



# Client Order

Q-125072

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

Prepared Date: 6/29/2021  
Valid Through: 7/29/2021  
  
Prepared By: Terry Burge  
  
Start Date: 7/1/2021  
End Date: 6/30/2022  
Quote Term: 12

Customer: Boone County Schools  
Address: 8330 US 42  
Florence, Kentucky 41042  
  
Contact: Amy Atkins  
Phone: 8592843792

## Year 1- 2021-22 SY

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

QTY	PRODUCT	DESCRIPTION	UNIT	TOTAL
1	Training - FASTflix Subscription - Tier 4	On demand, web-based library of FastBridge training courses. Annual district subscription - 2,500-4,999	\$2,500.00	\$2,500.00
2	Onsite Training, FastBridge	One day (up to six hours) onsite training and/or technical assistance for FastBridge.	\$3,250.00	\$6,500.00
4,500	FastBridge Subscription	FastBridge Assessment System Annual Subscription	\$8.00	\$36,000.00
1	Product Implementation: Level 3, FastBridge	FastBridge setup and initial configuration. Student Count greater than 1500.	\$2,000.00	\$2,000.00
1	»» Level 3 Onboarding, FastBridge	Dedicated guidance through a comprehensive change framework and FastBridge system setup.	Included	
1	»» Level 3 Data Integration, FastBridge	Extraction, import, and validation of required data for FastBridge site setup.	Included	
1	»» System Management Workshop, FastBridge	Half-day virtual Implementation training session on FastBridge for System Administrators.	Included	
Year 1- 2021-22 SY Subtotal:				\$47,000.00
Year 1- 2021-22 SY Grand Total:				\$47,000.00

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

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

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

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

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

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

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



## Master Subscription Licenses & Services Agreement

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

### Definitions.

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

(b). **“Client Personnel”** means Client’s internal employees, who shall be bound by confidentiality restrictions at least as restrictive as this Agreement provides, explicitly excluding contractors and/or vendors that are not granted access herein.

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

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

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

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

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

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

(i). **“Subscription Period”** means the period commencing upon the start date set forth in the applicable Client Order and continuing until terminated in accordance with Section 15 (“Termination”).

(j). **“Third Party Software”** means any software product designated as Third Party Software by Illuminate, and any related documentation supplied to Client, which is licensed directly between Client and a third party. Third Party Software is different than Embedded Applications in that Illuminate licenses the Embedded Applications to Client as part of Licensed Product (but in some cases, such Embedded Applications may

be subject to additional license terms as identified herein). Illuminate is not a licensor of Third Party Software.

**1. Subscribing to the Service(s).** Client will subscribe to the Licensed Products and/or Services by: (i) providing a purchase order that displays the unique identifier contained within the Client Order attached hereto or another Client Order, or in Illuminate’s discretion sufficiently references said Client Order; (ii) having an authorized Client representative execute a Client Order with this Agreement and receiving a countersigned copy by an authorized Illuminate representative; and, if applicable for custom services, (iii) executing a written SOW for such customized Licensed Products and/or Services with Illuminate. The Parties explicitly agree that, regardless of the confirmation of subscription method discussed herein that is utilized by Client, any additional and/or varying terms included in the Client’s purchase order are hereby deemed null and void, including terms that attempt to override this specific provision. Unless the Parties specify otherwise in writing, each SOW will be incorporated into this Agreement. Each Client Order and/or SOW will specify the Licensed Products and/or Services and specific terms and conditions applicable to that order. In the event of any conflict between this Agreement and a SOW, the mutually agreed upon and executed SOW shall control, except this Agreement shall govern all terms relating to intellectual property rights, confidential information, warranty, indemnity, and liability. Subject to the terms and conditions of this Agreement, Illuminate will provide the Licensed Products and/or Services described in the applicable Client Order. Unless expressly designated as replacing a specific Client Order and/or SOW, subsequent Client Orders and SOWs will be considered in addition to currently effective Client Orders and SOWs and shall be governed by this Agreement.

### 2. License.

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

(b). **User IDs.** Illuminate will issue Client’s system administrator access to Client’s designated user(s) that will have the ability to issue a singular User ID and password to each student, teacher, and staff member for access to and to utilize the Licensed Products and/or

Service(s) specified in the applicable Client Order and/or SOW. Client shall limit the total number of issued User IDs and passwords to the student count noted for each Licensed Product and/or Service on the Client Order; provided that said student count does not limit the total number of teacher and staff User IDs and passwords that Client may issue. Each User ID may be used to access the Services during only one (1) concurrent login session. Client shall not allow Client Personnel and/or students to share User IDs with any third parties, which require prior written approval for access by Illuminate. Client is responsible for all activity occurring under its User IDs and control of said User IDs, including the corresponding password credentials. Client is responsible for all use of the Licensed Products and/or Services by Client Personnel, students Client grants access to, for maintaining the confidentiality of all User IDs, and promptly notifying Illuminate of any actual or suspected unauthorized use of the Licensed Products and/or Services. Illuminate reserves the right to suspend or terminate any Client user that Illuminate determines may have been used for an unauthorized purpose.

