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education**

Master Subscription Licenses & Services
Agreement Addendum

The Parties hereby agree to the amend the attached Master Subscription Licenses & Services Agreement in accordance with the terms set forth herein. All references to Client are to the Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services ("BOCES" or "Client").

Section 2(a) "License – License Grant" is hereby amended with the addition of the following language:

> Illuminate acknowledges and accepts that Client is the Board of Cooperative Educational Services, which is contracting, representing, and acting on behalf of authorized school districts in accordance with New York State law. Accordingly, the Parties hereby acknowledge that Client, in its authority to contract on behalf of said school districts, transfers any rights and/or obligations set forth herein to school districts, which Illuminate accepts and acknowledges will act as limitations of obligations and liabilities for Client.

Section 2(c) "License – Limitations" is hereby amended with the addition of the following language:

> The Parties hereby acknowledge and agree that the limitations contained herein limit Client's ability to modify Illuminate's Licensed Products and/or limit Illuminate's liability in correlation with Client's modifications; however, the Parties acknowledge and agree that Client is entitled to comply and will not be held liable for compliance with accessibility accommodations provided by Client to Client's districts and/or end users.

Section 2(e) "License – Ownership" is hereby incorporated into the Agreement with the addition of the following language:

> Illuminate represents and warrants and Client hereby acknowledges that Illuminate is the sole owner or is an authorized licensee of the Licensed Products, and all trademarks and service marks associated therewith.

Section 4(b) "Reservation of Rights – Client" is hereby amended with the addition of the following language:

> Illuminate's non-exclusive, royalty-free, license to use, reproduce, and create derivative works of the Client Data in operating the Licensed Product(s) and/or Service features for Client's benefit as is explicitly permitted under the law is limited to de-identified and/or aggregate data.

Section 5 "Term" is hereby amended with the addition of the following language:

> The Parties agree that Client may terminate this agreement for convenience by providing at least sixty (60) days written notice prior to the end of Client's fiscal year and/or the annual renewal of this Agreement (i.e., typically recurring in July).

Section 6(a) "Client Support – Web & Phone Support" is hereby amended with the deletion of the provision in its entirety.

Section 6(b) "Client's Responsibilities" is hereby amended with the addition of the following language:

Client Support Services. Client support staff shall provide Tier 1 support services to participants, which includes, but is not limited to, basic front-end support, troubleshooting, password resets, and functionality instruction.

Authorized Support Personnel. Client shall identify one person to be the primary point-of-contact for all support and escalation issues. The primary contact must be and remain proficient in support of the applicable Illuminate Licensed Products, escalation procedures, and product updates. The primary contact shall also review all support issues prior to submission to Illuminate for Tier 2 support in accordance with Illuminate support protocols. Client may also identify a second point-of-contact to act in lieu of the primary contact when the primary contact is unavailable.

Section 8(c) "Hosting – Data" is hereby amended with the addition of the following language:

In performing under this Agreement, the Parties represent and warrant to each other that they shall comply with all federal and state laws including, but not limited to, the New York State Safe Schools Against Violence in Education (SAVE) legislation, the Federal Family Educational Rights and Privacy Act ("FERPA") and Section 2-d of the New York State Education Law.

Client Hosting. In a Client hosted solution, Client is responsible for MS SQL and third-party licensing fees, system maintenance responsibilities, including but not limited to code roll out, database script roll outs, security and performance monitoring, daily full backups, and hourly transaction backups, maintaining archive databases, performing data base record change lookups and other queries, security administration, and similar duties. Client is responsible for maintaining the complete hosting infrastructure including but not limited to firewalls, load balancers, clusters, SANs, test environments, and the like. Client is also responsible for the creation of new databases, including demo sites and test environments.

Section 9(c) "Fees and Payment – Late Payment" is hereby deleted in its entirety and amended with the addition of the following language:

Purchase Orders. Client will process all orders for its participating school district. Participating school districts will submit purchase orders to Client to obtain Licensed Products or Services. Client will, prior to implementation of any Licensed Product or delivery of any Service, provide a purchase order to Illuminate correlating to the Licensed Product(s) and Services requested.

