product(s) and/or Services and all results from processing such data, including compilations, and derivative works thereof (the "Client Data"), except that Client grants Illuminate a non-exclusive, royalty-free, license to use, reproduce, and create derivative works of the Client Data in operating the Licensed Product(s) and/or Service features for Client's benefit as is explicitly permitted under the law. Additionally, Illuminate may use and distribute the Client Data for any lawful purpose outside the scope of the Agreement, provided always that such Client Data must be aggregated and/or de-identified (e.g., the development of Illuminate's products and/or services, as authorized under F.E.R.P.A. and applicable state laws). Client represents and warrants that Client has all rights under applicable law to provide and input in the Licensed Product(s) and/or Services the Client Data, including any personally identifiable information of any of the students and or other persons included therein.

**5. Term.** Unless earlier terminated pursuant to this Agreement, this Agreement shall be in effect pursuant to the dates set forth in the Client Order and/or SOW ("Initial Term"), and thereafter may be renewed for additional one (1) year periods upon each anniversary of the commencement of the Initial Term (each subsequent period will be known as a "Renewal Term" and together with the Initial Term, the "Term"). The Renewal Term(s) will be invoiced at then-current rates; provided that Illuminate does not enter into a multi-year item price agreement with Client, as denoted in the attached Client Order. Expiration or termination of one Client Order and/or SOW shall not affect any other Client Order and/or SOW, unless the Agreement Term expires or the Agreement as a whole is terminated under Section 14 ("Termination").

**6. Client Support.** During the Subscription Period for the applicable Services, Illuminate will provide the following standard customer support:

(a). **Web & Phone Support.** Client's designated representative(s) shall have access to Illuminate's technical support via website/email and telephone and may use the website/email to submit service requests. Illuminate will use reasonable efforts to respond in a timely manner under the given circumstances.

(b). **Client's Responsibilities.** To receive support, Client shall: (i) report errors or suspected errors for which support is needed, and supply Illuminate with sufficient information and data to reproduce the error; (ii) procure, install, operate and maintain hardware, operating systems

and other software that are compatible with the most current supported version of Software; (iii) establish adequate operational back-up provisions in the event of malfunctions or errors; (iv) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Software; (v) maintain hardware and system software consistent with Illuminate's minimum requirements; and (vi) timely install all fixes and new versions supplied by Illuminate in the proper sequence, and have the most current version of Software installed (if applicable). Client acknowledges that fixes and new versions may be made available electronically, and that, in some cases, Illuminate may maintain email distribution lists that are used to notify Clients of the availability of fixes and new versions and to provide other information to Clients that are eligible for support. Client shall be responsible for including the appropriate Client Personnel on any such email distribution lists of Illuminate so that Client receives such notifications and other information.

(c). **Service Upgrades and Scheduled Downtime.** Client shall receive, through the Licensed Product(s) and/or Services, generally available versions and releases for the Software, as designated by Illuminate in its sole discretion and that Illuminate generally offers to its other clients in Illuminate's sole discretion, and at no additional charge (beyond current support and subscription fees). Illuminate may from time to time schedule downtime for maintenance and upgrades. Illuminate may provide Client notice of any scheduled downtime, including any scheduled user disruption, if the circumstances permit such notice. Illuminate will strive to perform updates during non-peak hours.

**7. Professional Services.** In consideration of Client's payment of the applicable and non-refundable fees and expenses set forth in the Client Order or SOW for professional services, Illuminate will provide Client the professional services set forth therein, which may include attendance at designated training sessions provided by Illuminate as set forth herein ("Professional Services"). Training and/or consultation sessions may be conducted, as Illuminate deems appropriate or as explicitly agreed upon in writing on the Client Order or SOW at the time of purchase, at Illuminate's training facility, at Client's location, or by teleconference.

(a). **Use Period.** All Professional Services must be invoiced/prepaid or paid in the same manner as agreed to with other Licensed Products included on the applicable Client Order and utilized by Client within one (1) year of purchase. Illuminate, in its sole discretion, may extend this period up to a maximum of one (1) additional year to utilize said Professional Services; however, regardless of whether the Professional Services use period described herein is extended, Client's non-utilization of purchased Professional Services will be deemed null and void upon expiration of the applicable use period.

(b). **Third Party Integration.** Illuminate, in its sole discretion, will assist Client with integration of Licensed Product(s) with Client's third-party applications and/or content that are compatible in nature. Due to the potential access of students' personally identifiable information, Illuminate provides said integration only at the request of Client in writing. Client is solely and entirely responsible for compliance with local, state, and federal laws corresponding with integrations, as well as ensuring authorized access to said applications and/or content. To the extent permitted under the law, Client agrees to indemnify and hold Illuminate harmless for any actions and/or omissions pertaining to the integration.

