Client Order

Q-120733

Prepared Date:	3/19/2021	Customer:	Pomona Unified School District
Valid Through:	6/30/2021	Address:	800 S Garey Ave
			Pomona, California 91766-3325
Prepared By:	Kevin Mannion		
		Contact:	Silvia San Martin
Start Date:	7/1/2021	Phone:	9093974800 x23833
End Date:	6/30/2024		
Quote Term:	36		

21/22 School Year

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

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
23,865	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	$2.50	$59,662.50
23,865	»» Grading Software	Assessment Scanning and Scoring	included	
23,865	Inspect Premium	Access to Inspect PLUS item bank and the NGSS pre-builts	$1.50	$35,797.50
3	Virtual Training, DnA	Synchronous learning sequence addressing selected DnA content. Facilitated live by an Instructor across 2 3-hour sessions for up to 30 participants.	$0.00	$0.00
1	Virtual Consultations, DnA	Three one-hour virtual training sessions for DnA.	$0.00	$0.00
10	Learning Community, DnA	Access to DnA content, resources, and usage reporting within Illuminate Education's Learning Management System.	$0.00	$0.00
23,865	eduCLIMBER, Software License	eduCLIMBER allows districts to easily import and visualize a wide range of student data including academic, SEL, behavior, attendance, and intervention. Districts can then create custom dashboards to identify ways to improve student achievement.	$4.50	$107,392.50
2	Virtual Training, eduCLIMBER	Synchronous learning sequence addressing selected eduCLIMBER content. Facilitated live by an Instructor across 2 3-hour sessions for up to 30 participants.	$1500.00	$3,000.00
3	Virtual Consultations, eduCLIMBER	One-hour of virtual coaching for eduCLIMBER.	$165.00	$495.00
1	Product Implementation: Level 2, DnA	DnA site setup and initial configuration. District size under 4,000-30,000 students.	$0.00	$0.00
1	»» Level 2 Onboarding, DnA	Dedicated guidance from a Customer Success Manager through a comprehensive change framework and DnA system setup.	included	
1	»» Level 2 Data Integration, DnA	Extraction, import, and validation of required data for DnA site setup.	included	
1	»» System Management Workshop, DnA	Half-day virtual Implementation training session on DnA for System Administrators.	included	
1	Product Implementation: Level 2, eduCLIMBER	eduCLIMBER site setup and initial configuration. District size under 4,000-30,000 students.	$4250.00	$4,250.00
1	»» Level 2 Onboarding, eduCLIMBER	Dedicated guidance from a Customer Success Manager through a comprehensive change framework and eduCLIMBER system setup.	included	
1	»» Level 2 Data Integration, eduCLIMBER	Extraction, import, and validation of required data for eduCLIMBER site setup.	included	
1	»» System Management Workshop, eduCLIMBER	Half-day virtual Implementation training session on eduCLIMBER for System Administrators.	included	

21/22 School Year Subtotal:	$210,597.50
21/22 School Year Grand Total:	$210,597.50

22/23 School Year

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
23,865	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	$2.75	$65,628.75
23,865	»» Grading Software	Assessment Scanning and Scoring	included	
23,865	Inspect Premium	Access to Inspect PLUS item bank and the NGSS pre-builts	$1.75	$41,763.75
10	Learning Community, DnA	Access to DnA content, resources, and usage reporting within Illuminate Education's Learning Management System.	$0.00	$0.00
23,865	eduCLIMBER, Software License	eduCLIMBER allows districts to easily import and visualize a wide range of student data including academic, SEL, behavior, attendance, and intervention. Districts can then create custom dashboards to identify ways to improve student achievement.	$4.50	$107,392.50
1	Virtual Training, eduCLIMBER	Synchronous learning sequence addressing selected eduCLIMBER content. Facilitated live by an Instructor across 2 3-hour sessions for up to 30 participants.	$1500.00	$1,500.00

22/23 School Year Subtotal:	$216,285.00
22/23 School Year Grand Total:	$216,285.00