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

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

**3. Acceptable Use Policy.** Client acknowledges and agrees that Illuminate does not monitor or police the content of communications or data of Client or its users transmitted through the Licensed Products and/or Services, and that Illuminate shall not be responsible for the content of any such communications or transmissions. In using the Software, Licensed Products, and/or Services, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software, Licensed Products, and/or Services any content that violates or infringes the rights of others, including without limitation any material that: (A) may be abusive, indecent, threatening, obscene, harassing, violent, defamatory, libelous, fraudulent, or otherwise objectionable; (B) encourages or otherwise promotes conduct that would constitute a criminal offense or give rise to civil liability; (C) impersonates any person or entity or that otherwise misrepresents Client's affiliation with a person or entity; (D) contains malicious code; is in violation of the

CAN-SPAM Act or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications, or the transmission of emails to an individual or entity with which Client has no preexisting relationship; (E) includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable individual would consider private in nature, (F) violates any privacy, intellectual property or proprietary right of another; (G) is pornographic or sexual in nature; expressly targets children under the age of 13; or (H) is unlawful or otherwise objectionable, in Illuminate's sole opinion; and (ii) Client shall ensure that Client's use of the Software and/or Services is at all times compliant with all applicable local, state, federal and international law, regulations and conventions, including without limitation, those related to data privacy, international communications, and the exportation of data of any kind, regulations of the U.S. Securities and Exchange Commission and/or any rules of a securities exchange in the U.S. or elsewhere.

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

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

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

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

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

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

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

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

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

(a). **Use Period.** All Professional Services must be prepaid or paid in the same manner as agreed to with other Licensed Products included on the applicable Client Order and utilized by Client within one (1) year of purchase. Illuminate, in its sole discretion, may extend this period up to a maximum of one (1) additional year to utilize said Professional Services; however, regardless of whether the Professional Services use period described herein is extended, Client's non-utilization of purchased Professional Services will be deemed null and void upon expiration of the applicable use period and shall not entitle Client to any refund or credit.

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

## **7. Hosting.**

(a). **Availability.** Client acknowledges and agrees that the hosted Licensed Products and/or Services may be inaccessible or inoperable

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

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

(c). **Data.** Client has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submits to the hosting environment. Client is further solely responsible for ensuring that Client's hosted environment (including, by way of example, email servers) accepts encrypted transmissions.

## **8. Fees and Payment.**

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

(b). **Fees.** All fees and expenses will be invoiced and are payable net thirty (30) days after the invoice date and are non-refundable after being granted access to any products and/or the commencement of internal preparations to provide Professional Services. Such other fees and expenses along with the corresponding fees for Licensed Products and/or Services are collectively "**Fees**". No refund or credit shall be due to Customer in the event that a Licensed Product or Service is not utilized.

(c). **Renewals; Enrollment Increases.** Prior to any Renewal Term, Client shall provide Illuminate with an updated student count for proper invoicing and to maintain an accurate number of students accessing the Licensed Products and/or Services specified in all applicable Client Orders. Illuminate reserves the right to validate, adjust, and/or invoice for variation of Client's student count based on information provided to state reporting agencies. If an increase in student enrollment occurs, then Client shall remit payment for additional student access to Licensed

Products and/or Services in accordance with Illuminate's supplemental invoice. Such additional fees will be calculated by multiplying the then-current per student fee for Licensed Products and/or Services by Client's additional enrollment. Additionally, in the event a Client Order includes discounted pricing for bundled Licensed Products and/or Services and Client terminates any Licensed Products and/or Services within the bundle, Illuminate reserves the right to invoice Client at then-current pricing for the non-terminated Licensed Products and/or Services. Illuminate may supply new or modified policies or other terms and conditions to Client related to the provision of Licensed Products and/or Services that will govern this Agreement to remain compliant with applicable laws and industry standards.

(d). **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 15 ("**Termination**").

(e). **Certain Taxes.** Fees quoted do not include tax, and Client shall pay all applicable taxes. If client is exempt from federal, state, sales, and use taxes the client will not be charged the same upon providing Illuminate with sufficient evidence of said exemption.

## 9. Confidential Information.

(a). **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 course of their business dealings regardless of whether it is marked as "confidential" or "proprietary". Without limiting the foregoing, Client hereby acknowledges that the Licensed Products contain proprietary information, including trade secrets and along with the Services (including any Documentation, Software, and any translations, compilations, partial copies and derivative works thereof) will be considered Confidential Information belonging exclusively to Illuminate (or its designated third party supplier), and Illuminate hereby acknowledges that Client Data will be considered Confidential Information belonging to Client.

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

(d). **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.