Invoicing. Illuminate will prepare and transmit invoices to Client for received purchase orders, including listing each participating school district, the Licensed Product(s) and/or Services, and the then-prevailing unit rate under the applicable volume discount, whereby the current version of Illuminate's schedule of products and pricing is attached hereto as Exhibit B.

Student Count. The Parties agree that the student count for any applicable Licensed Product(s) and/or Service(s) will be calculated in accordance with the most recent reported data correlating to the Resident Weighted Average Daily Attendance ("RWADA"), which can be found at the following website or similarly authenticated source: https://data.nysed.gov/lists.php?type=district

Section 9(d) "Fees and Payment – Renewals; Enrollment Increases" is hereby deleted in its entirety and amended with the addition of the following language:

> The Parties agree that all invoices are payable by Client net ninety (90) days (i.e., instead of the previously indicated net 30). Illuminate reserves the right to suspend Services, including access to the Software, and Professional Services (if any) until all undisputed past due amounts are paid in full after giving Client advance written notice and an opportunity to cure as specified in Section 13 ("Notices") and Section 14 ("Termination").

Section 10(c) "Confidential Information – New York State § 2-d" is here incorporated into the Agreement with the addition of the following language:

New York State Education Law Section 2-d. As required by Section 2-d of New York State Education Law, the Parties have agreed upon and incorporate herein the following Data Security and Privacy Plan (the "Plan"):

1. For purposes of this Plan, the terms used shall have the same meanings as those found in Education Law Section 2-d(1) and the proposed and/or enacted Regulations of the Commissioner of New York State Education Department at Section 121.1 of Title 8 of the New York Codes, Rules and Regulations (8 NYCRR § 121.1), unless more broadly defined herein.

2. Confidential Information: Both Parties understand that in performing this Agreement they may have access to confidential information in possession of the other Party or others, including, but not limited to personally identifiable data, information and records of the students and staff members of Client. It is agreed that the definition of confidential information includes all documentary, electronic, or oral information made known to Illuminate through any activity related to this Agreement concerning a student of Client as well as any other information clearly delineated as confidential by one of the Parties. Both Parties agree not to reveal, publish, discuss, disclose or communicate any confidential information, directly or indirectly to any third-party, except as explicitly provided for in this Agreement or as required by law, court order, or subpoena. The Parties also understand that any unauthorized disclosure, publication and/or communication of such confidential information shall be considered a breach of this Agreement. Both Parties agree that if one of them receives a subpoena or court order for divulgence of confidential information, the Party receiving the subpoena or court order shall notify the other Party prior to divulging the confidential information unless such notice is specifically prohibited by the subpoena or court order.

3. The Parties further agree that the terms, conditions and obligations of this Plan shall survive the expiration and/or termination of this Agreement.

4. Illuminate understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that confidential information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state, federal and local data security and privacy standards and laws, as well as the policy and protocols on data security and privacy for all personally identifiable information from education records of Client, as stated herein, and it shall:

i. limit internal access to education records to those individuals who are determined to have legitimate educational interests and are determined to need such records to perform the services set forth in this Agreement;

ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;

iii. not sell or release confidential information, nor use or disclose it for any marketing or commercial purpose, or facilitate its use or disclosure by any other Party for any marketing or commercial purpose or permit another person or entity to do so;

iv. use and maintain reasonable administrative, technical and physical safeguards consistent with industry standards and best practices, including but not limited to encryption technology, firewalls and password protection, to protect the security, confidentiality and integrity of confidential information, including but not limited to student, teacher and/or principal data of the Client, in the custody of Illuminate from unauthorized disclosure as prescribed by state and federal laws and regulations, this Plan and this Agreement;

v. use encryption technology to protect Confidential Information while in motion or in Illuminate's custody from unauthorized disclosure using a technology or methodology specified by the Secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5;

vi. ensure that all data protection obligations imposed upon Illuminate by New York State laws, federal laws, this Plan, and this Agreement are made applicable to any officer, employee, company, or agent engaged by Illuminate to perform any or all of its contractual obligations; and

vii. reasonably cooperate with the Client and other parties to protect the integrity of investigations into the breach or unauthorized release of confidential information, including but not limited to personally identifiable student, teacher, or principal data or information.