23/24 School Year

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
23,865	DnA, Software License	Per Student Licenses - Illuminate Data and Assessment™	$3.00	$71,595.00
23,865	»» Grading Software	Assessment Scanning and Scoring	included	
23,865	Inspect Premium	Access to Inspect PLUS item bank and the NGSS pre-builts	$2.00	$47,730.00
10	Learning Community, DnA	Access to DnA content, resources, and usage reporting within Illuminate Education's Learning Management System.	$0.00	$0.00
23,865	eduCLIMBER, Software License	eduCLIMBER allows districts to easily import and visualize a wide range of student data including academic, SEL, behavior, attendance, and intervention. Districts can then create custom dashboards to identify ways to improve student achievement.	$4.50	$107,392.50
1	Virtual Training, eduCLIMBER	Synchronous learning sequence addressing selected eduCLIMBER content. Facilitated live by an Instructor across 2 3-hour sessions for up to 30 participants.	$1500.00	$1,500.00

23/24 School Year Subtotal:	$228,217.50
23/24 School Year Grand Total:	$228,217.50

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 earlier of the date of the last signature hereto or 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 Products, 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.

(b). **"Client Personnel"** means 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.

(c). **"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.

(d). **"Embedded Applications"** means software licensed to Illuminate by third parties that is provided to Client as part of the Licensed Products or Services.

(e). **"Licensed Products"** 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.

(f). **"Professional Service(s)"** means any consulting, training, implementation, or technical services provided by Illuminate to Client under the Client Order.

(g). **"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.

(h). **"Software"** means the Illuminate software programs described in the applicable Client Order.

(i). **"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 15 ("Termination").

Subscription Period, to access the Licensed Products and/or Services through the User IDs and to operate the features of the Licensed Products and/or Services according to the Documentation under normal circumstances. Client is only granted licensed access to any customized software and/or content

(j). **"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 Products and/or Services by: (i) providing a purchase order that displays the unique identifier contained within the Client Order attached hereto or another Client Order, or in Illuminate's discretion sufficiently references said Client Order; (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 Products 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. Unless the Parties specify otherwise in writing, each SOW will be incorporated into this Agreement. Each Client Order and/or SOW will specify the Licensed Products 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, Illuminate will provide the Licensed Products and/or Services described in the applicable Client Order. Unless expressly 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 and shall be governed by this Agreement.

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, non-exclusive, non-transferable, non-sublicensable license during the 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 Products 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 staff member for access to and to utilize the Licensed Products 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 staff User IDs and passwords that Client may issue. Each User ID may be used to access the Services during only 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 Products 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 Products 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 acknowledges that the Licensed Products, including all derivative works thereof and source code and libraries thereto, are and shall remain the sole and exclusive property of Illuminate, except for license rights that Illuminate has to said Licensed Products. Client will not and will not permit any Client Personnel or other party to: (i) permit any party to access or use the Licensed Products 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 Products 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 Products 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 Products 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 Products and/or Services, and that Illuminate shall not be responsible for the content of any such communications or transmissions. In using the Software, Licensed Products, and/or Services, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software, Licensed Products, 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; 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; (E) 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, (F) violates any privacy, intellectual property or proprietary right of another; (G) is pornographic or sexual in nature; expressly targets children under the age of 13; or (H) 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 Products, 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 Products, 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 Products, 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 Products 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 Products 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, provided that such Client Data will 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). All such aggregated data shall be the property of Illuminate. Client represents

and warrants that Client has all rights under applicable law to provide and input in the Licensed Products and/or Services the Client Data, including any personally identifiable information or other sensitive information of any of the students and or other persons included therein.

5. 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 Products 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.

6. 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 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 and shall not entitle Client to any refund or credit.

(b). **Third Party Integration.** Illuminate, in its sole discretion, will assist Client with integration of Licensed Products 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.

7. Hosting.

(a). **Availability.** Client acknowledges and agrees that the hosted Licensed Products 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 Products 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 Products and/or Services, or any third party that is hosting or interfacing with any part of the Licensed Products and/or Services; or (ii) use or distribute through the Licensed Products 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 Products 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 Products and/or Services. Client is solely responsible for monitoring its authorized users' access to and use of the Licensed Products and/or Services. Illuminate has no obligation to verify the identity of any person who gains access to the Licensed Products 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 Products and/or Services. Illuminate's security policies and incident response plans are confidential and proprietary and will not be disclosed to Client or any third party.

(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. Client is further solely responsible for ensuring that Client's hosted environment (including, by way of example, email servers) accepts encrypted transmissions.

8. Fees and Payment.

(a). <u>Subscription Fees</u>. Subscription Fees (set forth in each Client Order and/or SOW) are payable in advance. For multi-year Client Orders, Illuminate will issue an invoice for each payment annually.