## 10. Disclaimers.

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

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

(c). **Limited Privacy Warranty.** Illuminate hereby recognizes that the Client Data which Client provides to Illuminate may include personally identifiable information of students. In order for Illuminate to carry out its obligations under this Agreement, it is necessary for Illuminate to use

the Client Data. Illuminate agrees to use the Client Data, some of which may contain personally identifiable information of students, only for the purpose of fulfilling its obligations under this Agreement. Illuminate agrees all usage of Client Data shall be in compliance with the requirements of applicable privacy laws; provided however, Illuminate will bear no responsibility for non-compliance that arises, in whole or in part, from any acts or omissions of Client. Illuminate warrants that it has put in place reasonable and appropriate security, technical, and organizational measures to protect its usage of the Client Data against accidental or unlawful destruction or accidental loss, alterations, and unauthorized use, disclosure, or access. Illuminate also warrants that it shall not disclose to, permit the disclosure to, or provide access to the Client Data to any third parties, except as is necessary for Illuminate to fulfill its obligations under this Agreement and under the law. In the event the Client or any third party believes there has been a material breach of this provision, Illuminate shall have a reasonable amount of time, which will be a minimum of thirty (30) days from the date of receiving written notice to cure any such alleged breach.

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

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

## **12. Indemnification.**

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

(b). Subject to Section 11 (Limitation of Liabilities), Illuminate will defend, indemnify and hold Client, its officers, directors, employees and

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

**13. Notices.** Notices sent to either Party shall be effective when delivered electronically or physically as follows: (i) In the case of Illuminate, notices shall be sent to the attention of: Illuminate Legal Department at the address listed as Illuminate's principal place of business herein and or to [Legal@illuminateed.net](mailto:Legal@illuminateed.net), and (ii) In the case of Client to the recipient provided by Client at the commencement of the Services and/or use of Software, or at the address listed on the Client Order. Each Party may change its address for receipt of notice by giving notice of such change to the other Party. Notwithstanding the foregoing notice procedures, the Parties acknowledge that notices regarding the ordinary usage of the Licensed Products and Services may be sent through the usual and customary means that the parties establish for such communications, including electronic communications.

**14. Term.** Unless earlier terminated pursuant to this Agreement, this Agreement shall be in effect pursuant to the dates set forth in the Client Order and/or SOW ("Initial Term"), and thereafter may be mutually renewed for additional one (1) year periods upon each anniversary of the commencement of the Initial Term (each subsequent period will be known as a "Renewal Term" and together with the Initial Term, the "Term"). The Renewal Term(s) will be invoiced at then-current rates; unless specified otherwise in the attached or a subsequent Client Order. Expiration or termination of one Client Order and/or SOW shall not affect any other Client Order and/or SOW, unless the Term expires or the Agreement as a whole is terminated under Section 15 ("Termination").

## **15. Termination.**

(a). **Termination for Breach.** Illuminate shall have the right to immediately suspend performance under this Agreement in the event that Client is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that Illuminate shall have the right to terminate this Agreement immediately upon written notice in the event that Client breaches any of its obligations under Section 9. Client further acknowledges that, as breach of the provisions of Section 9 could result in irreparable injury to Illuminate, Illuminate shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

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

(c). **Termination or Suspension for Failure to Make Timely Payment.** Illuminate may, at its option, immediately terminate, or suspend its performance of, the Agreement with Client any time Client



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

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

(e). **Survival.** Upon termination or expiration of this Agreement for any reason: (i) all rights and obligations of both Parties (except for Client's payment of all Fees then owing), including all licenses granted hereunder, shall immediately terminate except as provided below; (ii) Illuminate will work with Client regarding the disposition of Client Data, and within thirty (30) days after the effective date of termination, Client shall return or destroy, at Illuminate's sole discretion, all Confidential Information of Illuminate, as set forth in Section 9 ("**Confidential Information**"); (iii) Client shall not utilize or provide access to assessments created during the Term; and (iv) Client is responsible for transferring any data to its own or a third party's hosted environment. The following Sections and Subsections will survive expiration or termination of this Agreement for any reason: Section 4 ("**Reservation of Rights**"), Section 9 ("**Confidential Information**"), Section 10 ("**Disclaimers**"), Section 11 ("**Limitation of Liabilities**"), Section 15(e) ("**Survival**"), and Section 16 ("**General Provisions**"). Prior to termination and during the Term, Client shall have the ability to access and download its data at Client's convenience. Upon termination, as long as Client is not in breach, if requested, Illuminate shall make a final backup of Client data and provide the backup media to Client at Illuminate's then-current rates in a readily usable form in accordance with industry standards.

## **16. General Provisions.**

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

(b). **Choice of Law.** If the Client is a governmental entity of one of the United States, this Agreement and any action related thereto shall be governed by and construed in accordance with the laws of that State, without regard to conflicts of law principles, and if not, then by and with the laws of the State of California, without regard to conflicts of law principles. In the latter case the Parties agree to be subject to the exclusive jurisdiction, and venue shall reside, in the state and federal courts located in Orange County, California for the purpose of adjudicating any dispute relating to or arising out of this Agreement, and further irrevocably consent to exclusive personal jurisdiction and

venue of state and federal courts located therein. In either case the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and any claim against Illuminate must be brought within one (1) year after it arose, or be barred.

(c). **Compliance with Export Regulations.** Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; to the extent permitted under the law, shall indemnify and hold Illuminate harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws (e.g., in the U.S., the Bureau of Export Administration of the U.S. Department of Commerce).

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

(e). **Force Majeure.** Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war or terrorism, acts of God, earthquake, flood, pandemic, embargo, labor shortage, governmental act or failure of the Internet (not resulting from the actions or inactions of Illuminate); provided that the delayed party (i) gives the other party prompt notice of such cause, (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance, and (iii) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of ninety (90) calendar days, Client or Illuminate may elect to terminate the Agreement upon notice to the other Party.