5. Illuminate shall not reveal, publish, discuss, disclose, or communicate any Confidential Information, including but not limited to personally identifiable information or data of students, directly or indirectly, to any other person or entity, except for authorized representatives of Illuminate, such as its officers, directors, employees, contractors and/or agents, to the extent they are carrying out this Agreement and are in compliance with New York State and federal laws and regulations and this Agreement or as explicitly authorized in writing by an authorized representative of the Client,

i. Without the prior written consent of the parent or eligible student if the confidential information pertains to a student; or

ii. Without the prior written consent of the teacher or principal that is the subject or the confidential information; or

iii. Unless required by statute or court order and Illuminate provides a notice of disclosure to Client no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order.

6. In the event of a breach of the confidentiality and data security and privacy standards and

provisions and unauthorized release of confidential information, in particular student data, Illuminate shall immediately notify Client and advise Client as to the nature of the breach and steps Illuminate has taken to minimize said breach. In the case of required notification to a parent or eligible student, Illuminate shall promptly reimburse Client for the full cost of such notification. Subject to the terms and conditions contained herein, Illuminate shall indemnify and hold Client harmless from any claims arising from Illuminate's breach of the within confidentiality and data security and privacy standards and provisions.

7. Upon termination of this Agreement, Illuminate shall destroy all confidential information obtained or generated in connection with the services provided under this Agreement, including all student data, in the same form as received or generated.

8. Illuminate understands and acknowledges that this Plan must include a signed copy of the Client's Parents' Bill of Rights for Data Privacy and Security including the supplemental information portion, which Parents' Bill of Rights for Data Privacy and Security is attached hereto.

9. Illuminate acknowledges, understands and agrees that parents and/or guardians of students attending Client's schools have the right to inspect and review the complete contents of their child's education record, which may include records maintained, stored, transmitted, and/or generated by Illuminate.

10. Illuminate acknowledges that federal and state laws protect the confidentiality of personally identifiable information of Client. Illuminate represents and warrants that any of its officers, directors, employees, contractors and/or agents, who will have access to student records and/or data of Client, has received or will receive training on the federal and state laws governing confidentiality of such data prior to obtaining access or any further access to such data.

Section 11(d) "Disclaimers – Illuminate Indemnification" is hereby incorporated into the Agreement with the addition of the following language:

Illuminate Indemnification. If a third-party claims that a Licensed Product (other than related to any Licensee Content) infringes that party's U.S. patent, copyright or other proprietary right, Illuminate will defend Licensee against that claim at Illuminate's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Illuminate, provided that Licensee:

i. promptly notifies Illuminate in writing of the claim; and
ii. allows Illuminate to control, and cooperates with Illuminate in, the defense and any related settlement.

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

the Licensee's content and/or data; or (d) modification or alteration to the Licensed Products by anyone other than Illuminate.

Section 11(d) "Disclaimers – Illuminate Indemnification" is hereby incorporated into the Agreement with the addition of the following language:

Limitations of Liability. 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:

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY OR ANY OF THEIR AFFILIATES, HAVE ANY LIABILITY WHATSOEVER FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFIT, LOSS OF USE, LOSS OF DATA, LOSS OF LIFE, LOST PRODUCTION OR CONSEQUENTIAL PROPERTY DAMAGE; COST OF CAPITAL; COST OF REPLACEMENT OFFERINGS; OR CLAIMS RESULTING FROM CONTRACTS BETWEEN THE OTHER PARTY AND ANY THIRD PARTY, INCLUDING CONTRACTS ARISING FROM ANY THIRD PARTY PURCHASE ORDERS, UNLESS SUCH LIABILITY RESULTS FROM INTENTIONAL OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF A PARTY, ITS EMPLOYEES, ITS OFFICERS, ITS OFFICIALS OR ITS AGENTS. THE PARTIES AGREE THAT THIS LIMIT OF LIABILITY ONLY APPLIES TO ILLUMINATE AND THE BOARD OF COOPERATIVE EDUCATIONAL SERVICES. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, THE PARTIES 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 TWENTY-FOUR (24) MONTHS.

