

**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, 2022 (“**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 22/23 School Year for a fee of Two Hundred Sixteen Thousand Two Hundred Eighty-Five Dollars (\$216,285), minus credit memo issued #CM0000003789 in the amount of Seventeen Thousand Eight Hundred Ninety-Eight and Seventy-Five Cents (\$17,898.75), for a total fee of One Hundred Ninety-Eight Thousand Three Hundred Eighty-Six Dollars and Twenty-Five Cents (\$198,386.25), as set forth in **Exhibit “A”** (“**Agreement**”). District will be invoiced based on total student enrollment for the Term as reported to the State of California. 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. **Term.** The term of the Agreement (and this Addendum as an integral part thereof) shall commence on July 1, 2022 (the “**Effective Date**”) and terminate on June 30, 2023 (“**Term**”), unless earlier terminated as provided in the Agreement and this Addendum.
2. **California Student Privacy Alliance.** 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. **Warranties.** 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. **Notice of Service Interruption.** 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.

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

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 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 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.

9. Limitation on Liability.

- 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 One Million Dollars (\$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.

10. [Intentionally omitted.]

11. Notices. 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.  
530 Technology Drive, Suite 100  
Irvine, CA 92618  
Legal@illuminate.net

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. Termination. 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. Governing Law; Venue. **Section 16** of the Agreement is hereby replaced in its entirety with the following: 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. The Convention on Contracts for the international sale of goods shall not apply to this agreement.

14. Force Majeure. 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 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. Solicitation. 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. Conflicts of Interest. 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. Attorneys' Fees. 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. Assignment. 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. Effect of this Addendum. 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**

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

  
\_\_\_\_\_  
Signature  
Scott Virkler  
\_\_\_\_\_  
Print Name  
Chief Operating Officer  
\_\_\_\_\_  
Title

6-15-22

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

  
\_\_\_\_\_  
Sandra Garcia, Assistant Superintendent/  
Chief Business Officer

Approved by Board: June 15, 2022

Approved as to Form:

MUNDELL, ODLUM & HAWS, LLP  
General Counsel

  
\_\_\_\_\_



## EXHIBIT "A"

22/23 School Year

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

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-tests	\$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
<b>22/23 School Year Subtotal:</b>				\$216,285.00
<b>22/23 School Year Grand Total:</b>				\$216,285.00



### Credit Memo

Illuminate Education, Inc.  
530 Technology Dr.  
Suite 100  
Irvine CA 92618  
United States

**Bill To**  
Pomona Unified School District (AN-12008003)  
Pomona Unified School District  
800 S Garey Ave  
Pomona CA 91766-3325  
United States

Document Number : #CM0000003789  
4/28/2022

Quantity	Item	Options	Rate	Amount
1	2 month credit of eduCLIMBER subscription		\$17,898.75	\$17,898.75

<b>SUBTOTAL</b>	<b>\$17,898.75</b>
<b>Sales Tax</b>	<b>\$0.00</b>
<b>Total Credit</b>	<b>\$17,898.75</b>

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 through 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:   
Printed Name: Jeffrey Dress

Date: 3/9/2020  
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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Title/Position: \_\_\_\_\_

**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