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

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

(h). **Counterparts; Facsimile Signature.** Illuminate requires Client's execution of select Client Orders and/or SOWs, all of which are incorporated into this Agreement, and may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If any Client Order and/or SOW is executed in counterparts, no signatory hereto shall be bound until both the Parties named below have duly executed or caused to be duly executed a counterpart of said Client Order and/or SOW. A signature received by either Party by facsimile or email is binding upon (the other Party) as an original.

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

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

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

(l). **Entire Agreement.** This Agreement, Illuminate's Privacy Policy,

the attached Client Order, subsequent Client Order(s) (if applicable), Illuminate's SOWs (if applicable), and Client's purchase order (excluding any terms or conditions therein that conflict with a Client Order, SOW or this Agreement) incorporated by reference constitute the entire Agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. Any terms or conditions in Client's purchase order, data agreement or other document do not form a part of this Agreement and are not binding on Illuminate, unless expressly agreed in a writing signed by both Parties. This Agreement may be amended only by a written document signed by both Parties. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.



# Terms of Use and License Agreement

CAREFULLY READ THE FOLLOWING LICENSE AGREEMENT. IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. THIS DOCUMENT CONTAINS A DISPUTE RESOLUTION CLAUSE.

## Acceptance

This AGREEMENT must be accepted by CUSTOMER and FASTBRIDGE. CUSTOMER may indicate acceptance of this AGREEMENT by: (1) signing and returning to FASTBRIDGE the printed acceptance form; (2) by electronic acceptance indicating that CUSTOMER accepts the Agreement; or (3) by accessing, using, printing, and/or displaying the MATERIALS. If CUSTOMER submits a purchase order for any products or services covered by this AGREEMENT, CUSTOMER agrees that any pre-printed terms of such purchase order shall not apply or modify this AGREEMENT and that this AGREEMENT shall solely control and govern the transaction and such purchase order shall constitute acceptance of this AGREEMENT.

FURTHER, BY SELECTING THE “YES, I AGREE” BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. PROCEEDING WITH REGISTRATION, OR ACCESSING, USING, PRINTING, OR DISPLAYING THE PRODUCTS OR SERVICES INDICATES CUSTOMER ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, SELECT THE “NO, I DO NOT AGREE” BUTTON OR LEAVE THE WEBSITE. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, CUSTOMER SHOULD DECLINE THE REGISTRATION AND CUSTOMER MAY NOT ACCESS, USE, PRINT, OR DISPLAY THE PRODUCTS OR SERVICES.

## Violation of These Terms of Use



If you violate these Terms of Use, License Agreement, or Privacy Policy, FastBridge Learning, LLC reserves the right, in its sole discretion, to immediately terminate your access to any or all Subscription Services, including any and all accounts you have established. You acknowledge that we are not required to notify you prior to terminating any such account.

**Please contact us at [help@fastbridge.org](mailto:help@fastbridge.org) for any queries.**

This Terms of Use and License Agreement (“AGREEMENT”) governs access to and use of fee-based products and services offered by FastBridge Learning, LLC (“FASTBRIDGE”). By accessing, using, printing, displaying or registering for such products or services, you (“CUSTOMER”) agree to the terms of this AGREEMENT in which, CUSTOMER receives a limited license to access, use, print, display or register for such products or services for an agreed upon license period, which is commonly one year (e.g., July 1st-June 30th).

FASTBRIDGE has developed a proprietary Internet-based direct, frequent, and continuous assessment system designed to monitor student achievement and instruction. In addition, FASTBRIDGE has developed Internet-based software employed in establishing and maintaining a database of student performance; providing access to the database through the Internet; providing skill assessment protocols, testing materials and instructions; and assessment probes, (collectively referred to in this Agreement as the “MATERIALS”). Some or all of the MATERIALS are copyrighted. All of the MATERIALS are proprietary. Use of the MATERIALS by any individual, organization, entity or enterprise is strictly prohibited except for a CUSTOMER entity authorized pursuant to this Agreement. The MATERIALS, software, online software documentation, printed training documentation and materials, and the FASTBRIDGE school support site (collectively the “Subscription Service”) and any modifications, updates, revisions, or enhancements thereof are subject to the terms of this AGREEMENT.

## 1. License Grant

Your use of the Subscription Service constitutes your express acceptance without reservation to this AGREEMENT.

Use of the Subscription Service is also governed by our Privacy Policy and this AGREEMENT and any other terms of use applicable to services you register to use within a Subscription Service including any amendments or updates thereto.



FASTBRIDGE hereby grants to CUSTOMER and CUSTOMER hereby accepts from FASTBRIDGE a limited, non-exclusive, non-transferable, revocable license to access, print and use the MATERIALS for the limited purposes of assessing academic achievement and instruction of each LICENSED USER associated with CUSTOMER (as defined below).

CUSTOMER may not assign, sell, distribute, lease, rent, sublicense, or transfer the Subscription Service or the license granted CUSTOMER herein or disclose the Subscription Service to any other person or entity.