Section 14(b) "Termination – Liquidated Damages" is hereby amended with the deletion of the provision in its entirety.

Section 15(a) "General Provisions – Assignment" is hereby amended with the deletion of the provision in its entirety and replaced with the following language:

Neither Party may assign this Agreement or any portion of any of the obligations to be performed herein, without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the language in this Section, either Party may assign this Agreement without the prior consent of the other Party in the event of a merger, sale, acquisition, or similar transaction of the applicable products and/or services.

Section 15(b) "General Provisions – Choice of Law" is hereby amended with the deletion of the provision in its entirety and replaced with the following language:

Choice of Law. This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles. Each of the Parties hereto agrees to be subject to the jurisdiction, and venue shall reside, in the state and federal courts located in New York for the purpose of adjudicating any dispute relating to or

arising out of this Agreement and consent to personal jurisdiction and venue of state and federal courts located therein. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim against Illuminate must be brought within one (1) year after it arose, or be barred.

Section 15(j) "General Provisions – Independent Contractors" is hereby amended with the addition of the following language:

Illuminate will not have and shall not represent to any third-party that it has any authority to act on behalf of Client.

Section 15(k) "General Provisions – Entire Agreement" is hereby amended with the addition of the following language:

The Parties hereby agree to fully incorporate by reference the Parents' Bill of Rights for Data Privacy and Security of the BOCES, which shall control in the event of any conflict of terms or conditions contained in the Agreement or herein this Addendum. *See* Exhibit A. All references to Illuminate's Privacy Policy herein this Agreement are hereby deleted and replaced with Client's New York Education Law § 2-d in Section 10(c) herein and Parents' Bill of Rights for Data Privacy and Security of the BOCES.

Section 15(l) "General Provisions – Sexual Harassment" is hereby incorporated into the Agreement with the addition of the following language:

Federal and state laws and the policies of Client, including end users, prohibit sexual harassment of employees and students. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that create a hostile or offensive working environment for Client employees or students. Illuminate shall exercise control over its employees, agents, and consultants so as to prohibit acts of sexual harassment of employees or students of Client, including end users. In the event Client, in its reasonable judgment, determine that Illuminate, its employees, agents, and/or consultants have committed an act of sexual harassment, upon notice from Client, Illuminate shall cause such person to be removed from servicing Client, and Illuminate shall take such other action as may be reasonably necessary to cause such sexual harassment to cease.

Section 15(m) "General Provisions – Non-Discrimination" is hereby incorporated into the Agreement with the addition of the following language:

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Illuminate agrees it shall not discriminate against any employee or applicant for employment or individual associated with Client because of race, creed, color, sex, national origin, sexual orientation, age, disability, gender identity or expression, military status, predisposing genetic characteristics, familial status, religion, status as a victim of domestic violence or marital status. The services provided pursuant to this Agreement shall be provided without regard to a student's actual or perceived race, creed, color, weight, gender, sex, sexual orientation, national origin, ethnic group, religion, religious practice, age, or disability.

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Section 15(n) "General Provisions – Agreement Construction" is hereby incorporated into the Agreement with the addition of the following language:

> This Agreement has been arrived at mutually and is not to be construed against any Party hereto as being the drafter hereof or causing the same to be drafted.

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.