(b). <u>Fees</u>. 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 Products and/or Services are collectively "**Fees**". No refund or credit shall be due to Customer in the event that a Licensed Product or Service is not utilized.

(c). <u>Renewals; Enrollment Increases</u>. 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 Products 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 occurs, then Client shall remit payment for additional student access to Licensed Products 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 Products and/or Services by Client's additional enrollment. Additionally, in the event a Client Order includes discounted pricing for bundled Licensed Products and/or Services and Client terminates any Licensed Products and/or Services within the bundle, Illuminate reserves the right to invoice Client at then-current pricing for the non-terminated Licensed Products and/or Services. Illuminate may supply new or modified policies or other terms and conditions to Client related to the provision of Licensed Products and/or Services that will govern this Agreement to remain compliant with applicable laws and industry standards.

(d). <u>Late Payment</u>. 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 15 ("**Termination**").

(e). <u>Certain Taxes</u>. Fees quoted do not include tax, and Client shall pay all applicable taxes. 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.

9. Confidential Information.

(a). <u>Definitions</u>. 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 course of their business dealings regardless of whether it is marked as

"confidential" or "proprietary". Without limiting the foregoing, Client hereby acknowledges that the Licensed Products contain proprietary information, including trade secrets and along with 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.

(b). <u>Covenant</u>. 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). <u>Educational Research</u> (**Applicable to Only FAST and PALS 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 de-identified 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). <u>Injunctive Relief</u>. Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensated 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.

10. 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; provided however, Illuminate will bear no responsibility for non-compliance that arises, in whole or in part, from any acts or omissions of Client. 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.

11. 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.

12. Indemnification.

(a). Client will defend, indemnify and hold Illuminate, its Affiliates, agents and content providers, and the directors, officers, shareholders, employees, agents and representatives of each of the foregoing, harmless against and from any and all liabilities, claims, suits, losses, damages, costs, fees and expenses (including reasonable attorneys' fees) brought against or incurred by Illuminate that arise from or relate to: (i) any violation by Client and/or its authorized users of the Agreement; (ii) any unauthorized download, modification or usage of Illuminate Materials; (iii) any breach of Client's obligations or warranties under the Agreement; or (vi) the negligence or intentional misconduct of Client, its employees or contractors, agents or the authorized users.

(b). Subject to Section 11 (Limitation of Liabilities), Illuminate will defend, indemnify and hold Client, its officers, directors, employees and agents harmless from and against any and all liabilities, claims, suits, losses, damages, costs, fees and expenses (including reasonable attorneys' fees) brought against or incurred by Client that solely arise from or solely relate to: (i) a material breach by Illuminate of its obligations or warranties (subject to the disclaimer provided for in Section 10) under the Agreement, or (ii) the negligence or intentional misconduct of Illuminate or any of its employees, contractors and agents.

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. Notwithstanding the foregoing notice procedures, the Parties acknowledge that notices regarding the ordinary usage of the Licensed Products and Services may be sent through the

usual and customary means that the parties establish for such communications, including electronic communications.

14. 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 mutually 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; unless specified otherwise in the attached or a subsequent Client Order. Expiration or termination of one Client Order and/or SOW shall not affect any other Client Order and/or SOW, unless the Term expires or the Agreement as a whole is terminated under Section 15 ("Termination").

15. 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 9. Client further acknowledges that, as breach of the provisions of Section 9 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). **Termination for Convenience.** For multi-year Client Orders, Client may terminate this Agreement for convenience as of the day before the earlier of the Client's next immediate academic year or next immediate fiscal year ("Term End"); but only if Client notified Illuminated in writing of its desire to so terminate more than sixty (60) days prior to the Term End. If notice is not timely, Client shall not be entitled to any refund, credit or offset for any amounts paid or owed for the period after the Term End.

(c). **Termination or Suspension for Failure to Make Timely Payment.** Illuminate may, at its option, immediately terminate, or suspend its performance of, the Agreement with Client any time Client is more than ninety (90) days in arrears on its payment obligations to Illuminate. In the event of termination or suspension by Illuminate under this section, Customer's access to the Licensed Products (including all Authorized Users whose right of access to the Licensed Products is derived from Illuminate's contractual relationship with Client) shall be discontinued without further notice. In the event of a suspension of access to the Licensed Products, access may, at the sole discretion of Illuminate, be restored when Client's payment obligations are brought current and Illuminate has received adequate assurances that Client's payment obligations to Illuminate shall remain current for the remainder of the term of the Agreement.