“CUSTOMER” is a person, organization, public entity, business entity or enterprise which: (1) has paid a license fee to or is otherwise authorized by FASTBRIDGE to access, print, display, and use the MATERIALS on behalf of a LICENSED USER; and (2) CUSTOMER and LICENSED USER have agreed to be bound by the terms and conditions of this AGREEMENT.

In this AGREEMENT, all references to CUSTOMER or YOU include LICENSED USER.

All references to US or WE include FASTBRIDGE.

“LICENSED USER” means:

(a) If CUSTOMER is a corporation, or public body such as a school, or school district, or similar organization, a LICENSED USER may include an individual employee, student, or agent to whom CUSTOMER has conferred the right to use the MATERIALS. Any such individual is subject to the terms and conditions of this AGREEMENT and agrees to be bound by the terms and conditions of this AGREEMENT by accessing, using, printing, and/or displaying the MATERIALS.

(b) If CUSTOMER is a post-secondary academic institution, academic library or similar research institution, a LICENSED USER may also include a post-secondary student and an academic researcher, provided that CUSTOMER identifies each to FASTBRIDGE and FASTBRIDGE consents to each. Any such entity is subject to the terms and conditions of this AGREEMENT and agrees to be bound by the terms and conditions of this AGREEMENT by accessing, using, printing, and/or displaying the MATERIALS.

Upon expiration or termination of this AGREEMENT, the nonexclusive limited license granted above shall automatically and immediately terminate and CUSTOMER agrees not to access, print, display, or use the MATERIALS and, upon request of FASTBRIDGE, to return all MATERIALS then in



possession of CUSTOMER to FASTBRIDGE or destroy and certify to FASTBRIDGE the manner and date that CUSTOMER destroyed all MATERIALS.

## 2. Authorization

The use of the MATERIALS is strictly limited to those provided for in this AGREEMENT. The MATERIALS may be used only for educational, academic research, and similar purposes. The MATERIALS may be used only for their stated and published purposes including monitoring of student performance scores, comparison of student performance scores, individually and across various cohort groups.

CUSTOMER agrees that the MATERIALS will not be:

- (a) used for any “for-profit” commercial activities, unless specifically agreed in writing by FASTBRIDGE, including any use of any trademarks, designs, or logos of FASTBRIDGE;
- (b) copied, duplicated, modified, translated, adapted, publicly displayed, or publicly performed without the express written consent of FASTBRIDGE;
- (c) downloaded, transmitted, or re-transmitted or transferred for the purpose of evading the prohibition on copying, duplication or modification;
- (d) sold, transferred, conveyed, pledged licensed, or sub-licensed;
- (e) reverse engineered, decompiled, disassembled or subject to efforts to derive source code for any software and/or computer code components of the MATERIALS; or
- (f) exploited for any purpose different from or contrary to the rights and interests of FASTBRIDGE or inconsistent with the stated terms and purposes of this AGREEMENT.

Notwithstanding the foregoing, some of the MATERIALS, including any assessment protocols, which include assessment probes, testing sheets and instructions and similar information, may be duplicated for the internal distribution and administration of student performance tests, and to train employees of CUSTOMER, including each LICENSED USER, consistent with this AGREEMENT.

## 3. Ownership



CUSTOMER is granted a non-exclusive limited license to use the MATERIALS under the terms of this AGREEMENT and only in the business or professional activities of CUSTOMER. All right, title, and interest in and to the MATERIALS, the Subscription Services, the student performance data CUSTOMER enters via the Subscription Services, the personal and business information FASTBRIDGE captures for registration and billing purposes, and all intellectual property rights in and to the MATERIALS, the Subscription Services and the website of FASTBRIDGE, and all other materials shall remain solely vested in, to and with FASTBRIDGE.

#### 4. Subscription Charges

FASTBRIDGE subscriptions are based on per student, per school year fees. The initial fee to activate a subscription is based on the estimate by CUSTOMER of the number of unique students that will have score data entered. FASTBRIDGE will run reconciliation reports in June of each subscription year and invoice for any overages at that time, which CUSTOMER must pay. FASTBRIDGE will not credit subscription fees for any reason at any time.

Certain “Subscription Services” are available only from FASTBRIDGE via a dedicated service subscription to which the following applies:

(a) CUSTOMER agrees to pay, using a valid credit card, purchase order, or check written against readily-available funds which is acceptable to FASTBRIDGE, the subscription fees set forth by FASTBRIDGE, applicable taxes, and other charges incurred on the account of CUSTOMER in order to access, print and use the Subscription Services. FASTBRIDGE reserves the right to change or institute new fees at the end of each subscription year, upon reasonable notice posted in advance on <http://www.FastBridge.org> or as otherwise provided. To continue to have access to the services, CUSTOMER must renew its Subscription Services on an annual basis. In the event CUSTOMER chooses not to renew FASTBRIDGE Subscriptions, FASTBRIDGE reserves the right to terminate CUSTOMER access to the Subscription Services. No refunds or credit will be granted for unused licenses remaining at the end of each subscription year or for any cancellation or termination for any reason at any time.

