



Dear Dixon Public Schools ,

We are continuously upgrading our offerings to our clients. As you have seen, we have rebranded our company and our products. As part of this we would like to implement the following service agreement with your school district.

This is the New Lumen Touch Master Services Agreement that will supersede all previous agreements.

Please be sure to read this and ensure that all the people in your organization are aware of the conditions in this agreement.

Considering that the essence of our offering relates to the **confidentiality** of student data, we pay the utmost attention to all aspects of security governed by federal and state statutes. We build as many safety elements as possible to ensure that student data is secure at all times. We encourage you to inform us of any improvements you think can be brought about to enhance the integrity of our products.

Best regards,

Dr John Vandewalle CEO

## MASTER SERVICES AGREEMENT

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## MASTER SERVICES AGREEMENT

This Master Services Agreement ("**Agreement**") is made as of January 1, 2019 (the "**Effective Date**") by and between Dixon Public Schools ("**Customer**"), a School District having an office at 1335 Franklin Grove Road Dixon, IL 61021 and Lumen Touch, LLC, a Kansas Limited Liability Company ("**Provider**"). In consideration of the mutual covenants set forth herein, Customer and Provider hereby agree as follows:

### 1. SERVICES

**1.1 Services.** Provider will supply the services and/or products (the "**Services**") set forth in any Additional Service Order executed by the parties in the form of Exhibit A attached hereto and incorporated herein ("**Additional Service Order**" or "**ASO**"). Provider will provide the Services in accordance with the specifications and schedule set forth in the applicable ASO. To the extent any terms or provisions of an ASO conflict with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control, except to the extent such ASO specifically states the parties' intent that such ASO controls with respect to a particular matter. If the parties do not agree upon a schedule or milestones for the performance of certain Services, then Provider will perform such Services with reasonable diligence under the circumstances. Customer registration for, or use of the Services, constitutes Customer's assent to this Agreement, as well as any terms and conditions available on Provider's website (located at <http://www.lumentouch.com>), including, but not limited to Provider's Privacy Policy and End User License Agreement ("**EULA**"). Provider will do its best to inform Customer of any significant changes to the Services or terms and conditions of this Agreement that it may make from time to time, but there may be times when advance notice from Provider is not practical or feasible. Customer acknowledges it is responsible to regularly check Provider's website for updates and changes.

**1.2 Performance Standards.** The parties will consult and cooperate to coordinate the Services with the activities of Customer's representatives. Provider will supply the Services in accordance with the terms of the ASO and the specifications therein and in a manner consistent with general industry standards reasonably applicable to the provision of the Services.

**1.3 Features License & Restrictions.** If the Services include access to any of Provider's databases, content, online systems, functions, software, remotely-accessed gateways, platforms, or other products (collectively, "**Features**") such access shall be governed by this paragraph. Access to certain Features may be restricted and Features may change from time to time. Provider hereby grants Customer a non-exclusive, non-transferable, limited license ("**License**") to access the Features and to use content made available by the Features ("**Content**"), solely for Customer's internal business and educational purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by Provider and its licensors. Except as otherwise provided with respect to certain Content, the License includes the right to download and temporarily store insubstantial portions of Content to a storage device solely: (i) to display such Content; and (ii) to quote and excerpt from such Content by electronic cutting and pasting or other means in internal reports, lesson plans, lessons, and similar works created by Customer, its administrators, teachers, enrolled students, or parents or legal guardians of Customer's enrolled students. The License shall expire upon termination or expiration of the Term of this Agreement.

No individual shall be authorized to access Features or Content under the License unless such individual is an administrator, employee, teacher, consultant, contractor, agent, enrolled student, or a parent or legal guardian of an enrolled student of Customer. The number of individuals authorized to access the Features under the License shall be set in the applicable ASO and Provider will supply Customer

with an equal number of distinct keys, codes, passwords, or similar devices ("Access Keys") which will permit individuals authorized to access the Features and Content ("Users") to access the Features and Content. When issued by Provider, Access Keys shall be assigned to specific individuals and shall not be shared or used by more than one individual User. Access Keys may be reassigned upon written request and authorization of Provider in the event a User's relationship with Customer changes such that the User no longer accesses Features or Content. Certain Features and Content are licensed subject to "Additional Terms" (as defined below), which take precedence over the rights granted in this Section.

Neither Customer nor any User may copy, download, store, publish, transmit, transfer, sell or otherwise use the Features or Content, or any portion thereof, in any form or by any means, except: (i) as expressly permitted by this Agreement; (ii) with Provider's prior written permission; or (iii) if not expressly prohibited by this Agreement or by the "Additional Terms," as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Features and Content shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement. Neither Customer nor any User shall: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party, the Features or the Content in any way; (ii) modify or make derivative works based upon the Features or the Content; (iii) create Internet "links" to the Features or Content or "frame" or "mirror" any Features or Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Features or Content in order to: (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Features or Content, or (c) copy any ideas, features, functions or graphics of the Features or Content. Neither Customer nor any User may access the Features or Content if Customer or User is a competitor of Provider, except with Provider's prior written consent. In addition, neither Customer nor any User may access the Features or Content for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

Certain Features or Content may be governed by terms and conditions, including charges, which are different from those set forth in this Agreement ("Additional Terms"). Customer will be given an opportunity to review Additional Terms by receiving notice in writing, online, or by other means which Provider may determine. Additional Terms may be modified effective upon Provider giving Customer notice of the modification. By using Features or Content governed by Additional Terms, Customer agrees to, and Customer and Users will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement.

