ISI SOFTWARE SERVICES AGREEMENT

This ISI Software Services Agreement ("***Agreement***") is entered into effective as of **December 9**, **2016** ("***Effective Date***") by and between Illuminate Education, Inc., a California corporation ("***Illuminate***"), and **Berkeley Unified School District** ("***District***").

RECITALS

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

WHEREAS, Illuminate has developed, owns and hosts online such systems known, respectively, as the Illuminate Student Information System (the "***System***");

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

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

AGREEMENT

1.   Term of Agreement. Unless earlier terminated as provided herein, the initial term of this Agreement shall be from the Effective Date through **June 30, 2020** ("***Term***").

2.   System Services. Subject to the terms of this Agreement, during the Term, District and District Users (as defined below) may access and use the System for the benefit of District's students, but only with respect to the schools identified on Exhibit A hereto. Exhibit A may be amended for future school years to include additional District schools. District is responsible for the actions of all District Users and other District employees and agents, for ensuring that only District Users are provided access to the System (including ensuring ID and password security), and that access of District Users is limited to that portion of the System and District Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. "***District Users***" means District employees, students and such students' parents or guardians holding a valid ID and password to use the System issued by the District.

3.   Fees.

(a)   Annual Fee. District agrees to pay to Illuminate an annual fee (the "***Annual Fee"***) for access and use of the System each school year during the Term consisting of:

(i)   See chart below for detailed per student pricing

(b)   Student Count. The parties agree that the number of students to be used in calculating the Annual Fee for each school year (the "***Student Count***") shall be the number of students during the preceding school year based upon http://data1.cde.ca.gov/dataquest at schools in the District that will be using or are authorized to use the System. The number of students used for calculating a fiscal year's annual price is based on the prior fiscal year's audited Fall full student count.

(c)   Required Fees: Software Cost, Data Migration, Setup and System Admin Training. By way of example, the estimated fees are as follows:

Product/School Year	Fee Structure	Estimate of Annual Fee
July 1, 2017 – June 30, 2018		
ISI System – Software Cost	**$4.50** per student **9,468** students	**$42,606**
ISI System – Data Migration Cost (provided remotely)	N/A	$7,500
ISI System – Setup and System Admin Training Cost (provided remotely)	N/A	$27,457
ISI System – On Site Train the Trainer Cost	$**1,500** per trainer per day of training for **5** training days	$7,500
Total		**$85,063**
July 1, 2018 – June 30, 2019		
ISI System – Software Cost	**$5.50** per student **9,468** students	**$52,074**
ISI – Master Schedule Training	N/A	**$6,000**
Total		**$58,074**
July 1, 2019 – June 30, 2020		
ISI System – Software Cost	**$7.00** per student **9,468** students	**$66,276**
Total		**$66,276**

(d)   Additional Training and Services. Upon written request and authorization by District, Illuminate may conduct additional training and provide additional services to District. The scope and timeframe of such services will be mutually determined by the parties. Illuminate reserves the right to deny any request for custom development. The table below is provided by way of example:

Additional Costs	Fee Structure
ISI System – On Site Training	**$1,500** per trainer per day of training
Custom Development	**$250** per hour
ISI Data Migration (provided remotely)	**$1,500** per day

(e)   <u>Payment</u>. The required fees for each school year shall be paid by District within 30 days of receipt of an invoice from Illuminate. Illuminate may submit an invoice for the required fees in advance of each school year on or after the first day of such school year. Illuminate may submit an invoice for training and other services following the provision of such training or service.

(f)   <u>Failure to Make Payment</u>. In the event District fails to pay the Annual Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon written notice from Illuminate, District agrees to immediately cease, and to cause District Users to immediately cease, using the System and Illuminate will have no further obligation to provide any maintenance or support to District or District Users.

(g)   <u>Taxes</u>. The fees in this Section 3 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to Illuminate under this Agreement, excluding taxes based on Illuminate's overall net income.