(d). **Termination Due to Non-Appropriation or Change in Funding.** Client may terminate this Agreement due to the non-appropriation of funds by providing at least thirty (30) days written notice prior to the Effective Date anniversary. Client will provide Illuminate documentation evidencing the non-appropriation of funds upon request. Illuminate may terminate the Agreement at the close of the then academic year, if the payments to which Illuminate is entitled under a Client Order or SOW are materially reduced as a result of a change in funding provided to the Client or applicable laws or regulations that impose requirements that are materially different from those previously provided under the Client Order or SOW, and Illuminate is unwilling or unable to make the required changes.

(e). **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) Illuminate will work with Client regarding the disposition of Client Data, and within thirty (30) days after the effective date of termination, Client shall return or destroy, at Illuminate's sole discretion, all Confidential Information of Illuminate, , as set forth in Section 9 ("Confidential Information"); (iii) Client shall not utilize or provide access to assessments created during the Term; and (iv) Client is responsible for transferring any data to its own or a third party's hosted environment. The following Sections and Subsections will survive expiration or termination of this Agreement for any reason: Section 4 ("**Reservation of Rights**"), Section 9 ("**Confidential Information**"), Section 10 ("**Disclaimers**"), Section 11 ("**Limitation of Liabilities**"), Section 15(e) ("**Survival**"), and Section 16 ("**General Provisions**"). Prior to termination and during the Term, Client shall have the ability to access and download its data at Client's convenience. 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.

16. 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.** If the Client is a governmental entity of one of the United States, this Agreement and any action related thereto shall be governed by and construed in accordance with the laws of that State, without regard to conflicts of law principles, and if not, then by and with the laws of the State of California, without regard to conflicts of law principles. In the latter case the Parties agree 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 further irrevocably consent to exclusive personal jurisdiction and venue of state and federal courts located therein. In either case the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and 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.** Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war or terrorism, acts of God, earthquake, flood, pandemic, embargo, labor shortage, governmental act or failure of the Internet (not resulting from the actions or inactions of Illuminate); provided that the delayed party (i) gives the other party prompt notice of such cause, (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance, and (iii) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of ninety (90) calendar days, Client or Illuminate may elect to terminate the Agreement upon notice to the other Party.

(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 multiple 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.
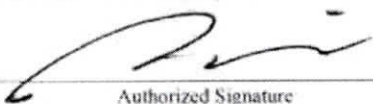
(j). **No Third-Party Rights.** This Statement of Work is made for the sole benefit of the parties. Except as otherwise expressly provided, nothing in this Statement of Work shall create or be deemed to create a relationship among the parties or any of them, and any third party, including a relationship in the nature of a third-party beneficiary or fiduciary.

(k). **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.

(l). **Entire Agreement.** This Agreement, Illuminate's Privacy Policy, the attached Client Order, subsequent Client Order(s) (if applicable), Illuminate's SOWs (if applicable), and Client's purchase order (excluding any terms or conditions therein that conflict with a Client Order, SOW or this Agreement) 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. Any terms or conditions in Client's purchase order, data agreement or other document do not form a part of this Agreement and are not binding on Illuminate, unless expressly agreed in a writing signed by both Parties. 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.

By: _____
Authorized Signature

Name: GREGORY SCOTT VIRKLER

Title: COO

Date: 4-14-21

CLIENT: _____

By: _____
Authorized Signature

Name: Sandra Garcia

Title: Assistant Superintendent/CBO

Date: May 25, 2021

ADDENDUM
TO
MASTER SUBSCRIPTION LICENSES & SERVICES AGREEMENT

THIS ADDENDUM TO THAT CERTAIN MASTER SUBSCRIPTION LICENSES & SERVICES AGREEMENT dated for reference purposes only as of July 1, 2021 ("**Addendum**"), by and between POMONA UNIFIED SCHOOL DISTRICT, a public agency of the State of California ("**District**"), and ILLUMINATE EDUCATION, INC., a California corporation ("**Company**"), is entered into by District and Company (the "**Parties**") as of the Effective Date (as defined below), and shall be an integral part of such Master Subscription Licenses & Services Agreement associated with client order Q-120733 for a total fee of Two Hundred Ten Thousand Five Hundred Ninety-Seven Dollars and Fifty Cents ($210,597.50), as set forth in **Exhibit "A"** ("**Agreement**"), as if set forth therein. Unless expressly provided otherwise, all capitalized terms and phrases used in this Addendum shall have the same meanings as set forth in the Agreement.