## **8. Hosting.**

(a). **Availability.** Client acknowledges and agrees that the hosted Licensed Product(s) and/or Services may be inaccessible or inoperable from time to time due to planned maintenance or to causes that are

beyond the control of Illuminate or are not reasonably foreseeable by Illuminate, including, but not limited to: (i) the interruption or failure of telecommunication or digital transmission links; (ii) hostile network attacks; (iii) network congestion; (iv) or other failures (collectively "Downtime"). Illuminate shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Licensed Product(s) and/or Services caused by Downtime, whether scheduled or not.

(b). **Security.** Client will not: (i) breach or attempt to breach the security of the hosting environment or any network, servers, data, computers or other hardware relating to or used in connection with the Licensed Product(s) and/or Services, or any third party that is hosting or interfacing with any part of the Licensed Product(s) and/or Services; or (ii) use or distribute through the Licensed Product(s) and/or Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Licensed Product(s) and/or Services or the operations or assets of any other customer of Illuminate or any third party. Client will comply with any potential user authentication requirements for use of the Licensed Product(s) and/or Services. Client is solely responsible for monitoring its authorized users' access to and use of the Licensed Product(s) and/or Services. Illuminate has no obligation to verify the identity of any person who gains access to the Licensed Product(s) and/or Services by means of an access ID. Any failure by any authorized user to comply with the Agreement shall be deemed to be a material breach by Client, and Illuminate shall not be liable for any damages incurred by Client or any third party resulting from such breach. Client must immediately take all necessary steps, including providing notice to Illuminate, to affect the termination of an access ID for any authorized user if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred in relation to hosted Licensed Product(s) and/or Services.

(c). **Data.** Client has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submits to the hosting environment.

## **9. Fees and Payment.**

(a). **Subscription Fees.** Subscription Fees (set forth in each Client Order and/or SOW) are payable in advance pursuant to subsection 9(b) below. Illuminate will issue an invoice for each payment annually.

(b). **Fees.** All fees and expenses will be invoiced and are payable net thirty (30) days after the invoice date and are non-refundable after being granted access to any products and/or the commencement of internal preparations to provide Professional Services. Such other fees and expenses along with the corresponding fees for Licensed Product(s) and/or Services are collectively "Fees".

(c). **Renewals; Enrollment Increases.** Prior to any Renewal Term, Client shall provide Illuminate with an updated student count for proper invoicing and to maintain an accurate number of students accessing the Licensed Product(s) and/or Services specified in all applicable Client Orders. Illuminate reserves the right to validate, adjust, and/or invoice for variation of Client's student count based on information provided to state reporting agencies. If an increase in student enrollment in excess of five percent (5%) occurs, then Client shall remit payment for additional student access to Licensed Product(s) and/or Services in accordance with Illuminate's supplemental invoice. Such additional fees will be calculated by multiplying the then-current per student fee for Licensed Product(s) and/or Services by Client's additional enrollment. Additionally, in the event a Client Order includes discounted pricing for bundled Licensed Product(s) and/or Services and Client terminates any Licensed Product(s) and/or Services within the bundle, Illuminate

reserves the right to invoice Client at then-current pricing for the non-terminated Licensed Product(s) and/or Services. Illuminate may supply new or modified policies or other terms and conditions to Client related to the provision of Licensed Product(s) and/or Services in a renewal term in order to remain compliant with applicable laws and/or Illuminate's uniform procedures, in which event such new or modified policies or other terms and conditions will govern Illuminate's provision of Licensed Product(s) and/or Services in such renewal term.

(d). **Late Payment.** Client may not withhold or "setoff" any amounts due hereunder. Illuminate reserves the right to suspend Services, including access to the Software, and Professional Services (if any) until all undisputed past due amounts are paid in full after giving Client advance written notice and an opportunity to cure as specified in Section 13 ("Notices") and Section 14 ("Termination"). Illuminate also reserves the right to charge Client a 1.5% late fee for any outstanding invoices that exceed ninety (90) days past due.

(e). **Certain Taxes.** Fees quoted do not include and Client shall pay, and to the extent permitted under the law, indemnify and hold Illuminate harmless from all gross receipts, value-added, personal property or other taxes, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transaction contemplated herein, other than taxes based on the net income or profits of Illuminate. If client is exempt from federal, state, sales, and use taxes the client will not be charged the same upon providing Illuminate with sufficient evidence of said exemption.

#### 10. Confidential Information.

(a). **Definitions.** For purposes of this section, a Party receiving Confidential Information (as defined below) shall be the "Recipient" and the Party disclosing such information shall be the "Discloser" and "Confidential Information" means all information disclosed by Discloser to Recipient during the Term and marked as "confidential" or "proprietary". Client hereby acknowledges that the Services (including any Documentation, Software, and any translations, compilations, partial copies and derivative works thereof) will be considered Confidential Information belonging exclusively to Illuminate (or its designated third party supplier), and Illuminate hereby acknowledges that Client Data will be considered Confidential Information belonging to Client, in each case regardless of whether or not marked as "confidential" or "proprietary".