4.   <u>Ownership of System; Third Party Materials</u>. Illuminate and its third party providers are and will remain the exclusive owners of all right, title and interest in and to the System and all derivative works, and in the materials licensed or provided by such third parties to Illuminate ("***Third Party Materials***"), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components. In addition, Illuminate shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by Illuminate pursuant to this Agreement ("***Specific Developments***"). District will have no rights in the System, any derivative works, the Specific Developments or Third Party Materials, except the right to access and use them as expressly set forth in this Agreement. District agrees not to (i) alter, merge, modify, adapt or translate the System or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the System or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or license the System or Third Party Materials, (iii) create derivative works based upon the System or Third Party Materials or (iv) permit anyone other than District Users to use the System. District acknowledges that the System is confidential in nature and constitutes a trade

secret of Illuminate and agrees to use reasonable efforts to prevent inadvertent disclosure of the System, or elements thereof, to any third party during the Term or thereafter.

     5.   <u>Implementation, Data Conversion and Hosting</u>. Illuminate agrees to provide the services associated with the implementation of the System and District Data conversion and hosting as follows:

     (a)   <u>Milestones Timeline</u>. A list of milestones and associated targeted completion dates for implementation are set forth on <u>Exhibit B</u> attached hereto.

     (b)   <u>Hosting</u>. The System and District Data will be hosted on Illuminate's servers. District shall have access to the District Data through the System, except for maintenance downtime and during data import mode.

     (c)   <u>Implementation</u>.

     (i)   District acknowledges that for a successful implementation District will need to identify the key roles highlighted during the planning process as outlined at https://process.illuminateed.com/#tab_tab3 for the District Leadership Team.

     (ii)   District will use the data file specifications provided by Illuminate to gather the required data files as outlined in the milestones timeline. It is the responsibility of District to provide the data files to Illuminate using Illuminate data import tools. Illuminate can assist District with additional data set migration on an as needed basis at a rate of $1,500 per day. The scope and timeframe of any proposed work will be mutually agreed to by both parties prior to starting. Illuminate reserves the right to deny request for additional data migration work. District acknowledges that data that is not provided during the timelines specified, or is incomplete/inaccurate, will cause delays in the rest of the timeline, particularly in training dates.

     (iii)   District acknowledges that the key to a successful implementation is establishing a training plan that includes topics designed for various stakeholder groups. District and Illuminate implementation teams will determine the implementation and training plan details within the first 30 days of the timeline. (Illuminate will accommodate specific training date requests when possible; however, District acknowledges that during peak training seasons (i.e., summer) advanced planning and coordination with Illuminate's implementation manager will need to occur when creating the training plan.) District may consolidate training with a maximum participant limit of 30 attendees per any given day for one trainer. District will host the trainings at no cost. The number of training days/trainers for the first year and for subsequent years will vary and will depend on whether District will lead training (Train-the-Trainer model), or if Illuminate will lead the training (or a combination thereof). Most organizations and school districts utilize several days of training per year to accommodate expanded use of features and new staff.

     (iv)   District will work with Illuminate's implementation team to utilize the implementation process documents that support the timeline. District understands that the timeline has risk factors particularly with regard to the impact of data not being provided to Illuminate in the timeframe outlined.

     (v)   District acknowledges that the System is a national product that has product development processes that are designed to meet the needs of many schools and

districts. District will work with its implementation manager should District have requests for product enhancements. All enhancement requests are reviewed by Illuminate for relevance nationally and are not guaranteed to be implemented. District acknowledges that the System is being purchased in its current form and additional development to meet the unique needs of District is not part of this Agreement.

6. <u>System Maintenance and Support</u>. Illuminate agrees to provide maintenance and support of the System to District. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the System; telephone and e-mail support for questions regarding operations of the System; change the System as necessary to incorporate upgrades and new features; support to District in resolving problems/errors resulting from misuse or hardware/software failure; telephone or web conferences with District to address future growth or modifications to the System. Maintenance and support of the System is provided at no additional cost to District. Illuminate is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the System or databases by District or District Users, District employees or agents, unless such modification or alteration is approved in writing by Illuminate, or (b) any failure of District equipment or software.