OPERATIVE PROVISIONS

NOTWITHSTANDING THE TERMS OF THE AGREEMENT, the Parties hereby agree as follows:

1. <u>Term</u>. The term of the Agreement (and this Addendum as an integral part thereof) shall commence on July 1, 2021 (the "**Effective Date**") and terminate on June 30, 2022 ("**Term**"), unless earlier terminated as provided in the Agreement and this Addendum.

2. <u>California Student Privacy Alliance</u>. In conjunction with this Addendum, the Parties hereto acknowledge that they have signed and entered into the California Student Data Privacy Agreement issued by the California Student Privacy Alliance (CSPA), as set forth in **Appendix "A"** attached hereto and incorporated by reference herein (the "**CSDPA**"), consistent with California Education Code Section 49073.1 (AB 1584), the California Student Online Personal Information Protection Act (SOPIPA) at California Business and Professions Code Sections 22584-22585, and other applicable federal and State of California student privacy and data security laws and regulations.

3. <u>Warranties</u>. Company hereby expressly warrants that (i) Company has the full power, rights and authority to enter into and perform the Agreement and to grant the rights granted to District in the Agreement; (ii) the license of and/or subscription to the Licensed Products under the Agreement, and District's use thereof as authorized under the Agreement, will not violate or infringe upon the rights of any third party, including without limitation, any copyright, patent rights, trademark rights, trade secret rights, or other proprietary rights of any kind.

4. <u>Notice of Service Interruption</u>. As early as reasonably practicable, Company will provide advance notice to District prior to interrupting or discontinuing some or all online features or services in order to perform hardware or software maintenance and/or upgrades.

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5.   Compliance Warranty. Company warrants that it will comply with, and will cause each of its employees, agents, and contractors to agree in writing to comply with, all federal and state laws and regulations applicable to its performance under the Agreement, including without limitation the Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C. 1232g, the Children's Online Privacy Protection Act (COPPA) at 15 U.S.C. 6501-6502, the Protection of Pupil Rights Amendment (PPRA) at 20 U.S.C. 1232h, California Education Code section 49073.1 (commonly known as "AB 1584"), and the Student Online Personal Information Protection Act (SOPIPA) at California Business and Professions Code sections 22584-22585 (SB 1177). This warranty is referred to herein as the "**Compliance Warranty**".

6.   Criminal Clearance. In connection with Company's provision of on-site training services or any other visits to District premises in the performance of the Agreement, Company shall comply with the following:

6.1.   Company and all of Company's employees, and subcontractors, if the use thereof in the provision of the Services has been approved by District ("**Subcontractors**"), shall comply with all requirements related to fingerprinting set forth in California Education Code Section 45125.1, and all District Administrative Regulations related to Fingerprint Background Checks prior to any substantial contact with any students, including, without implied limitation, prior to coming onto District's school grounds or having any contact with District's students in locations other than District school grounds.

6.2.   In accordance with California Education Code Section 45125.1, Company shall conduct a criminal background check of its applicable employees and Subcontractors, and upon receipt of those criminal background checks, certify in writing to District, upon prior written request, the following: "Neither the Company nor any of its employees and/or Subcontractors who are required by Section 45125.1 of the California Education Code to submit or have their fingerprints submitted to the California Department of Justice and who may come in contact with District's students have been convicted of a felony as defined in Section 45122.1 of the California Education Code."

6.3.   Prior to the commencement of Services, Company shall register with the California Department of Justice for subsequent offender notification of its employees and Subcontractors who provide Services to District's students. It is Company's responsibility prior to commencing Services and on an ongoing basis through the Term of the Agreement, to provide District with updated information and changes in status on employees and Subcontractors in full and complete compliance with California Education Code Section 45125.1.

7.   Insurance.

7.1.   Company shall, at Company's expense, procure and maintain for the duration of the Agreement general liability, workers' compensation, if required by applicable law, automobile liability, cyber liability, and other insurance to protect against Claims (as hereinafter defined) that may arise from or in connection with the performance of the

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Agreement and this Addendum by Company and Company's subcontractors, officers, employees, agents, or representatives. District in no way represents or warrants that the insurance required under this section is sufficient to protect Company for liabilities that may arise from or relate to the Agreement.