(b). **Covenant.** To the extent permitted by law, recipient hereby agrees that during the Term and at all times thereafter it shall not (i) disclose such Confidential Information of the Discloser to any person or entity, except to its own personnel having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Discloser may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Discloser; (ii) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend. Recipient shall use at least the same degree of care in safeguarding the Confidential Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event shall less than due diligence and reasonable care be exercised. Upon the earlier of Discloser's written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Discloser) all Confidential Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to the extent that such disclosure is

necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

(c). **Educational Research (Applicable to Only Select Clients).** Subject to the terms and conditions contained herein, including Illuminate's privacy policy and/or a data sharing agreement entered into with Client, Client hereby grants Illuminate the right to share deidentified data that has entirely omitted any and all personally identifiable information with the University of Minnesota (*FAST product customers only*) and/or University of Virginia (*PALS product customers only*) for educational research purposes. Client's use of these products is conditional upon Client's consent of this provision and necessary to the provision of the products to Client.

(d). **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

#### 11. Disclaimers.

(a). **DISCLAIMER OF OTHER WARRANTIES. SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (UNLESS EXPLICITLY PROVIDED FOR HEREIN), AND ILLUMINATE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND POTENTIAL IMPLEMENTATION DELAYS. ILLUMINATE DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE LICENSED PRODUCT WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE OR CLOUD HOSTING WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, ILLUMINATE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. CLIENT AGREES THAT THE USE OF SOFTWARE AND SERVICES IS AT CLIENT'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ILLUMINATE OR AN ILLUMINATE REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO CLIENT.**

(b). **Limited Non-Infringement Warranty.** Illuminate warrants that it has the right to license to Client the Software and Services as contemplated by this Agreement. Illuminate represents and warrants that as of the date the Software and Services is first made available hereunder, when properly used in accordance with the Documentation and this Agreement, will not misappropriate or infringe any third party's intellectual property rights recognized under any trade secret law, any U.S. copyright, or U.S. patent issued as of the Effective Date.

(c). **Limited Privacy Warranty.** Illuminate hereby recognizes that the Client Data which Client provides to Illuminate may include personally identifiable information of students. In order for Illuminate to carry out



its obligations under this Agreement, it is necessary for Illuminate to use the Client Data. Illuminate agrees to use the Client Data, some of which may contain personally identifiable information of students, only for the purpose of fulfilling its obligations under this Agreement. Illuminate agrees all usage of Client Data shall be in compliance with the requirements of applicable privacy laws. Illuminate warrants that it has put in place reasonable and appropriate security, technical, and organizational measures to protect its usage of the Client Data against accidental or unlawful destruction or accidental loss, alterations, and unauthorized use, disclosure, or access. Illuminate also warrants that it shall not disclose to, permit the disclosure to, or provide access to the Client Data to any third parties, except as is necessary for Illuminate to fulfill its obligations under this Agreement and under the law. In the event the Client or any third party believes there has been a material breach of this provision, Illuminate shall have a reasonable amount of time, which will be a minimum of thirty (30) days from the date of receiving written notice to cure any such alleged breach.

**12. Limitation of Liabilities.** The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

**ILLUMINATE SHALL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, HOSTING, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF ILLUMINATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, CLIENT SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CLIENT TO ILLUMINATE HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED IN THE PREVIOUS TWELVE (12) MONTHS.**

**13. Notices.** Notices sent to either Party shall be effective when delivered electronically or physically to the address designated by Client and in the case of Illuminate to the attention of: Illuminate Legal Department to the address listed as Illuminate's principal place of business herein and in the case of Client to the recipient provided by Client at the commencement of the Services and/or use of Software. Notices must be in writing. Each Party may change its address for receipt of notice by giving notice of such change to the other Party.

**14. Termination.**

(a). **Termination for Breach.** Illuminate shall have the right to immediately suspend performance under this Agreement in the event that Client is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that

Illuminate shall have the right to terminate this Agreement immediately upon written notice in the event that Client breaches any of its obligations under Section 10. Client further acknowledges that, as breach of the provisions of Section 10 could result in irreparable injury to Illuminate, Illuminate shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

(b). **Liquidated Damages.** In the event that Client enters into a multi-year contract with Illuminate and Client terminates the contract or any portion thereof, Client agrees to pay Illuminate the remaining sum due to Illuminate through the stated term of the Client Order and/or SOW as liquidated damages, as actual damages being impossible to calculate. This clause shall not apply in the event Client terminates this Agreement as a result of Illuminate's breach in accordance with Subsection 14(a) herein. Notwithstanding the foregoing, Client shall not be liable for said liquidated damages in the event that: (i) Client provides Illuminate at least thirty (30) days' advance notice of termination prior to the effective date anniversary; and (ii) said termination is a result of the non-appropriation of funds for Client's contract. Client shall not utilize this clause as a right to terminate the contract for convenience. Illuminate reserves the right to seek documentation evidencing the non-appropriation of funds.