**1.4 Remote Backup and Disaster Recovery Service.** As an additional service, and at an additional cost, Provider may offer to supply a periodic remote backup of "Customer Data" (defined below) in the event of a server malfunction, catastrophic event, or other data loss ("Disaster Recovery Service"). **Unless otherwise stated in an ASO, Disaster Recovery Service is not included in the Services. If Disaster Recovery Service is not included on the applicable ASO, Customer is solely responsible for any backup, disaster recovery, and restoration of Customer Data.** If Provider supplies data restoration services following a server malfunction, catastrophic event, or other data loss, Customer will be charged Provider's then-current rate.

**1.5 Data Storage.** The maximum disk storage space provided to Customer at no additional charge is 5 MB per User. If the amount of disk storage required exceeds these limits, Customer will be charged the then-current storage fees. Provider will use reasonable efforts to notify Customer when the average storage used per User reaches approximately 90% of the maximum; however, any failure by Provider to notify Customer shall not affect Customer's responsibility for such additional storage charges. Provider reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

## 2. COMPENSATION

**2.1 Service Fees.** For delivery of the Services, Customer agrees to pay Provider the fees as set forth in this Agreement and any ASO ("**Service Fees**"). To the extent that the Services are subject to any taxes, fees or levies of any nature which may be imposed by any governmental authority, Customer shall be solely responsible for the payment of any and all such taxes, fees or levies. For Services including access to Features, initial Service Fees are computed by multiplying the number of individual Users authorized to access the Features by the Individual User Fee provided in the ASO. Notwithstanding any ASO, Provider reserves the right to modify the Service Fees or add additional fees at any time, upon thirty (30) days' prior notice to Customer and Customer's continued use of the Services shall be deemed Customer's assent to such modifications and/or additional fees unless Customer notifies Provider in writing within such thirty (30) day period that Customer declines such modifications and/or additional fees.

**2.2 Invoices/Manner of Payment.** Service Fees are non-refundable and shall be fully earned, due and payable to Provider upon execution of this Agreement for the initial Term of the Agreement, and annually thereafter for renewal terms no later than thirty (30) days in advance of the anniversary of the Effective Date, without demand, unless otherwise mutually agreed by the parties in writing. If additional ASOs are added after the Effective Date which do not include specific payment provisions, Provider shall send Customer for each ASO one or more separate invoices, which invoice(s) shall summarize the Services provided during that period of time under such ASOs and the Service Fees due thereunder. Except as otherwise provided, Customer shall pay all amounts to Provider within thirty (30) days after Customer's receipt of such invoice(s). If Customer believes an invoice is incorrect, Customer must contact Provider in writing within sixty (60) days of the invoice date. The notice must contain the invoice and amount in question to be eligible to receive an adjustment or credit.

Customer agrees to supply Provider with complete and accurate billing and contact information, including without limitation, Customer's legal name, street address, e-mail address, name and telephone number of Customer's authorized billing agent and any individuals authorized to approve "Change Order Estimates" (defined below) and administer Customer's use of the Services on behalf of Customer ("**License Administrator**"). Customer agrees to update this information within thirty (30) days of any change.

**2.3 Change Orders, Additional Access to Features.** Customer may from time to time request additional Services, including without limitation increasing (but not decreasing) the number of individual Users authorized to access Features, by issuing a written request to Provider ("**Change Order Request**"). Provider will respond in writing to any Change Order Request, stating how such proposed changes to the Services will affect the time and/or materials required for Provider to provide the Services, as well as the increase in the Service Fees ("**Change Order Estimate**"). If Customer agrees in writing to such Change Order Estimate, the applicable ASO will automatically be deemed amended to incorporate the revisions to the Services as set forth in the Change Order Request (or as otherwise mutually agreed by the parties) and any agreed-upon modifications to the time, materials and/or Service Fees as set forth in the Change Order Estimate (or as otherwise mutually agreed by the parties). If Provider authorizes an increase in the number of individual Users authorized to access Features: (i) such additional access shall be coterminous with the then-current Term of this Agreement; (ii) the fee for the added access shall be at Provider's then-current rate; and (iii) such additional charges shall be assessed as of the first day of the month in which such access is granted, without proration.