ALBANY-SCHOHARIE-SCHENECTADY-SARATOGA
CLIENT: BOARD OF COOPERATIVE EDUCATIONAL SERVICES

By: _____
Authorized Signature

By: _____
Authorized Signature

Name: Dick Davidson

Name: Nancy DelPrado

Title: Chief Financial Officer

Title: Vice President

Date: 3/24/2020

Date: 3-11-20

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EXHIBIT A

Parents' Bill of Rights for Data Privacy and Security of the BOCES

In accordance with New York State Education Law Section 2-d, the Board of Cooperative Educational Services hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security, which is applicable to all students and their parents and legal guardians.

(1) New York Stated Education law Section 2-d ("Section 2-d") and the Family Educational Rights and Privacy Act ("FERPA") protect the confidentiality of personally identifiable information. Section 2-d and FERPA assures the confidentiality of records with respect to "third parties," and provides parents with the right to consent to disclosures of personally identifiable information contained in their child's education records. Exceptions to this include school employees, officials and certain State and Federal officials who have a legitimate educational need to access such records. In additions, the District will, upon request of parents, or adult students, or if otherwise required by law, disclose student records to officials of another school district in which a student seeks to enroll

(2) A student's personally identifiable information cannot be sold or released for any commercial purposes;

(3) Personally identifiable information includes, but is not limited to:

  i.   The student's name;

  ii.   The name of the student's parent or other family members;

  iii. The address of the student or student's family;

  iv.   A personal identifier, such as the student's social security number, student number, or biometric record;

  v.   Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

  vi.   Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

  vii. Information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates.

(4) In accordance with FERPA, Section 2-d and the BOCES Policy No. 6320, Student Records: Access and Challenge, parents have the right to inspect and review the complete contents of their child's education record.

(5) The District has the following safeguards in place: Encryption, firewalls and password protection, which must be in place when data is stored or transferred.

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(6) New York State, through the New York State Education Department, collects a number of student data elements for authorized uses. A complete list of all student data elements collected by the State is available for public review, at:
http://www.p12.nysed.gov/irs/data_reporting.html
http://data.nysed.gov/
http://www.p12.nysed.gov/irs/sirs/documentation/nyssisguide.pdf

(7) Parents have the right to submit complaints about possible breaches of student data or teacher or principal APPR data. Any such complaint must be submitted, in writing, to:
Michele V. Jones
General Counsel
ALBANY-SCHOHARIE-SCHENECTADY-SARATOGA
Board of Cooperative Educational Services
900 Watervliet-Shaker Road
Albany, New York 12205
518-464-5139

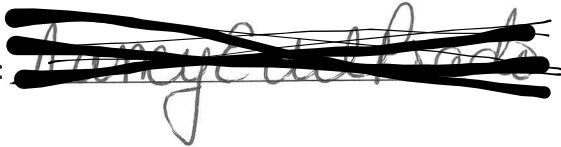**Supplemental Information for Agreement with Illuminate Education, Inc. (hereafter "Company"):**

(1) The student data or teacher or principal data (collectively, "the Data") accessed or received by the Company and its employees, contractors and agents will be used to provide requested technological products and related services, specifically pertaining to the administrative and educational needs of K-12 school districts.

(2) The Company will ensure that all other authorized persons or entities (e.g. officers, employees, contractors and/or agents) to whom Data will be disclosed will abide by all applicable data protection and security requirements, including those mandated by New York State and federal laws and regulations, by requiring as a term of their employment, engagement or retention that all such authorized persons or entities abide by the Data Security and Privacy Plan contained in its Agreement with the BOCES or equally similar requirements.

(3) The Agreement will be in effect from July 1, 2020 to June 30, 2021. If not renewed, upon the expiration or termination of the Agreement, any Data in the possession of the Company will be destroyed by the Company.

(4) A parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected by filing a written request to Michele V. Jones, General Counsel, Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services, 900 Watervliet-Shaker Road, Albany, New York 12205.

(5) The digital student records and Data will be maintained and stored in the Board of Cooperative Educational Services' computer system which is password protected and hard copy student records and Data will be maintained and stored in the locked files of the Company or the Board of Cooperative Educational Services.