7. <u>Responsibilities of District</u>. District agrees to prepare and furnish to Illuminate upon request such information as is reasonably requested by Illuminate in order for Illuminate to perform its obligations under this Agreement. These responsibilities are outlined in Exhibit B and further defined in the ISI Implementation Overview. Districts must meet calendar milestones and customer responsibilities. Additional charges will apply at $1,500 per day if calendar milestones or responsibilities are not met.

8. <u>District Data</u>.

(a) <u>Ownership and Control</u>. District will retain ownership of, and the ability to control, all District information, including Pupil Records (as defined below), imported into the System ("***District Data***"). Illuminate may, however, internally use District Data that has been de-identified, including aggregated de-identified information, in order to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services or applications. Upon the termination of this Agreement, to the extent District Data resides on Illuminate servers, Illuminate agrees to assist in the transfer all District Data back to District in an industry standard open format such as SQL at no charge.

(b) <u>Sharing of District Data</u>. Illuminate will not share District Data with or disclose it to any third party, except (i) to District Users, (ii) as directed by District or District Users, (iii) to Illuminate's subcontractors who need access to fulfill Illuminate's obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When Illuminate believes that any disclosure is required by applicable law, it will promptly notify District prior to the disclosure and give District a reasonable opportunity to object to the disclosure.

(c) <u>Storage and Process</u>. Illuminate will store and process District Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d)   Social Security Numbers. District agrees that it will not collect or store as part of the District Data or otherwise any social security numbers.

9.   Privacy and Security of Student Data.

(a)   Definitions.

(i)   "***Pupil-Generated Content***" means materials created by a pupil, excluding pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

(ii)   "***Pupil Records***" means any information (i) directly related to a pupil that is maintained by District or (ii) acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee, but does not include de-identified information, including aggregated de-identified information, used by Illuminate to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services or applications.

(b)   Ownership and Control of Pupil Records. Pupil Records obtained by Illuminate from District will continue to be the property of and under the control of the District.

(c)   Possession and Control of Pupil-Generated Content. Pupils may retain possession and control of their own Pupil-Generated Content, and may transfer their own Pupil-Generated Content to a personal account, by submitting a written request directly to the District.

(d)   Use of Pupil Records. Illuminate will not use any information in a Pupil Record for any purpose other than those required or specifically permitted by this Agreement and specifically will not use personally identifiable information in a student's Pupil Records to engage in targeted advertising.

(e)   Correction of Pupil Records. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student's Pupil Records and correct erroneous information contained therein by submitting a written request for access or a written description of the erroneous information and request for correction to District and furnishing District, upon request, such information as is reasonably required to respond to the request. District is responsible for correcting all such erroneous information and Illuminate agrees to fully cooperate with District to make such corrections.

(f)   Security and Confidentiality. Illuminate will take all legally required actions to ensure the security and confidentiality of Pupil Records, including but not limited to the designation and training of responsible individuals. Illuminate will identify those employees and subcontractors who will have access to Pupil Records and ensure that such individuals receive instructions as to compliance with the security and confidentiality requirements of this Agreement with respect to Pupil Records. Illuminate warrants that all Pupil Records will be encrypted in transmission. Illuminate further warrants that it will deploy electronic security tools and technologies, including anti-virus protection and intrusion-detection methods in providing the services under Agreement.

(g) <u>Notice of Unauthorized Disclosure</u>. In the event of an unauthorized disclosure of Pupil Records, each party agrees to advise the other promptly upon discovery of such a disclosure and, if required by law, District will notify affected parents, legal guardians, or students who have reached 18 years of age, as applicable, in writing of such unauthorized disclosure.

(h) <u>Certification of Non-Retention</u>. Illuminate certifies that, in accordance with this Agreement, Pupil Records will not be retained or available to Illuminate upon completion of the terms of this Agreement. This certification may be enforced through any lawful means, including but not limited to civil action.

(i) <u>FERPA and State Equivalent Compliance</u>. District and Illuminate each represents and warrants that it and its agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect Pupil Records from disclosure.

(j) <u>Other Third Party Content</u>. Nothing in this Section shall be construed to impose liability on Illuminate for content provided by any third party.

10. <u>Illuminate Warranty</u>.