**2.4 Non-Payment and Suspension.** In addition to any other rights granted to Provider herein, in the event Customer fails to pay Provider any amounts owed Provider under the Agreement when due, Provider may suspend provision of Services under the Agreement until such amounts (together with interest and Provider's costs of collection, including without limitation court costs and reasonable attorneys' fees) are paid, or Provider may terminate the Agreement pursuant to Section 8. All such unpaid amounts shall bear interest at the maximum rate permitted by law, and may be collected by Provider

together with Provider's costs of collection including, without limitation, court costs and reasonable attorneys' fees. Suspension of Services under this Section shall not relieve Customer of its obligation to pay Service Fees under this Agreement. Provider may charge Customer a reconnection fee at Provider's then-current rate if Customer requests that Services resume after a period of suspension under this Section. Customer agrees that Provider has no obligation to retain Customer Data and that Customer Data may be irretrievably deleted without notice if Customer's account is thirty (30) days or more delinquent.

### 3. CONFIDENTIALITY

**3.1 Confidentiality Obligation.** During the term of this Agreement and for a period of ten (10) years thereafter, Customer will maintain all "Confidential Information" (as defined below) as confidential and Customer will not disclose any Confidential Information or use any Confidential Information for any purpose, without Provider's prior written consent, except: (i) as expressly authorized by this Agreement; (ii) as permitted by Section 3.3; or (iii) to its employees and Provider-approved subcontractors or other representatives who require access to such information for Customer to realize the benefit of the Services, so long as such persons are under obligations regarding the confidentiality of the Confidential Information that are consistent with and no less protective to Provider than the terms of this Agreement. Customer will use at least the same standard of care as it uses to protect its own confidential information (but in no event less than reasonable care) to ensure that its employees and Provider-approved subcontractors and other representatives do not disclose or make any unauthorized use of the Confidential Information, and Customer shall be responsible for any breach of this Agreement by any of its employees, subcontractors or other representatives.

**3.2 Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" means all information, whether in oral, written, graphic or electronic form, provided or otherwise made available by or on behalf of Provider to Customer pursuant to or in connection with this Agreement, any ASOs and/or any separate confidentiality or non-disclosure agreement entered into by the parties (including, without limitation, all information relating to any of Provider's products made available to Customer, Service Fees, Access Keys, and terms of this Agreement), and all data, inventions and information developed, generated, produced or made in connection with the Services or any ASOs. Notwithstanding the foregoing, Confidential Information shall not include information which Customer can demonstrate by competent written proof: (i) is or becomes publicly known other than as a result of any breach of this Agreement by Customer; (ii) is disclosed to Customer by a third party who rightfully possesses the information and is not under an obligation of confidentiality with respect thereto; or (iii) was known to Customer prior to its first receipt from Provider (whether such first receipt occurred before or during the term of this Agreement); *provided that* "Work Product" and "Intellectual Property" (as defined below) shall not be subject to the exception in the foregoing clause (iii) and shall in all events be Confidential Information of Provider.

**3.3 Authorized Disclosure.** Notwithstanding the provisions of Section 3.1, Provider may disclose Confidential Information, without violating its obligations under this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body having jurisdiction or is otherwise required by law or regulation, *provided that* Customer: (i) shall give reasonable prior written notice to Provider of such required disclosure; (ii) shall obtain, or shall cooperate with Provider's efforts to obtain, a protective order or other confidential treatment of such Confidential Information; and (iii) shall disclose only that portion of the Confidential Information which the Customer's legal counsel advises it is legally required to disclose.

**3.4 Additional Limits on Use.** Customer shall not use the Confidential Information for any purpose or in any manner that would constitute a violation of any law or regulation. Customer will take all appropriate steps to safeguard the Confidential Information and to protect it against disclosure, misuse,

espionage, loss and theft. Customer shall promptly notify Provider in the event of any loss or unauthorized use or disclosure of any of the Confidential Information.

#### 4. PROPRIETARY RIGHTS

**4.1 Provider's Work Product & Intellectual Property.** Provider shall own and retain all right, title and interest in and to: (i) all deliverables, reports, documents, techniques, know-how, algorithms, software, specifications, plans, notes, drawings, designs, pictures, inventions, data, information, conclusions, results, materials, compounds and other items authored, produced, provided, created, collected, developed, discovered, made or generated in the course of conducting, or otherwise in connection with, the Services ("**Work Product**"), and (ii) any and all patent rights, copyrights, trade secrets, trademark rights and other intellectual property rights in the Work Product ("**Intellectual Property**"). To the extent applicable, Provider shall be deemed to be the "author" of all Work Product and all works of authorship contained in any Work Product shall not constitute "work made for hire" under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.) or any other applicable copyright law. Customer hereby waives any and all moral rights (including rights of integrity and attribution) in and to the Work Product. Customer hereby assigns to Provider all right, title and interest in and to all Work Product and Intellectual Property. At Customer's expense, Customer shall execute and deliver all documents and take all actions necessary or desirable to vest in Provider all right, title and interest in and to Work Product and Intellectual Property and for Provider to apply for, obtain, perfect, maintain and enforce the Intellectual Property and any other proprietary protection relating to the Work Product. Customer will not contest the validity of Provider's rights in the Work Product or the Intellectual Property. All Work Product will be deemed to be the Confidential Information of Provider under and subject to Section 3. Provider shall have the right to review, publish, disclose and use any and all Work Product as Provider, in its sole discretion, deems appropriate.