(6) To the extent Company possesses, stores or transmits personally identifiable student information or Data outside of the Board of Cooperative Educational Services' computer system, Company confirms that it will use encryption technology to protect the Data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the Secretary of the

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U.S. Department of Health and Human Services in guidance issued pursuant to Public Law 111-5, § 13402(h)(2).

ALBANY-SCHOHARIE-SCHENECTADY-
SARATOGA BOARD OF COOPERATIVE
EDUCATIONAL SERVICES

By: ~~[signature]~~

ILLUMINATE EDUCATION, INC.

By: ~~[DocuSigned signature]~~
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Illuminate Education, Inc.
6531 Irvine Center Drive Suite 100
Irvine, CA 92618
Phone: 949-656-3133
Fax: 909-266-1935

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Exhibit B

eSchoolData Pricing Schedule

2020-2021 Capital Region BOCES (NERIC)
Pricing Schedule Summary
Effective July 1, 2020 – June 30, 2021

Description	Unit Cost
Annual Core System Subscription Fee (Fee represents a 50.4% discount off the core system Subscription Fee due to NERIC participation in a Regional Early Adopter Incentive Program.	$6.20 per student
GURU Annual Subscription Fee Represents a 37.5% discount off standard Subscription Fee due to NERIC participation in a Regional Early Adopter Incentive Program	$1.25 per student
Online Registration (Maximum of $2,500.00 per district)	$1.00 per student
SQL Database Downloader Service	$2,750 per year
Cloud Hosting Solution (Individual BOCES Instance) NERIC is set up on its own instance within the Illuminate Education AWS cloud infrastructure	$5.50 per student

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2020 – 2021 Fee Schedule

1. Subscription Fee Schedule

SKU	Subscription Fee	Price
ESD-L-1-Cloud	eSD Cloud (Includes eSD, GURU, Online Reg – cloud based solution)	$20.00
ESD-L-1.1	eSD® Core System Subscription Fee 1 - 15,000 total students (aggregate)	$15.75
ESD-L-1.2	eSD® Core System Subscription Fee 15,001 – 30,000 total students (aggregate)	$13.50
ESD-L-1.3	eSD® Core System Subscription Fee More than 30,000 total students (aggregate)	$12.50
ESD-L-1.SM	eSD® Core System Subscription Fee Small District Pricing Any district with enrollment of less than 425 students is entitled to **Small District** pricing which is based on a flat enrollment count of 110 students at the standard rate.	Standard Rate x 110
ESD-L-1.LG	eSD® Core System Subscription Fee (Large District Pricing) Any individual district with enrollment greater than 12,000 students is eligible for **Large District** pricing.	$8.25
ESD-L-2	eSD® GURU Annual Subscription Fee (District Maximum $10,000.00)	$2.00 per Student
ESD_SQL	eSD® SQL Database Downloader Service	$2,750.00 per year
ESD-L-3	eSD® Supplemental Annual Helpdesk Support	$4.50 per Student
ESD-L-5	eSD® Online Registration Annual Subscription Fee (District Maximum $5,000.00)	$1.00 per Student
ESD-L-6	Messaging Module Annual Subscription Fee	$4,000.00 per year
TP-3	eSD® eScholar Assessment Data Transfer Service	.66 per student

2. eSchoolData, LLC. Available Service Offering Listing and Associated Fees

SKU	Hosting Services	Price
ESD-H-4-R	eSD® Cloud Hosting Services (Global Instance)	$4.00 per student
ESD-H-5-R	eSD® Cloud Hosting Services (Individual BOCES Instance)	$5.50 per student
SKU	**Implementation Services**	**Price**
ESD-IS-SBRC-1	eSD® Elementary Standard Entry Set Up/Template Design	$1,250.00 Per Template
ESD-IS-SBRC-2	eSD® Elementary Standard Entry/Set Up	$750.00 Per Template
ESD-IS-	eSD® Elementary Foreign Language Standard Entry	$500.00 Per