(b) In addition to the charges set forth above, CUSTOMER is responsible for all expenses and charges associated with accessing the Internet; connecting to the Subscription Service; and any service fees associated with such access and connection. CUSTOMER is also responsible for providing all equipment necessary for CUSTOMER to make such connection, including without



limitation, computer and modem and/or network connection. This includes all equipment and software used to load and print files saved in .pdf format.

(c) For purposes of identification and billing, CUSTOMER agrees to provide FASTBRIDGE with accurate, current and complete information as FASTBRIDGE may request or as otherwise required during registration for the Subscription Services, including, without limitation, the legal name, address, telephone number(s), e-mail address, and applicable payment data for CUSTOMER and to maintain and update this information to keep it accurate, current and complete. Failure to provide and maintain accurate, current and complete information may, at the option of FASTBRIDGE, result in immediate suspension or termination of this Agreement and the Subscription Services.

## **5. Password Confidentiality**

Each FASTBRIDGE CUSTOMER is provided a password protected account. CUSTOMER is solely responsible for maintaining the confidentiality of the CUSTOMER password and agrees that FASTBRIDGE has no obligations with regard to the use by third parties of such password. CUSTOMER is entirely responsible for any activity occurring under the CUSTOMER account and password, as well as the passwords of all LICENSED USERS within CUSTOMER account. CUSTOMER agrees to notify FASTBRIDGE immediately if CUSTOMER has any reason to believe that the security of CUSTOMER data or any password has been compromised.

Should CUSTOMER forget the password, FASTBRIDGE will reset it for CUSTOMER at CUSTOMER's request; however, in order to protect the privacy of CUSTOMER and the data of CUSTOMER, FASTBRIDGE may require CUSTOMER to provide specific information for verification purposes.

## **6. Privacy and Security**

FASTBRIDGE has taken reasonable actions, including use of encryption and firewalls, to ensure that data and information of CUSTOMER is disclosed only to those designated by CUSTOMER, as set forth in the FASTBRIDGE Privacy Policy. However, CUSTOMER acknowledges that the Internet is an open system and FASTBRIDGE cannot and does not warrant or guarantee that third parties will not intercept data and information of CUSTOMER.

## **7. Server Availability and Scheduled Down Times**





FASTBRIDGE schedules daily maintenance from 8:00 p.m. to 4:00 a.m. Central Time, Monday through Sunday. In the event a mission-critical maintenance situation arises, FASTBRIDGE may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, CUSTOMER may be temporarily unable to transmit and receive data. CUSTOMER agrees to accept the risk of such unavailability and to fully cooperate with FASTBRIDGE during the scheduled and emergency maintenance periods. Such maintenance is a required part of the Subscription Service and no refunds or adjustment shall be made relating to CUSTOMER'S inability to access the MATERIALS or Subscription Service during any scheduled or emergency maintenance periods.

## 8. Liability Disclaimer

THE MATERIALS AND THE SUBSCRIPTION SERVICES (INCLUDING ALL CONTENT, SOFTWARE AND FUNCTIONS) ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND "WITH ALL FAULTS" WITHOUT WARRANTY OF ANY KIND. FASTBRIDGE MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AVAILABILITY, OR UNINTERRUPTED ACCESS. FASTBRIDGE DISCLAIMS AND CUSTOMER WAIVES ALL LIABILITY ARISING FROM THE ACCESS, USE AND PRINTING OF THE MATERIALS AND PROVISION OF THE MATERIALS AND THE SUBSCRIPTION SERVICES. IN NO EVENT SHALL THE LIABILITY OF FASTBRIDGE TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES FOR ANY CAUSE WHATSOEVER RELATED TO OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO FASTBRIDGE DURING THE PRECEDING TWELVE MONTHS. IN NO EVENT WILL FASTBRIDGE BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE ANY MATERIALS OR THE SUBSCRIPTION SERVICE, EVEN IF FASTBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT ANY CLAIM ARISING FROM USE OF OR ACCESS TO THE MATERIALS OR THE PROVISION OF ANY SUBSCRIPTION SERVICES MUST BE MADE WITHIN ONE (1) YEAR OF THE FIRST DATE SUCH CLAIM FIRST ACCRUED OR SHALL BE DISMISSED AS UNTIMELY AND FOREVER BARRED. THIS LIMITATION OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OR OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF DATA



RECORDS, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.

BECAUSE SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT FASTBRIDGE IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD FASTBRIDGE LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF FASTBRIDGE OFFERINGS AND OPERATORS OF OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING THE SUBSCRIPTION SERVICES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

## 9. Indemnification

CUSTOMER hereby agrees to indemnify, defend, and hold harmless FASTBRIDGE from and against any and all claims, proceedings, damages, liability, and costs (including reasonable attorney fees) incurred by FASTBRIDGE in connection with any claim arising out of (i) any breach or alleged breach of any of CUSTOMER obligations set forth herein, (ii) any acts or omissions by CUSTOMER, or (iii) MATERIALS or information posted or transmitted by CUSTOMER in connection with the Subscription Service regardless of the type or nature of the claim. CUSTOMER shall cooperate as fully as reasonably required in the defense of any claim. FASTBRIDGE reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by CUSTOMER and CUSTOMER shall not in any event settle any matter without the written consent of FASTBRIDGE.