7.2. The general liability insurance shall have a per-occurrence limit of not less than Two Million Dollars ($2,000,000), Four Million Dollars ($4,000,000) in the aggregate. All such insurance will be equivalent to coverage offered by a commercial general liability form, including, without implied limitation, personal injury and contractual liability coverage for the performance by Provider of the indemnity provisions set forth in this Agreement.

7.3. The workers' compensation insurance, if required by applicable law, shall insure Company's obligations and liabilities under the workers' compensation laws of California, including, without implied limitation, employers' liability insurance in the limits required by the laws of California.

7.4. The automobile liability shall have an each-occurrence limit of not less than One Million Dollars ($1,000,000) for bodily injury and property damage. The automobile insurance shall be at least as broad as the latest version of the Insurance Office Business Auto Coverage form number CA 001, code 1 (any auto). The automobile liability policy shall be endorsed to state that: (A) the District, its governing board ("**Board**") members, superintendent, officers, employees, volunteers, agents and representatives shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Company or for which Company is responsible; and (B) the insurance coverage shall be primary insurance as respects the District, its Board members, superintendent, officers, employees, volunteers, agents, and representatives, or if excess, shall stand in an unbroken chain of coverage excess of the Company's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its Board members, superintendent, officers, employees, agents and volunteers shall be excess of Company's insurance and shall not be called upon to contribute with it.

7.5. The cyber liability insurance shall have a coverage limit of not less than One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) in the aggregate, to cover damages sustained by a third party from the unauthorized access to or theft of data, the unauthorized disclosure or use of personally identifiable information, Business Interruption, Cyber Extortion, and Denial of Services. The cyber liability policy shall cover consumer notification expenses, credit monitoring costs and any other liability, loss or expense of any nature whatsoever arising out of or related to the unauthorized access to or theft of data and the unauthorized disclosure or use of personally identifiable information.

7.6. All commercial general liability, automobile, or comparable policies maintained by Company shall name District and such other persons or firms as District specifies from

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time to time as additional insureds, entitling them to recover under such policies for any loss sustained by them, their agents, and employees as a result of the negligent acts or omissions of Company. All such policies maintained by Company shall provide that they may not be terminated nor may coverage be reduced except after thirty (30) days' prior written notice to District. All commercial policies maintained by Company will be written as primary policies, not contributing with and not supplemental to the coverage that District may carry. Certificates of insurance, together with originals of the endorsements that name District as an additional insured, extending coverage on a primary, non-contributory basis, shall be delivered to District prior to Company's commencement of the Services and from time to time at least thirty (30) days prior to the expiration of the term of each such policy. The certificate(s) of insurance shall reference this Agreement by name, and the insured party named on the certificate(s) shall match the name of the Company as identified in this Agreement. Company shall not commence providing the Services under this Agreement until it has provided evidence satisfactory to District that Company has secured all insurance required under this section. Neither District's failure to obtain a complying certificate of insurance or endorsement from Company, nor District's receipt of or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation provided by Company, its insurance broker and/or insurer(s), shall be construed as a waiver of any of the required insurance provisions of this **Section 7**; provided however, that District may, in its sole discretion and in limited circumstances, modify or waive certain of these insurance requirements pursuant to an insurance sufficiency review based on the nature and scope of the Services.

8.   Indemnity. Notwithstanding any limits on Company's insurance coverage or benefits, Company agrees to indemnify District as follows:

8.1.   Company shall indemnify, defend and hold harmless District, its Board members, superintendent, employees, subcontractors, volunteers, attorneys, agents, and representatives (collectively, **"District Personnel"**) from any and all liability, claims, demands, assessments, losses, fines, penalties, costs, expenses (including reasonable attorney's fees), damages (however characterized) (collectively, **"Losses"**) incurred in connection with, as a result of, or arising out of or by virtue of any claims, demands, actions, causes of action, or proceedings (collectively, **"Claims"**, and each, individually, a **"Claim"**) alleging physical injury, wrongful death or property damage in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Company, or its subcontractors, officers, employees, agents and representatives while on or about District premises in connection with any on-site training under the Agreement.

8.2.   Company shall indemnify, defend and hold harmless District and District Personnel from and against any Losses arising from or relating to a Claim alleging that use of or access to (in accordance with the Agreement) any of the Licensed Products provided or made available to District under the Agreement infringes upon the intellectual property or other proprietary rights of a third party. If any of the Licensed Products is held to infringe, or if in Company's opinion, such a claim is likely to occur, Company

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may, at its sole option and expense, either: (i) procure for District and its authorized users the right to continue using the Licensed Products in question; or (ii) replace or modify the infringing Licensed Products so that they it becomes non-infringing as long as functionality is not materially and adversely affected. If neither alternative (i) nor (ii) is reasonably available, then Company may terminate District's license to access and utilize the allegedly infringing Licensed Products and Company shall refund to District on a pro-rata basis the amount of the prepaid annual subscription for the infringing Licensed Products attributable to the unexpired Term of the Agreement.