(a) <u>System Warranty</u>. Illuminate warrants to District that the System as delivered, will materially comply with the published specifications of Illuminate for such System. Illuminate does not warrant that the operation of the System will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, ILLUMINATE AND DISTRICT ACKNOWLEDGE THAT THE SYSTEM IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SYSTEMS OF THIS TYPE.

(b) <u>Disclaimer of Warranties</u>. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THE SYSTEM AND ALL ILLUMINATE SERVICES ARE PROVIDED "AS IS" AND ILLUMINATE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND ILLUMINATE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL THIRD-PARTY SERVICES ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY SERVICES IS STRICTLY BETWEEN DISTRICT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY SERVICES.

11. <u>Indemnification</u>.

(a) <u>By Illuminate</u>. Illuminate agrees to defend, indemnify and hold harmless District and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account

of any third party claim: (i) alleging that District's use of the System infringes or misappropriates the proprietary or intellectual property rights of any third party, except to the extent that such infringement results from District's misuse of or modifications to the System; (ii) that results from the gross negligence or intentional misconduct of Illuminate or its employees or agents; or (iii) that results from any material breach of any of the representations, warranties or covenants contained herein by Illuminate.

(b)　　By District.　To the extent permitted under applicable law, District agrees to defend, indemnify and hold harmless Illuminate and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim that results from (i) the gross negligence or intentional misconduct of District or its employees or agents or (ii) any material breach of any of the representations, warranties or covenants contained herein by District.

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

12.　　Insurance.　Illuminate agrees to carry a comprehensive general and, if Illuminate has any company-owned or company-leased vehicles, automobile, liability (including cyber) insurance with limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Illuminate and District against liability or claims of liability which may arise out of this Agreement.　Illuminate agrees to maintain workers' compensation insurance as required under applicable law.

13.　　Termination.

(a)　　Termination by District.　District may terminate this Agreement without cause prior to the expiration of the Term, effective upon the end of a District fiscal year, by giving Illuminate written notice of its intent to so terminate at least sixty (60) days prior to the end of such District fiscal year.

(b)   Termination for Cause. Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, which breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution.

(c)   Rights in Law and Equity Remain. The foregoing rights to terminate are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

(d)   Survival. The obligations in the following Sections will survive any expiration or termination of this Agreement: Sections 4, 8, 9, 10, 11, 13 and 14 and any obligations to pay for license fees, services, training or taxes pursuant to Section 3 that were earned or payable relating to the period prior to termination.

14.   Miscellaneous.

(a)   Entire Agreement; Counterparts. This Agreement and the Recitals and Exhibits hereto (Exhibit A, Exhibit B and ISI Implementation Overview) contain the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior negotiations, commitments, agreements and understandings between them with respect thereto. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a ".pdf" data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof. To the extent that the terms and conditions of such documents are in conflict, they will be interpreted in the following order of precedence:

(i)   The Agreement, including Exhibit B
(ii)   ISI Implementation Overview

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

If to Illuminate:

Illuminate Education, Inc.
6531 Irvine Center Drive, Suite 100
Irvine, California 92618
Attention: Contracts Administrator
E-mail: Contracts@IlluminateED.com

If to District:

Berkeley Unified School District
2020 Bonar Street
Berkeley, CA 94702
Attention: Jay Nitschke
E-mail: jaynitschke@berkeley.net

       (c)   Assignment; Successors and Assigns. Neither party may assign this Agreement or its obligations hereunder without the prior written consent of the other party hereto, except that either party may assign this Agreement in connection with a sale of all or substantially all its outstanding equity or assets without the consent of the other party hereto. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, each of the parties hereto and, except as otherwise expressly provided herein, their respective legal representatives, successors and assigns.

       (d)   Amendments, Waivers and Severability. Except as otherwise provided herein, this Agreement may be amended, and compliance with any provision of this Agreement may be omitted or waived, only by written agreement duly signed by Illuminate and District. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will not invalidate or render unenforceable the remaining provisions of this Agreement.

       (e)   Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws.