**4.2 Proprietary Material.** Customer acknowledges that Provider alone (and its licensors, where applicable) own all right, title and interest, including all related intellectual property rights, in and to all constituents of the Services, including without limitation, the Features, Content, Customer Data, Provider's technology, the "Lumen Touch, LLC" name, the Lumen Touch, LLC logo and the product names and marks associated with the Services ("**Proprietary Material**") and Customer acknowledges that this Agreement does not convey to Customer any rights of ownership in or related to the Proprietary Material. Customer agrees to abide by all copyright notices, trademark rules, information, and restrictions applicable to Proprietary Material, and Customer agrees to not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose Proprietary Material, without obtaining the prior consent of the owner of that Proprietary Material. The requirements of this paragraph apply notwithstanding any functional capability of the Services which makes the violation of this paragraph technically possible. Provider reserves the right to remove material from the Services, Features, Content, or Customer Data, which Provider believes in good faith to violate copyright or intellectual property rights.

**4.3 Customer Data.** Customer grants Provider a world-wide, royalty-free, perpetual, irrevocable, non-exclusive, and fully sub-licensable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, transmit, share, perform and display any data, information, material, or content provided or submitted by Customer or any User to Provider or to the Features in connection with the Services ("**Customer Data**"), in whole or part, worldwide and/or to incorporate Customer Data in other works in any form, media, or technology now known or later developed for any of Provider's purposes, including without limitation, the development, manufacture, use, sale, or offer for sale of Provider's products, services, or processes. The rights granted Provider under this paragraph shall survive termination of this Agreement. Customer agrees to perform all further acts necessary to perfect any of the above rights granted by Customer to Provider, including the execution of documents, at Provider's request and at Customer's cost. Customer and/or User(s) retain any rights in Customer Data that

Customer and/or User(s) may have in such Customer Data, subject to the rights, licenses and privileges granted in this Section.

Customer represents and warrants to Provider that Customer owns or otherwise has adequate rights to grant the rights granted Provider by this Section. Customer represents, warrants and undertakes that: (i) use of the Customer Data will not infringe the rights of any third parties (including that the Customer Data is not defamatory); (ii) Customer has obtained all rights and consents that are necessary for Customer to provide the Customer Data; (iii) Customer is solely responsible for complying with the Children's Online Privacy Protection Act (15 U.S.C. § 6501 et seq.) and Customer has obtained advance written consent from all parents or guardians whose children under 13 will be accessing Services and Provider is entitled to rely upon the same; and (iii) Customer will immediately remove and notify Provider of any Content that does not comply with these terms and conditions or that may infringe the rights of third parties.

Customer, not Provider, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of Customer Data. Customer acknowledges that other persons may have submitted content to Provider, may have made public or developed, or may originate, submit, make public or develop, material similar or identical to all or a portion of the Customer Data, content or concepts contained therein, and Customer understands and agrees that neither Customer nor User(s) shall be entitled to any compensation because of the use or exploitation thereof, and the submission of Customer Data, or any posting or display thereof, is not any admission of novelty, priority or originality. Even if Customer and/or User(s) subsequently see or learn of a presentation, sound recording, composition, demo, idea, script, drawing, motion picture, photograph, film, video or any other content which appears to incorporate any idea or concept or include anything similar or identical to that contained in any Customer Data, that is purely coincidental and unavoidable.

Provider shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of Customer breach), Provider will make available to Customer, a file of the Customer Data within thirty (30) days of termination if Customer so requests, in writing, within five (5) business days of termination. Provider reserves the right to withhold Customer Data without notice for any breach by Customer, including, without limitation, Customer non-payment or under payment.

## **5. CUSTOMER RESPONSIBILITIES**

**5.1 Responsible for Users.** Customer is responsible for all activity of User(s). Customer agrees that Customer and Users(s) will abide by all applicable local, state, federal, and foreign laws, treaties and regulations in connection with use of the Services, including without limitation those related to data privacy, international communications and the transmission of technical or personal data.

**5.2 Obligation to Report.** Customer shall: (i) notify Provider immediately of any unauthorized use of any Access Key or account or any other known or suspected breach of security; (ii) report to Provider immediately and use reasonable efforts to stop any unauthorized copying or distribution of Content that is known or suspected by Customer or User(s); and (iii) not impersonate User(s) or provide false identity information to gain access to or use the Services.

**5.3 Children's Privacy.** Customer is solely responsible for complying with the Federal and State Regulations including the Children's Online Privacy Protection Act (15 U.S.C. § 6501 et seq.), the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the National School Lunch Act (79 P.L. 396, 60 Stat. 230).