(c). **Survival.** Upon termination or expiration of this Agreement for any reason: (i) all rights and obligations of both Parties (except for Client's payment of all Fees then owing), including all licenses granted hereunder, shall immediately terminate except as provided below; (ii) within thirty (30) days after the effective date of termination, each Party shall comply with the obligations to return or destroy, at Illuminate's sole discretion, all Confidential Information of the other Party, as set forth in Section 10 ("**Confidential Information**"). The following Sections and Subsections will survive expiration or termination of this Agreement for any reason: Section 4 ("**Reservation of Rights**"), Section 10 ("**Confidential Information**"), Section 11 ("**Disclaimers**"), Section 12 ("**Limitation of Liabilities**"), Section 14(c) ("**Survival**"), and Section 15 ("**General Provisions**"). Upon termination, as long as Client is not in breach, if requested, Illuminate shall make a final backup of Client data and provide the backup media to Client at Illuminate's then-current rates in a readily usable form in accordance with industry standards.

**15. General Provisions.**

(a). **Assignment.** Client may not assign this Agreement to any third party without Illuminate's prior written consent. Any assignment in violation of this section shall be void. The terms of this Agreement shall be binding upon permitted assignees.

(b). **Choice of Law.** This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. Each of the Parties hereto agrees to be subject to the exclusive jurisdiction, and venue shall reside, in the state and federal courts located in Orange County, California for the purpose of adjudicating any dispute relating to or arising out of this Agreement and irrevocably consent to exclusive personal jurisdiction and venue of state and federal courts located therein. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim against Illuminate must be brought within one (1) year after it arose, or be barred.

(c). **Compliance with Export Regulations.** Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; to the extent permitted under the law, shall indemnify and hold Illuminate harmless from, and bear all

expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws (e.g., in the U.S., the Bureau of Export Administration of the U.S. Department of Commerce).

(d). **Construction.** Except as otherwise provided herein, the Parties rights and remedies under this Agreement are cumulative. The term "including" means "including without limitation."

(e). **Force Majeure.** Neither Party shall be liable for delays caused by events beyond its reasonable control, except non-payment of amounts due hereunder shall not be excused by this provision.

(f). **Severable.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Without limiting the generality of the foregoing, Client agrees that the section titled Limitation of Liabilities will remain in effect notwithstanding the enforceability of any other provision herein.

(g). **Waiver.** Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Nothing herein shall be interpreted as a waiver of Client's governmental immunity for individual employees, if any, as provided for by state law.

(h). **Counterparts; Facsimile Signature.** Illuminate requires Client's execution of select Client Orders and/or SOWs, all of which are

incorporated into this Agreement, and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If any Client Order and/or SOW is executed in counterparts, no signatory hereto shall be bound until both the Parties named below have duly executed or caused to be duly executed a counterpart of said Client Order and/or SOW. A signature received by either Party by facsimile or email is binding upon (the other Party) as an original.

(i). **Client Authorization; Enforceability.** Client represents and warrants that (i) it has obtained all necessary authorizations to enter into this Agreement and all related SOWs, (ii) the person signing and/or consenting on behalf of Client is a duly authorized representative of the Client, and (iii) this Agreement is a duly authorized binding and enforceable obligation of Client.

(j). **Independent Contractors.** Client's relationship to Illuminate is that of an independent contractor, and neither Party is an agent or partner of the other. Client will not have and shall not represent to any third party that it has any authority to act on behalf of Illuminate.

(k). **Entire Agreement.** This Agreement, Illuminate's Privacy Policy, the attached Client Order, Illuminate's SOWs (if applicable), and Client's purchase order (without any added terms and conditions that may be contained therein) incorporated by reference constitute the entire Agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be amended only by a written document signed by both Parties. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

I hereby affirm that I am authorized to execute this Agreement and commit to the obligations set forth herein, including but not limited to, remit payment for all Licensed Products and/or Services procured.

ILLUMINATE EDUCATION, INC.

DocuSigned by:  
By: Dick Davidson  
354B79B8296D4B11 Authorized Signature

Name: Dick Davidson

Title: Chief Financial Officer

Date: 5/11/2020

CLIENT: Mt. Diablo Unified School District

DocuSigned by:  
By: Lisa M. Gonzales  
68C733A7825E4B Authorized Signature

Name: Lisa M. Gonzales

Title: Chief Business Officer

Date: 5/11/2020