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SBRC-3		Template/Per Foreign Language
ESD-IS-SBRC-4	eSD® Setup Standard Based Grading – Rollup Formulas	$500.00 Per Grade Level
ESD-IS-DB-3	eSD® System Initialization Fee – Per District	$7,500.00 Per Instance
ILL-IMP	eSD® System Implementation– Per District Milestone	$5,000.00
SKU	**Custom Services**	**Price**
ESD-PS-10	eSD® Data Analyst, Report Writer, QA (Custom reports, back-end imports, analysis)	$175.00 Per Hour
ESD-PS-12	Custom Software Design /Development	$295. 00 Per Hour
ESD –PS-N	Dev/Ops Engineering Support	$350.00 Per Hour
SKU	**Training & Certification Services**	**Price**
ESD-PS-T-3	eSD® Web Training – (up to 2 hours)	$300.00 Per Session
ESD-PS-T-14	eSD® Conference Registration (1 day)	$225.00 Per person
ESD-PS-T-14A	eSD® Conference Registration (2 days)	$325.00 Per person
ESD-CERT	eSD® Course Certification	$2,500.00 Per seat
ESD-PS-T-17	eSD® Online Training Bulk Enrollment (Pricing based on types of courses selected. Course offerings will include a combination of Module Training, Role based training and Product Certification Courses)	$150.00 – $2,500.00 Per seat
ILL-TR	Product Training	2,200.00 per day

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Achievement Dashboard – eduClimber Pricing Schedule
BOCES REGIONAL PRICING

Product/Number of Students	Price Per Student
Achievement Dashboards	
0 – 50,000 Students	$2.00
50,001 – 100,000 Students	$1.60
100,001 – 150,000 Students	$1.40
150,000 (+) Students	$1.25
eduClimber	
0 – 50,000 Students	$4.00
50,001 – 100,000 Students	$3.50
100,001 – 150,000 Students	$3.35
150,000 (+) Students	$3.25
Achievement Dashboard / eduClimber Bundle	
0 – 50,000 Students	$5.00
50,001 – 100,000 Students	$4.50
100,001 – 150,000 Students	$4.25
150,000 (+) Students	$4.00

Implementation
Implementation Costs (Per Instance) $5,000.00
Deployment of AD/EC products
Data Integration
LMS Training (Online)

Training
Basic Training – Webinar $300.00
Two Hour Session

Basic Training $3,000.00
Full Day Session
Cost inclusive of travel related expense

BOCES Training   Will provide BOCES team with up to 32 hours onsite
       and/or webinar style consultation services at no added cost

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FastBridge Learning Pricing Schedule
BOCES REGIONAL PRICING

Product/Number of Students	Price Per Student
FastBridge Learning	$6.50

*Standard Price Per Student is $7.50 per student. Price listed above represents a $1.00 reduction in the subscription fee per for districts subscribing through BOCES.

Implementation
Implementation — Included with Subscription

Training
Online Training — Included with Subscription
Webinar Training — $250.00 per hour
On Site Training — $3,000 per day for s cohort of up to 30 participants

BOCES Training — Will provide BOCES team with up to 32 hours onsite and or webinar style consultation services at no added cost

Fast Flix Subscription (optional) — $750.00 – $3,000.00 annually

Illuminate Education, Inc.
6531 Irvine Center Drive Suite 100
Irvine, CA 92618
Phone: 949-656-3133
Fax: 909-266-1935

DNA/SUITE Assessment Solution Pricing Schedule
BOCES REGIONAL PRICING

Product/Number of Students	Price Per Student
DNA – Assessment Solution	
0 – 50,000 Students	$5.00
50,001 – 100,000 Students	$4.75
100,001 – 150,000 Students	$4.60
150,000 (+) Students	$4.50
Suite – Assessment Solution	
0 – 50,000 Students	$5.00
50,001 – 100,000 Students	$4.75
100,001 – 150,000 Students	$4.60
150,000 (+) Students	$4.50
Inspect Premium - Content	
0 – 50,000 Students	$2.75
50,001 – 100,000 Students	$2,60
100,001 – 150,000 Students	$2.50
150,000 (+) Students	$2.45