Customer hereby agrees to obtain on behalf of, and for the benefit of Provider, advance written consent in writing for any User that is a child under 13 years of age from the parent(s) or guardian(s) of such child. Such parental consent must specifically authorize the child to use the Services and authorize

the child to disclose personal information to Provider for the purposes allowed by this Agreement. Customer is responsible for understanding how any third-party software or services accessed through or obtained from the Services may collect and use information of Users. When obtaining consent, Customer must provide parents and guardians with any disclosing or disclaiming information provided to Customer by Provider, including without limitation Provider's Privacy Policy, to accompany the consents. Customer must keep all consents on file and provide them to Provider should Provider request them. The written consent that Customer agrees to obtain from parents or guardians of Users under the age of 13 must contain the following information in Subsections (i) through (vi):

- i. That Provider has collected the parent's or guardian's online contact information from the child, and the name of the child or the parent or guardian, in order to obtain the parent's or guardian's consent;
- ii. That the parent's or guardian's consent is required for the collection, use, or disclosure of such information, and that Provider will not collect, use, or disclose any personal information from the child if the parent or guardian does not provide such consent;
- iii. That, should the parent or guardian provide consent, Provider intends to collect personal information from the child consistent with Provider's Privacy Policy and any other disclosing or disclaiming information provided to the parent or guardian;
- iv. A hyperlink to Provider's online notice of its information practices containing the name, address, telephone number, and email address of Provider; a description of what information Provider collects from children, including whether the Services provided by Provider enable a child to make personal information publically available, how Provider uses such information, and Provider's disclosure practices for such information;
- v. The means by which the parent or guardian can provide verifiable consent to the collection, use, and disclosure of the information; and
- vi. if the parent or guardian does not provide consent with a reasonable time from the date the direct notice was sent, Provider will delete the parent's online contact information from its records.

## **6. REPRESENTATIONS AND WARRANTIES**

Customer represents and warrants to Provider as follows:

**6.1** Customer has properly identified itself and has all necessary right, power and authority to execute this Agreement and grant the rights herein;

**6.2** The execution of this Agreement and provision of the Services by Provider will not violate any service, confidentiality, consulting or other agreement to which Customer or its employees is a party or by which Customer or its employees may be bound.

**6.3** Customer incorporates the additional representations and warranties located in any other Sections of this Agreement as though completely set forth in this Section.

## **7. INDEMNIFICATION**

**7.1 Indemnity.** Customer agrees to defend, hold harmless, and indemnify Provider and its affiliates and their respective directors, officers, employees, agents, and assigns ("**Indemnified Parties**"), from and against any and all claims, damages, losses, suits, actions, demands, proceedings, expenses, and/or liabilities of any kind, (including but not limited to reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification) (collectively, "**Claims**") to which such Indemnified Party(ies) may become subject to the extent that such Claims arise out of or result from:



(i) the default or breach by Customer of any obligation, representation, warranty, covenant or agreement hereunder; or (ii) the negligent act or omission or willful misconduct of Customer or its employees, consultants, subcontractors, representatives, agents, enrolled students, parents and/or legal guardians of Customer's enrolled students.

**7.2 Procedure.** Provider will have the right to approve the counsel selected by Customer for defense of the Claims. Provider will provide Customer reasonably prompt written notice of any such Claims and provide Customer with reasonable information and assistance, at Customer's expense, to help Customer to defend such Claims. Customer will not have any right, without Provider's written consent, to settle any such Claim if such settlement contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of Provider or its affiliates, subjects Provider or its affiliates to any injunctive or other relief or otherwise adversely affects the business of Provider or its affiliates in any manner, or otherwise requires Provider or its affiliates to take or refrain from taking any material action (such as the payment of fees).

## **8. TERM AND TERMINATION**

**8.1 Term.** The term of this Agreement (the "Term") will commence on the Effective Date and will continue for a period of two (2) years thereafter, unless earlier terminated as provided herein. The Term will automatically renew for periods of one (1) year each, unless one party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term. Upon renewal, Customer agrees to pay Provider's then-current Service Fees applicable to the Services.

**8.2 Termination For Cause.** Except as otherwise specifically provided in this Agreement, either party may terminate this Agreement or an individual ASO if the other party materially breaches this Agreement. In the case of a material breach that is not capable of being cured, the non-breaching party may terminate this Agreement immediately upon giving written notice of termination. In the case of a material breach that is capable of being cured, the non-breaching party shall send written notice to the breaching party describing the breach in reasonable detail, and the non-breaching party may terminate this Agreement if the breaching party does not cure such breach within thirty (30) days following its receipt of such notice. A breach by Customer of the obligations set forth in Sections 2 shall be deemed a material breach for purposes of this Section, in addition to and without limitation of any other material breach which may arise.