8.3. Company agrees to indemnify, defend and hold harmless District and District Personnel from any and all Losses incurred in connection with, as a result of, or arising out of or by virtue of any Claim arising out of any breach of Company's warranties under the Agreement and this Addendum, or any breach of Company's obligations under **Section 5** of this Addendum or any breach of Company's obligations under **Section 10.3** of this Addendum.

9. <u>Limitation on Liability.</u>

9.1. If there is any limitation in the Agreement on Company's liability to District or to any authorized user for damages, then (a) Company's liability to District or to any authorized user in connection with any Claim shall not be limited to less than the greater of the insurance proceeds payable to or on behalf of Company with respect to the Claim or $1,000,000, except any such limitation shall not apply to the extent the Claim is caused by Company's gross negligence or willful misconduct; and (b) any such limitation on liability shall be reciprocal as to the Parties such that District shall benefit from the same limitation on its liability under the Agreement.

9.2. If the Agreement contains a provision stating that Company shall not be liable to District for certain damages related to the Agreement, such as indirect, incidental, exemplary or consequential damages (including, without limitation, lost profits); then such provision shall be reciprocal such that District shall likewise not be liable to Company for such damages.

9.3. Notwithstanding anything contained in the Agreement to the contrary, Company shall be responsible for the maintenance, safeguarding and security of all District's Confidential Information (including, without limitation, all Client Data) and any Student PII submitted by District in connection with the Services and the use of the Licensed Products by District and any District users. Furthermore, Company expressly warrants and represents that commercially reasonable security measures will be used, by Company or any third parties (including, without limitation, the hosting service provider) in the provision of the Services, not less than industry standard practices, to protect District and District users of the Licensed Products against incidents of unauthorized access to personally identifiable information; and Company will provide District and District users protection while using the Licensed Products, including, but not limited to Company's securing all information uploaded or otherwise provided by District or its users, providing reasonable protection against viruses.

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10. [Intentionally omitted.]

11. <u>Notices</u>. All notices permitted or required under the Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

COMPANY:

Illuminate Education, Inc.
Attn: Christine Willig
Chief Executive Officer
6531 Irvine Center Drive
Irvine, CA 92618

DISTRICT:

Pomona Unified School District
Assistant Superintendent/
Chief Business Officer
800 South Garey Avenue
Pomona, CA 91766

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12. <u>Termination</u>. The termination provision included as part of **Section 15** of the Agreement is hereby replaced in its entirety with the following:

12.1. The Agreement may be terminated by District, for any reason or no reason, during the Term of the Agreement by giving thirty (30) days' written notice to the Company.

12.2. The Agreement may be terminated by either Party in the event of a material breach of the Agreement by the other Party upon thirty (30) days written notice to the other Party.

12.3. If the Agreement is terminated per Section 12.2 above, Company shall within thirty (30) days of the termination of this Agreement refund to District any advance deposits made by District and the pro-rata amount of any prepaid fees attributable to the unexpired period of the Agreement or that are otherwise for Services not yet performed.

13. <u>Governing Law; Venue</u>. The Agreement (and this Addendum) shall be governed by the laws of the State of California without regard to principles of conflict of laws. Venue for any lawsuit or claim arising out of or related to the Agreement shall be the County of Los Angeles, California; and the Parties agree to personal jurisdiction by the state and federal courts in said county.

14. <u>Force Majeure</u>. The "Force Majeure" provision included as part of **Section 16(e)** of the Agreement is hereby replaced in its entirety with the following: In the event that performance on the part of either party hereto is unavoidably delayed or suspended as a result of circumstances beyond said party's reasonable control (the effects of which could not be prevented, mitigated or overcome by said party through the exercise of reasonable care and foresight, including the expenditure of reasonable sums), not including changes in market