Implementation
Implementation Costs (Per Instance) $5,000.00
Deployment of DNA, Suite & Inspect Products
Data Integration (Import up to three years of district data)
Training (Online)

Training
Basic Training – Webinar $300.00
Two Hour Session

Basic Training $3,000.00
Full Day Session
Cost inclusive of travel related expense

BOCES Training   Will provide BOCES team with up to 32 hours onsite
                                                and/or webinar style consultation services at no added cost

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illuminate
education
CAPITAL REGION BOCES

Approved: 3-16-20

Additional Services

Suite Custom Assessment Creation Services	Priced Per Request

Custom creation of benchmark or formative assessment
based on customer requirements.

BI Report Building Consultation	Priced Per Request

Custom built report designed to meet
customer defined specifications.

Premium Assessment Creation	$3,000.00 (Per)

Custom assessments and blueprints aligned
to districts S&S with high level of content
personalization aligned specifically to district's
blueprint and learning targets. Two rounds
of assessment review.

Master Subscription Licenses & Services Agreement

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

Definitions.

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

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

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

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

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

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

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

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

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

2. License.

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

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

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

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

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

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

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

4. Reservation of Rights.

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

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

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

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

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

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

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

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

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

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

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

8. **Hosting.**

(a). **Availability.** Client acknowledges and agrees that the hosted Licensed Product(s) and/or Services may be inaccessible or inoperable from time to time due to planned maintenance or to causes that are beyond the control of Illuminate or are not reasonably foreseeable by Illuminate, including, but not limited to: (i) the interruption or failure of telecommunication or digital transmission links; (ii) hostile network attacks; (iii) network congestion; (iv) or other failures (collectively "Downtime"). Illuminate shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Licensed Product(s) and/or Services caused by Downtime, whether scheduled or not.

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

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

9. **Fees and Payment.**

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

(b). <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 Product(s) and/or Services are collectively "Fees".

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

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

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

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

10. Confidential Information.

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

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

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

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

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

11. Disclaimers.

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

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

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

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

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

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

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

14. Termination.

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

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

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

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

15. General Provisions.

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

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

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

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

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

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

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

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

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

incorporated into this Agreement, and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If any Client Order and/or SOW is executed in counterparts, no signatory hereto shall be bound until both the Parties named below have duly executed or caused to be duly executed a counterpart of said Client Order and/or SOW. A signature received by either Party by facsimile or email is binding upon (the other Party) as an original.
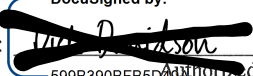
(i). **Client Authorization; Enforceability.** Client represents and warrants that (i) it has obtained all necessary authorizations to enter into this Agreement and all related SOWs, (ii) the person signing and/or consenting on behalf of Client is a duly authorized representative of the Client, and (iii) this Agreement is a duly authorized binding and enforceable obligation of Client.

(j). **Independent Contractors.** Client's relationship to Illuminate is that of an independent contractor, and neither Party is an agent or partner of the other. Client will not have and shall not represent to any third party that it has any authority to act on behalf of Illuminate.
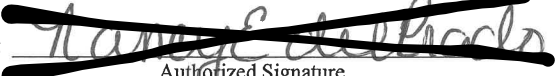
(k). **Entire Agreement.** This Agreement, Illuminate's Privacy Policy, the attached Client Order, Illuminate's SOWs (if applicable), and Client's purchase order (without any added terms and conditions that may be contained therein) incorporated by reference constitute the entire Agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be amended only by a written document signed by both Parties. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

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

ILLUMINATE EDUCATION, INC.

By: _____
Authorized Signature

Name: Dick Davidson

Title: Chief Financial Officer

Date: 3/24/2020

ALBANY-SCHOHARIE-SCHENECTADY-SARATOGA
CLIENT: BOARD OF COOPERATIVE EDUCATIONAL SERVICES

By: _____
Authorized Signature

Name: Nancy Eckerdorf

Title: Vice President

Date: 3-11-20