**8.3 Effect of Termination.** Upon the termination of this Agreement and any then outstanding ASO by Customer without cause, Customer shall pay to Provider as liquidated damages any amounts due and remaining unpaid for the remainder of the then-current Term, together with interest accruing as of such termination at the maximum rate permitted by law and Provider's costs of collection, including without limitation, court costs and reasonable attorneys' fees. The parties acknowledge and agree that this is a reasonable estimate of the actual damages which will be sustained by Company should Customer terminate early without cause. Following termination or expiration of this Agreement, (i) Customer will promptly provide all Work Product to Provider (including any unfinished Work Product), (ii) Customer will return any Confidential Information and any property of Provider within ten (10) days from the date of such termination or expiration, (iii) the terms and conditions of Sections 3, 4, 7, 8, 9, 10, and 11 will survive such termination or expiration of this Agreement, and (iv) at Customer's request, Provider will make its staff available to assist with any transition of the Services at Provider's then-current hourly rates, and (v) Provider shall have no obligation to retain Customer Data and may delete Customer Data thirty (30) days after termination of the Agreement.

## **9. RECORDS, INSPECTIONS AND AUDIT**

During the Term and for a period of five (5) years thereafter or, if later, until expiration of the minimum retention period required by applicable laws, rules and regulations, and subject to the

continuing confidentiality obligations under Section 3, Customer will maintain accurate and complete records related to the Services and this Agreement. Provider shall not destroy any such records unless and until it has obtained Provider's prior written permission to do so. At Provider's written request, Customer shall continue to maintain any such records beyond the applicable period specified above, subject to payment by Provider of reasonable storage fees, or shall transfer such records to Provider or its designee at Customer's expense. Representatives of Provider may visit Customer's facilities or meet with Customer or its representatives at reasonable times and with reasonable frequency during normal business hours to observe and evaluate the progress of the Services. If any regulatory authority conducts or gives notice to Customer of its intent to conduct an inspection of the Services at Customer's facilities or to take any other regulatory action with respect to the Services, Customer shall notify Provider of the same and shall promptly provide Provider with a copy of the results of any such regulatory inspection or action. Provider may, upon twenty-four (24) hours' notice, audit Customer's records relating to the Services and consult with Customer's accountants for the purpose of verifying Customer's compliance with the terms of this Agreement.

## **10. LIMITATION OF LIABILITY**

**10.1 Responsibility for Content and Customer Data.** All Content and Customer Data is the sole responsibility of the person from whom such content originated, and Customer or User(s) access all such information and content at their own risk. Provider is not liable for any errors or omissions in such information or for any damages or loss Customer or User(s) may suffer in connection with it. Provider cannot control and Provider assumes no duty to take any action regarding how Customer or Users may interpret or use the Content or what actions Customer or Users may take as a result of having been exposed to the Content, and Customer hereby releases Provider from all liability for Customer or User(s) having acquired or not acquired Content through the Service. Provider cannot guarantee the identity of any users with whom Customer or User(s) interact in using the Services and Provider does not assume any duty or responsibility for any users of other customers who may gain access to the Services.

**10.2 Third Party Materials.** The Services may contain links or connections to third party websites or services that are not owned, operated, or controlled by Provider. If Customer or Users access third party websites or use third party services, Customer accepts that there are risks in doing so, and agrees that Provider cannot be held liable with respect to the same. Provider encourages Customer and Users to read the terms and conditions and privacy policy of each third party website or service that Customer or Users may visit or utilize. Provider assumes no responsibility for the content in any third party website or from any third party that Customer or User may interact with through the Service. By using the Service, Customer releases and holds Provider harmless from any and all liability arising from Customer's or Users' use of any third party website or service. Customer recognizes that certain third party providers of ancillary software, hardware or services may require that Customer or Users agree to additional or different license or other terms prior to Customer's or Users' use of or access to such software, hardware or services, and that any such subsequent agreement or license between Customer and third party providers of ancillary software shall not relieve Customer of any responsibilities Customer incurs by reason of this Agreement.

**10.3 DAMAGES.** THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES IS WITH THE CUSTOMER. EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY) OR INDEMNIFIED CLAIMS UNDER SECTION 7 (INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER FOR THE TERM DURING WHICH THE EVENT GIVING RISE TO SUCH CLAIM OCCURS. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY

CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.4 INTERNET & ELECTRONIC COMMUNICATIONS.** PROVIDER'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS EXCEPT AS SET FORTH IN THIS AGREEMENT.

#### **11. DISCLAIMER OF WARRANTIES**

PROVIDERS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT OR CUSTOMER DATA. PROVIDER AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (i) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (ii) THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS; (iii) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER OR USERS THROUGH THE SERVICE WILL MEET CUSTOMER OR USER REQUIREMENTS OR EXPECTATIONS; (v) ERRORS OR DEFECTS WILL BE CORRECTED; OR (vi) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES AND ALL CONTENT IS PROVIDED TO CUSTOMER AND USERS STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY PROVIDER AND ITS LICENSORS.