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conditions, and not as a result of the negligent or willful acts or omissions of said party, then neither of the parties shall incur any liability to the other party as a result of such delay or suspension. Circumstances deemed to be beyond the control of a party hereunder shall include, but not be limited to, natural phenomena (acts of God) such as fires, floods, earthquakes, or severe storms; acts of war; terrorist acts or other acts of public enemies; insurrection; civil disturbance; labor strikes; government action (including action of a government authority resulting in a moratorium on the activities relating to this Agreement); national, state or local emergency; and epidemics or quarantine restrictions. The party invoking force majeure shall give prompt notice to the other party.
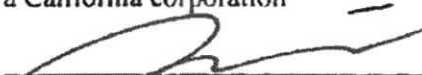
15. <u>Solicitation</u>. Company maintains and warrants that Company has not employed or retained any company or person, other than a bona fide employee working solely for Company, to solicit or secure the Agreement. Further, Company warrants that Company has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Company, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, District shall have the right to rescind the Agreement without liability and Company shall refund to District all amounts paid under the Agreement.

16. <u>Conflicts of Interest</u>. Company shall not engage in any activity that conflicts with District. Notwithstanding any other provision contained herein, District shall have the right to immediately terminate the Agreement in the event that District determines that a real conflict of interest exists that cannot be resolved. Company shall avoid any actual conflict of interest on behalf of itself or its employees providing services under the Agreement, including, but not limited to, employment with District.

17. <u>Attorneys' Fees</u>. In the event of any action or proceeding (including, without implied limitation, any bankruptcy proceeding) to enforce or construe any of the provisions of the Agreement, the prevailing Party in any such action or proceeding shall be entitled to attorneys' fees and costs.

18. <u>Assignment</u>. Company shall not assign this Agreement or any interests therein without the prior written approval of the District, other than in connection with a merger, consolidation, corporate reorganization, or sale of all or substantially all of Company's business (a "**Permitted Assignment**"). In the case of a Permitted Assignment, Company shall provide District with thirty (30) days' prior written notice thereof, or if such prior written notice is not permitted due to a confidentiality obligation that the Company has with the proposed assignee then Company shall provide such written notice as soon as it is able under such confidentiality obligation, and District shall have the right to terminate this Agreement effective upon written notice to Company whereupon Company shall within thirty (30) days of such termination refund to District the pro-rata amount of any prepaid fees attributable to the unexpired period of the Agreement or that are for Services not yet performed. Any attempt to assign this Agreement in breach of this Section shall be invalid.

19. <u>Effect of this Addendum</u>. The provisions of this Addendum shall constitute an integral part of the Agreement as if set forth therein. IN THE EVENT OF A CONFLICT BETWEEN THE AGREEMENT AND THIS ADDENDUM, THE TERMS OF THIS ADDENDUM SHALL

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CONTROL. All other terms and conditions of the Agreement shall remain in full force and effect, except as modified by this Addendum.

20. **Public Record.** Company understands and acknowledges that under the California Public Records Act (CPRA), this Agreement (and this Addendum as an integral part thereof) is a public record subject to disclosure under the CPRA, and District shall have no obligation to provide written notification to Company prior to disclosure thereof pursuant to a CPRA public records request or otherwise.

21. **Authority.** Company has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement and this Addendum. Each Party warrants that the persons who have signed the Agreement and this Addendum have the legal power, right and authority to make the Agreement and this Addendum and bind each respective Party.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the Effective Date.

ILLUMINATE EDUCATION, INC.
a California corporation

_____
Scott Virkler
Chief Operating Officer

POMONA UNIFIED SCHOOL DISTRICT
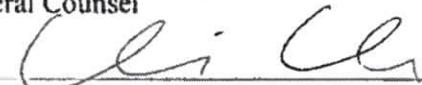a public agency of the State of California

_____
Sandra Garcia, Assistant Superintendent/
Chief Business Officer

Approved by Board: May 19, 2021

Approved as to Form:

MUNDELL, ODLUM & HAWS, LLP
General Counsel

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APPENDIX "A"

"EXHIBIT E"

GENERAL OFFER OF PRIVACY TERMS POMONA UNIFIED SCHOOL DISTRICT

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and Pomona Unified School District and which is dated to any other LEA ("Subscribing LEA") who accepts this General Offer though its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form.

Provider:

BY: _____   Date: 3/9/2020

Printed Name: Jeffrey Dress   Title/Position: Vice President of Legal

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

BY: _____   Date: 5-25-2021

Printed Name: Sandra Garcia   Title/Position: Assist Superintendent / CBO

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: Jeffrey Dress
Title: Vice President of Legal
Email: contracts@illuminateed.net

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