## 10. Arbitration

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS CAPABLE IN LAW OF BEING SUBMITTED TO BINDING ARBITRATION) AGAINST US, our agents, employees, officers, directors, successors, assigns or affiliates (collectively, for purposes of this paragraph, "Licensor Group") arising from or relating to this Agreement, its interpretation or the breach, termination or validity thereof, the relationships between the parties, whether pre-existing, present or future (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this



Agreement), Licensor Group's advertising or any related purchase SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE NATIONAL ARBITRATION FORUM ("NAF") under its Code of Procedure and any specific procedures for the resolution of small claims and/or consumer disputes then in effect (available via the Internet at [www.arb-forum.com](http://www.arb-forum.com), or via telephone at 1-800-474-2371). The arbitration will be limited solely to the dispute or controversy between CUSTOMER and FASTBRIDGE. Any award of the arbitrator(s) shall be final and binding on each of us, and may be entered as a judgment in any court of competent jurisdiction. Information may be obtained, and claims may be filed with the NAF at P.O. Box 50191, Minneapolis, MN 55405, or by email at [file@arb-forum.com](mailto:file@arb-forum.com), or by online filing at [www.arb-forum.com](http://www.arb-forum.com).

## 11. Injunctive Relief

You acknowledge and agree that it would be difficult to fully compensate FASTBRIDGE for damages resulting from the breach or threatened breach of this AGREEMENT and, accordingly, FASTBRIDGE will be entitled to seek injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, from a court of competent jurisdiction to enforce such provisions. This provision with respect to injunctive relief will not, however, diminish FASTBRIDGE's right to claim and recover damages.

## 12. Term and Termination

This License Agreement has a term of one (1) year and must be renewed annually by CUSTOMER for continued service.

Either CUSTOMER or FASTBRIDGE may cancel or terminate this Agreement upon sixty (60) days advanced written notice to the other via electronic mail or conventional mail, and all fees for the then-present term of this Agreement shall immediately become fully due and payable to FASTBRIDGE.

FASTBRIDGE reserves the right to restrict, suspend or terminate CUSTOMER access to the Subscription Services in whole or in part without notice and without liability, with respect to any breach or threatened breach of any portion of this AGREEMENT. If FASTBRIDGE terminates this AGREEMENT based on a breach of any portion of this AGREEMENT, FASTBRIDGE reserves the right to refuse to provide Subscription Services to CUSTOMER.



Subject to the FASTBRIDGE Privacy Policy, if the AGREEMENT is terminated by FASTBRIDGE for reasons other than breach of this AGREEMENT by CUSTOMER, any student data entered by CUSTOMER will be made available to CUSTOMER either through a third-party offsite vault storage provider or directly from FASTBRIDGE for up to twelve (12) months after termination. Additional charges to CUSTOMER may apply.

### **13. Modifications to Agreement and Subscription Services**

FASTBRIDGE reserves the right to modify this AGREEMENT and the software or policies associated with the Subscription Services and any MATERIALS at any time without advance notice to CUSTOMER. Customer's continued use of the Subscription Services following any modification shall be conclusively deemed an acceptance of all such modification(s).

FASTBRIDGE may add, change, discontinue, remove, or suspend any of the information, products, names, images, pictures, graphs, trademarks, icons, documents and materials, or features and specifications of products described, depicted, or posted within the MATERIALS and Subscription Service temporarily or permanently, at any time, without notice and without liability. Similarly, FASTBRIDGE may temporarily introduce minor changes to MATERIALS for a subset of LICENSED USERS for the purpose of efficacy and usability testing, which may include internal analysis of usage logs, subject to the FASTBRIDGE Privacy Policy, regarding such changes.

### **14. Student Data Export Requests**

CUSTOMER may request an export of their data at any time. FASTBRIDGE will produce regular backups of any student data of CUSTOMER. Assuming all fees owed by CUSTOMER are current and have been paid, CUSTOMER may request that any of the student data of CUSTOMER be copied to physical data storage media and provided to CUSTOMER. Charges to CUSTOMER apply for this service. This service (receiving data) will be available to CUSTOMER only during the term of this AGREEMENT and for a maximum period of twelve (12) months following the termination or expiration of this AGREEMENT. After the twelve (12) month period expires, all such data will be destroyed and not available to CUSTOMER.

### **15. Support**

At no additional charge, each CUSTOMER may use a comprehensive online customer service and assistance service, called "FastBridge Learning School Support." FASTBRIDGE agrees to exert



reasonable efforts to provide the FastBridge Learning School Support service to CUSTOMER, as well as telephone and email support, but each form of support is provided “AS IS” and “AS AVAILABLE” basis and CUSTOMER acknowledges that use of such support is at the sole risk of CUSTOMER. FASTBRIDGE reserves the right to change, suspend, or institute new support services at any time, upon reasonable notice posted in advance on <http://www.FastBridge.org> or as otherwise provided.

CUSTOMER agrees to promptly report to FASTBRIDGE all defects, inconsistencies, or issues arising from the MATERIALS and the Subscription Services.