#### **12. MISCELLANEOUS**

**12.1 Notices.** All notices, authorizations, and requests in connection with this Agreement shall be in writing and will be deemed given: (a) on the day they are sent by air express courier, charges prepaid; or (b) on the day of transmittal if sent by confirmed facsimile, or by other means of accepted electronic communication, in each case to the address set forth below or to such other address as the party to receive the notice or request so designates by written notice to the other.

If given to Provider:

Lumen Touch, LLC  
10502 NW Ambassador Dr.  
Kansas City, MO 64153  
Attention: CEO

If given to Customer:

Dixon Public Schools  
1335 Franklin Grove Road  
Dixon, IL 61021  
Attention: Superintendent Margo Empen [Manager]

**12.2 Relationship of Parties.** Provider's relationship with Customer is that of an independent contractor and nothing in this Agreement shall be construed as creating a partnership, joint venture or

employer-employee relationship between the parties. Provider acknowledges that it is not authorized to make any contract, agreement or warranty on behalf of Customer. Under no circumstance will one party's employees be construed to be employees of the other party, nor will one party's employees be entitled to participate in the profit sharing, pension or other plans established for the benefit of the other party's employees.

**12.3 No Exclusivity.** Notwithstanding anything contained herein to the contrary, the parties agree that nothing contained in this Agreement or any ASO will be construed as creating an exclusive relationship between the parties. Nothing in this Agreement will prevent either Provider or Customer from entering into the same or similar relationship with others.

**12.4 Governing Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Kansas, without reference to its choice of law principles to the contrary. Neither party will commence or prosecute any action, suit, proceeding or claim arising out of or related to this Agreement other than in the United States District Court for the State of Kansas or the District Court of Johnson County, Kansas. Each party hereby irrevocably consents to the jurisdiction and venue of such courts in connection with any such action, suit, proceeding or claim. In any suit, arbitration, mediation or other action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the substantially prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

**12.5 Waiver.** No waiver of any term, condition or obligation of this Agreement will be valid unless made in writing and signed by the party to which such performance is due. No failure or delay by any party at any time to enforce one or more of the terms, conditions or obligations of this Agreement will (a) constitute a waiver of such term, condition or obligation, (b) will preclude such party from requiring performance by the other party at any later time, or (c) will be deemed to be a waiver of any other subsequent term, condition or obligation, whether of like or different nature.

**12.6 Assignment.** This Agreement may not be assigned by Customer without the prior written approval of Provider but may be assigned without Customer consent by Provider to: (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a competitor of Provider directly or indirectly owning or controlling 50% or more of Customer shall entitle Provider to terminate this Agreement for cause immediately upon written notice.

**12.7 Severability.** This Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Agreement is held to be invalid or unenforceable to any extent, then the remainder of this Agreement will have full force and effect and such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision.

**12.8 Entire Agreement.** This Agreement, together with all ASOs attached hereto, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all oral understandings, representations, prior discussions and preliminary agreements. Except as otherwise expressly stated herein, this Agreement and any ASOs hereto may be amended only in writing signed by all parties, and no text or information set forth on any purchase order, preprinted form or document (other than a final ASO, if applicable) shall add to or vary the terms and conditions of this Agreement.

**12.9 Counterparts; Electronic Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Each party may execute this Agreement by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail. Facsimile or PDF signatures of authorized signatories of the parties

will be deemed to be original signatures, will be valid and binding, and, upon delivery, will constitute due execution of this Agreement.

**12.10 Read and Understood.** Each Party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions. Each Party acknowledges that this Agreement shall not be construed for or against either Party by reason of who did or did not draft this Agreement. The provisions of this Agreement shall be binding upon and will inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

**13. PRIOR AGREEMENT(S)**

**13.1 Termination of Prior Agreement(s).** This Agreement, upon execution, will hereby terminate and supersede all prior understandings, representations, discussions, commitments, and agreements, both verbal and written, between the Parties. All agreements and commitments between the Parties must be contemplated in this Agreement to be considered in effect and binding between the Parties.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.**

**Signatures:**

**Dixon Public Schools**

Representative Name: \_\_\_\_\_

Representative Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**LUMEN TOUCH**

Representative Name: \_\_\_\_\_

Representative Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**ADDITIONAL SERVICE ORDER (ASO)**

This Additional Service Order, dated January 1, 2019, is made pursuant to that certain Master Services Agreement (the "Agreement"), dated January 1, 2019 by and between LUMEN TOUCH, LLC ("Provider") and Dixon Public Schools ("Customer"). All capitalized terms, where not otherwise defined in this Additional Service Order, will have the meanings set forth in the Agreement.

Fees listed in this ASO are current as of January 2019 and are subject to change from time to time.

Provider will issue notice to Customer in the event fees are scheduled to be modified.