       (f)   Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

       (g)   Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

       (h)   No Third-Party Beneficiaries. Except for the indemnification rights of certain directors, officers, employees and agents expressly set forth in Section 11, this Agreement is for the sole benefit of the parties hereto and their respective successors and

permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(i)   Improper Payments. Illuminate represents and warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent or representative of District any cash or noncash gratuity or payment with a view toward securing any business from District or influencing such person with respect to the conditions, or performance of any contracts with or orders from District, including without limitation this Agreement.

(j)   EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER DISTRICT OR ILLUMINATE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SYSTEM, (b) LOSS, DAMAGE OR CORRUPTION OF DATA OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(k)   CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE ANNUAL FEE FOR ONE YEAR SET FORTH IN SECTION 3. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

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

(m)   Use of Illuminate Materials. Subject to all terms and conditions of this Agreement, permission is herby granted to District by Illuminate to include (i) Illuminate Trademarks and/or logos as provided by Illuminate to District, (ii) screenshots of and links to the Software as provided by Illuminate to District, and (iii) links to Illuminate University Training Videos and Materials as provided by Illuminate to District (collectively, the "Illuminate Works"), on District's website for the sole purpose of identifying and facilitating use of the System in furtherance of this Agreement. Illuminate reserves the right to change, modify or replace any of the Illuminate Works at any time, and District agrees to comply with such changes within a reasonable time. District will case using the Illuminate Works immediately upon termination of this Agreement, change any of the Illuminate Works, or use them in combination with other words or symbols, without prior written authorization of Illuminate. District shall have no right to use any of the Illuminate Works, including any of the Illuminate Trademarks, logos or name or names which otherwise relate to the System, except provided herein. The use of any of the Illuminate marks, logos or name or names which otherwise relate to the System by District shall inure to the sole benefit of Illuminate.

(n)   Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

ILLUMINATE EDUCATION, INC.

Date: _____   By: _____
                                         Lane Rankin, President

BERKELEY UNIFIED SCHOOL DISTRICT

Date: _____   By: _____

                                   Print: _____

                                   Title: _____

EXHIBIT A

DISTRICT SCHOOL LOCATIONS

<u>District Schools</u>

1. <u>Berkeley Arts Magnet At Whittier</u>
2. <u>Berkeley High</u>
3. <u>Berkeley Technology Academy</u>
4. <u>Cragmont Elementary</u>
5. <u>Emerson Elementary</u>
6. <u>Jefferson Elementary</u>
7. <u>John Muir Elementary</u>
8. <u>Leconte Elementary</u>
9. <u>Longfellow Arts And Technology Middle</u>
10. <u>Malcolm X Elementary</u>
11. <u>Martin Luther King Middle</u>
12. <u>Oxford Elementary</u>
13. <u>Rosa Parks Environmental Science Magnet</u>
14. <u>Thousand Oaks Elementary</u>
15. <u>Washington Elementary</u>
16. <u>Willard Middle</u>

EXHIBIT B

MILESTONES AND ISI IMPLEMENTATION OVERVIEW

Milestones	Due Date
Initial implementation meeting	Scheduled at least two weeks prior to first data bootcamp
Import all data outlined in the Illuminate Core Data Spec spreadsheet, ISI Data Integration Summary tab complete, Contacts Test data set imported	End of data bootcamp #1
Core data validated, Final contact data set imported and validated, Transcripts Test data set imported, Behavior test data set imported with minimum fields, Attendance test data set imported, Health test data set imported	Prior to data bootcamp #2
Final Behavior, Attendance and Health data imported validated and on automation	Prior to admin setup bootcamp
Transcript creation; Site and registration setup complete; Attendance, Behavior, Secondary Grades modules setup complete; Initial user management setup complete	End of admin setup bootcamp
District begins training End Users	When Train the Trainer courses complete
Master schedule for all secondary sites imported into Illuminate from legacy SIS for upcoming school year	Two weeks after the current school year ends
Legacy data archived in report form (attendance, behavior, GPA including ranking, transcripts)	Three weeks after year end closeout in legacy SIS is complete
Gradebook templates created (if applicable); Secondary report cards created (if applicable); Elementary report cards created (if applicable)	Prior to teacher Gradebook training

Included by incorporation is the more detailed ISI Implementation Overview.