## **16. Student Assessment**

The use, accuracy, and efficacy of the Subscription Service depends in large measure upon the accuracy and completeness of the data provided to FASTBRIDGE by CUSTOMER. CUSTOMER agrees that it will use the MATERIALS, and in particular the basic skill performance tests, protocols, reading passages, testing procedures, testing instructions, and all similar documents and information in a manner consistent with this AGREEMENT and applicable guidelines and directions from FASTBRIDGE.

## **17. Use of De-Identified Data for Innovation and Research**

Subject to the FASTBRIDGE Privacy Policy, CUSTOMER grants permission to FASTBRIDGE and its agents to use CUSTOMER data to maintain the software and to troubleshoot problems related to the software or related to CUSTOMER’s data. CUSTOMER further grants permission to FASTBRIDGE to use CUSTOMER data for educational research and high-quality assessment improvement activities in so far as FASTBRIDGE agrees to exclude any and all personally identifiable student data in any resulting reports or publications. CUSTOMER represents and warrants that CUSTOMER has obtained all consents necessary and is authorized to grant FASTBRIDGE the permissions contained herein.

## **18. Copyright, No Redistribution of Materials**

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## 20. Import Taxes and Fees

When you acquire items, physical or otherwise, through any of the Subscription Services for delivery outside the United States, YOU are considered an importer and, as between YOU and FASTBRIDGE, YOU will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and YOU must comply with all laws and regulations of the country in which YOU are receiving the goods. Your privacy is important to US and we know that YOU care about how information about your order is used and shared. We would like our international CUSTOMERS and CUSTOMERS dispatching products internationally to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.





## 21. Export Control Laws

The Subscription Services may be subject to United States and international export controls. By accessing the Subscription Services, YOU warrant that YOU are not located in any country, or exporting any Subscription Services, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods or which place restrictions on YOU that hinder, prohibit, or prevent YOU from accessing the Subscription Services. YOU agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Subscription Services that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

## 22. Governing Law

The laws of the State of Minnesota shall govern this AGREEMENT and the interpretation and issues of enforcement related thereto without regard to any conflicts of law's provisions therein. CUSTOMER agrees to the personal and subject matter jurisdiction of the court sitting in the State of Minnesota. In the event that any provision of this AGREEMENT is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be valid and enforceable according to its terms.

## 23. Assignment

You may not assign this AGREEMENT, or any right relating thereto, without the prior written consent of FASTBRIDGE, and any non-approved attempted assignment shall be null and void. This AGREEMENT shall be binding upon, and inure to benefit of, the successors and permitted assigns of the parties hereto.

## 24. Waiver

Failure of either party to object to any act or omission of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder. No waiver by any party at any time of any other provision of this AGREEMENT shall be deemed a waiver or breach of any other provision of the AGREEMENT or consent to any subsequent breach of the same of any other provision hereunder. If any act or omission by any party shall require the consent or approval of another party, such consent or approval of such act or omission on any one



occasion shall not be deemed a consent to or approval of said act or omission on any subsequent occasion or consent to or approval of any other act or omission on the same or any subsequent occasion. Waiver of any rights or remedies must be in a signed writing by the waiving party.

## 25. Headings

The paragraph headings in this document are for convenient reference only and shall not in any way affect the meaning or interpretation of this AGREEMENT.

## 26. Notices

Except as expressly stated otherwise, all notices to FASTBRIDGE shall be sent to the either the postal or email address provided herein, which FASTBRIDGE may update from time to time.

FastBridge Learning, LLC  
150 South Fifth Street,  
Suite 600  
Minneapolis, MN 55402  
[www.fastbridge.org](http://www.fastbridge.org)  
[help@fastbridge.org](mailto:help@fastbridge.org)

Except as expressly stated otherwise, all notices to YOU shall be sent electronically to YOU via the account YOU established with us. Such notice shall be deemed given on the date sent.

## 27. Force Majeure

Neither party to this AGREEMENT shall be liable for failure to perform or delay in performance of any of its obligations under the AGREEMENT (except payment of amounts already due and owing) where such failure or delay results from any act of God, extreme weather event, military operation, catastrophic event directly related to terrorist activity, national emergency, or the order, requisition, request or recommendation of any government agency or acting government authority, or any party's compliance therewith, or government probation, regulation, or priority, or any change in laws or regulations which prevent any party from providing services required by the AGREEMENT, or any other cause beyond any party's reasonable control whether similar or dissimilar to the foregoing causes.



## 28. Survival

Any provisions of the AGREEMENT which requires performance or grants a benefit after termination of the AGREEMENT shall be deemed to survive the termination of the AGREEMENT.

## 29. Interpretation

The AGREEMENT shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. Any ambiguity shall not be interpreted against the drafting party.

## 30. Entire Agreement

This AGREEMENT and the Privacy Policy set forth the entire understanding of the parties in respect of the transactions contemplated hereby and supersede all prior arrangements and understandings, whether written or oral, relating to the subject matter hereof.

## CONTACT US:

FastBridge Learning, LLC  
150 South Fifth Street,  
Suite 600  
Minneapolis, MN 55402  
612-254-2534  
[www.fastbridge.org](http://www.fastbridge.org)  
[help@fastbridge.org](mailto:help@fastbridge.org)

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