**A. Products Purchased / Included:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Bright STUDENT – Student Information          | <input checked="" type="checkbox"/> Bright CARE – Health Management              |
| <input checked="" type="checkbox"/> Bright LEARNING – Curriculum Management       | <input type="checkbox"/> Bright INSIGHT – Data Dashboards                        |
| <input checked="" type="checkbox"/> Bright RESOURCE – Library and Inventory       | <input checked="" type="checkbox"/> Bright SUCCESS – College and Career Planning |
| <input checked="" type="checkbox"/> Bright SPACE 1 – Emergency Message Management | <input type="checkbox"/> Bright SPACE 2 – Social Media Management                |
| <input checked="" type="checkbox"/> Bright SPED – Special Education Management    | <input type="checkbox"/> Bright STEPS – Early Learning Management                |
| <input type="checkbox"/> Bright PATH – Professional Development                   | <input checked="" type="checkbox"/> <b>Bright SUITE– All-In-One Bundle</b>       |
| <input type="checkbox"/> Bright TRACKS 1 – Tracking buses                         | <input type="checkbox"/> Bright TRACKS 2 – Tracking students                     |
| <input type="checkbox"/> Bright CODE –Contract Design Services                    | <input type="checkbox"/> Bright SAGE INTACCT - Financial Management              |

**B. Delivery Schedule and Milestones:**

**C. Lumen Services Purchased/Included:**

- Training Package
- Lumen Touch Hosting
- SSL Certificate: Included
- Lumen Backup & Recovery Service
- Lumen Hardware Maintenance

**D. Product/Service Fees:**

- Unit Fee for Year 2019-2020: Bright SUITE (\$12.50) Bright SPACE 1 (\$2.65)  
Unit Fee for Year 2020-2021: Bright SUITE (\$12.75) Bright SPACE 1 (\$2.65)  
Estimated student count\*: 2756  
*(\* Units are calculated from district summary/count data on October 1<sup>st</sup>)*

Service	Fee based on:	2019-20 Fee	2020-21 Fee (est.)
Bright SUITE	Per K-12 Student	\$34,450.00	\$35,139.00
Bright SPACE 1	Per K-12 Student	\$7,303.40	\$7,303.40

**2. Additional Service Fees:**

Service	Fee based on:	2019-20 Fee	2020-21 Fee (est.)
Server Monitoring	School Year	\$650.00	\$650.00
Backup & Recovery	School Year	\$1,080.00	\$1,080.00
Annual Required Training	School Year	\$525.00	\$525.00

**3. Total Fees**

Lumen Touch Services	2019-20	2020-21
Total	\$44,008.40	\$44,697.40

**4. Subsequent Training and Development**

- a. Additional training and software development that is requested by Customer over the included 3 hours of personal training and the free online webinars will be billed at \$175.00 per hour.

**E. Payment Schedule:** With the exception of Subsequent Training and Development, all fees will be invoiced annually and be due on July 1st each year that such service is scheduled to be provided. The per user fees will be estimated based upon demographic information collected regarding the Customer's student population.

**F. Miscellaneous**

**1. True-up**

- a. Provider reserves the right to perform a fee true-up if Provider believes the actual per user population is more than 5% greater than the user population billed by Provider.

**2. Proposal(s)**

- a. Proposals issued by Provider to Customer will contain more specific information regarding the full services and fees to be offered to Customer. The signed proposal will be used in conjunction with this Agreement and ASO to determine the Services and Fees that will be provided to the Customer.

This Additional Service Order shall be attached to and incorporated into the Agreement, and is subject to all the terms and conditions of the Agreement.

**Dixon Public Schools :**

**LUMEN TOUCH, LLC**

By: \_\_\_\_\_

By: LUMEN TOUCH LLC

Name: MARGO EMPEN

Name: JANE VANDEWALLE

Title: SUPERINTENDENT

Title: CFO

Signature: Margo Empen

Signature: Jane Vandewalle

Date: 6/4/2019

Date: 6/7/2019

**Return signed copies to:**

Chief Financial Officer  
Lumen Touch, LLC  
10502 NW Ambassador Drive  
Suite 201  
Kansas City MO 64145

**Or email to: [janev@lumentouch.com](mailto:janev@lumentouch.com)**

**Lumen Touch will return the signed copies to you.**

**4. Subsequent Training and Development**

- a. Additional training and software development that is requested by Customer over the included 3 hours of personal training and the free online webinars will be billed at \$175.00 per hour.

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This Additional Service Order shall be attached to and incorporated into the Agreement, and is subject to all the terms and conditions of the Agreement.

**Dixon Public Schools :**

**LUMEN TOUCH, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: MARGO EMPEN

Name: \_\_\_\_\_

Title: SUPERINTENDENT

Title: \_\_\_\_\_

Signature: Margo Empen

Signature: \_\_\_\_\_

Date: 6/4/2019

Date: \_\_\_\_\_

Return signed copies to:

Chief Financial Officer  
Lumen Touch, LLC  
10502 NW Ambassador Drive  
Suite 201  
Kansas City MO 64145

Or email to: [janev@lumentouch.com](mailto:janev@lumentouch.com)

**Lumen Touch will return the signed copies to you.**