

MASTER SOFTWARE SUBSCRIPTION AGREEMENT

This Master Software Subscription Agreement (“**Agreement**”) is made and entered into as of July 1, 2019 (the “**Effective Date**”), by and between Silverback Learning Solutions, Inc. (“**Silverback**”), a Delaware corporation with its principal place of business at 2963 E Copper Point Dr. #150, Meridian, ID 83642, and Kimberly School District #414, a public school system, with its principal place of business at 141 Center Street West, Kimberly, ID 83341 (“**Customer**”).

RECITALS

A. Silverback is the provider of various cloud-based services, enabled by Silverback’s proprietary software platforms, that are designed for use by school districts and other educators and educational administrators.

B. Customer desires to access and use one or more of Silverback’s services, as more specifically identified in corresponding annexes or addenda to this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

1.1. “**Authorized User**” means any individual who has been authorized in accordance with the terms of this Agreement to access and use the Hosted Service. Authorized Users may include, without limitation, Customer employees and independent contractors engaged by Customer and, where applicable given the nature or features of the Hosted Service, students who attend schools in Customer’s school district or other organization.

1.2. “**Customer Content**” means and is limited to the following, as applicable: (i) test questions that Customer furnishes and uploads onto Silverback’s system for use with the edifyAssess Hosted Service; and/or (ii) other documents or audio or visual information that Customer furnishes and uploads onto Silverback’s system for a given Hosted Service as contemplated in the corresponding Service Annex.

1.3. “**Customer Data**” means any education-related data, including but not limited any student educational records, that are input or submitted by Customer or Authorized Users to the Hosted Service.

1.4. “**Implementation Services**” means the services performed by Silverback to implement and/or configure a given Hosted Service for

Customer and its Authorized Users, as described in the corresponding Service Annex.

1.5. “**Intellectual Property Rights**” means patent rights, copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.6. “**Hosted Service**” means each of Silverback’s cloud-based services for which Customer purchases a subscription (which may include, for example, Silverback’s services currently known as Mileposts, Teacher Vitae, or edifyAssess), each as more specifically described in a corresponding Service Annex.

1.7. “**Service Annex**” is a written annex or addendum to this Agreement, as executed by Silverback and Customer from time to time, that describes a particular Hosted Service and outlines the pricing, subscription and billing periods, usage limits, Implementation Services (if applicable), and other terms that are unique to that Hosted Service.

1.8. “**Silverback Content**” means the audio and visual information, documents, software, data, products, services, and other content contained in or made available to Customer in the course of using the Hosted Service, other than the Customer Content, if any.

1.9. “**Subscription Term**” means the term of the subscription Customer has purchased for a given Hosted Service, as set forth in the applicable Service Annex and as may be renewed and/or terminated in accordance with this Agreement or the applicable Service Annex.

2. SERVICES

2.1. Service Annexes. From time to time, Customer and Silverback may mutually execute, on the applicable form(s) designated by Silverback, one or more Service Annexes, which will document the Hosted Service subscriptions and any other services purchased by Customer under this Agreement. Each Service Annex will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein. Exhibit A contains the parties’ initial Service Annex(es).

2.2. Implementation. Silverback will perform the Implementation Services, if any, specified in the Service Annex.

2.3. Hosted Service. Beginning on the subscription start date in the applicable Service Annex and continuing throughout the applicable Subscription Term, Silverback will make the Hosted Service available for Customer’s use in accordance with and subject to the terms and conditions of this Agreement.

2.4. Use Limitations. Customer and Authorized Users may access and use the Hosted Service solely during the Subscription Term for Customer’s internal education-related purposes, and only up to the usage limits specified in the applicable Service Annex. Such limits may include, as applicable, caps on the number of Authorized Users for the Hosted Service, the number of students for whom the Hosted Service may be used, and/or the volume of data that may be processed or stored. Customer will not permit access to or use of the Hosted Service for any other purpose, or in violation of any applicable usage limit, or by anyone other than Authorized Users. Customer will ensure that the Hosted Service is accessed and used in compliance with all applicable laws and regulations and the rights of others.

2.5. Restrictions. Customer will not, and shall ensure that Authorized Users do not, interfere with

or disrupt the Hosted Service or attempt to gain access to any related systems or networks to which access is restricted. Customer will not: (i) copy, frame or mirror any portion of the Hosted Service; (ii) sell, resell, rent or lease the Hosted Service; (iii) decompile, reverse engineer or otherwise attempt to obtain source code of the Hosted Service; (iv) attempt to modify the Hosted Service; (v) use the Hosted Service to store any data or information that is unlawful or that violates a third party’s rights, including without limitation a third party’s privacy rights; (vi) access or use the Hosted Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vii) encourage, enable, or permit any Authorized User or third party to do any of the foregoing.

2.6. Data Maintenance and Backup. Silverback will follow its archival procedures for Customer Data as established by Silverback in its reasonable discretion.. In the event of any loss or corruption of Customer Data, Silverback will use its commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by Silverback in accordance with the archival procedure as established by Silverback in its reasonable discretion.. Silverback will not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by any third party. SILVERBACK’S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION 2.6 WILL CONSTITUTE SILVERBACK’S SOLE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA.

3. CUSTOMER OBLIGATIONS

3.1. Cooperation and Assistance. As a condition to Silverback’s performance of its obligations hereunder, Customer will at all times provide Silverback with good faith cooperation and access to such information, facilities, equipment and personnel as may be reasonably required by Silverback in order to perform Implementation Services and to make the Hosted Service available pursuant to Section 2.

3.2. Customer Data and Content. Customer will be solely responsible for the accuracy, quality,

suitability, integrity and legality of all Customer Data and Customer Content, if any, and for obtaining any third-party permissions needed in relation to the Customer Data and Customer Content.

3.3. Security. Customer will: (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Service, and will notify Silverback promptly of any such unauthorized access or use; and (ii) keep confidential and not disclose to any third parties, and will ensure that Authorized Users keep confidential and do not disclose to any third parties, any user identifications, account numbers, passwords, or other similar information for the Hosted Service.

3.4. Enforcement. Customer will be responsible for ensuring that the Authorized Users comply with the terms of this Agreement. Customer will promptly notify Silverback of any suspected or alleged breach of this Agreement and will cooperate with Silverback with respect to: (i) any investigation by Silverback of any suspected or alleged breach of this Agreement; and (ii) any action by Silverback to enforce the terms and conditions of this Agreement. Silverback may suspend or terminate any Authorized User's access to the Hosted Service upon notice to Customer in the event that Silverback reasonably determines that such Authorized User has breached this Agreement.

3.5. Marketing Support. Customer will comply with reasonable requests of Silverback to support public relations efforts pertaining to the Hosted Service, which efforts may include: (i) a press release highlighting Customer's purchase or use of the Hosted Service; (ii) participation in targeted press and analyst interviews highlighting benefits of implementing the Hosted Service; and (iii) participation in customer case studies developed by Silverback and used on the Silverback website and other outlets.

4. PAYMENT

4.1. Fees and Expenses. In consideration for Silverback's performance of Implementation Services (if applicable) and for making available the Hosted Service hereunder, Customer will pay to Silverback the fees and expense reimbursements specified in the applicable Service Annex, subject to any adjustments as provided in Section 4.2 below.

4.2. Renewal Fees. For each renewal period of a Hosted Service subscription, Customer will pay for the Hosted Service at the rates specified in the Service Annex or, if applicable, at such other rates as Silverback may establish by written notice to Customer at least sixty (60) days prior to the renewal period. If usage of the Hosted Service under Customer's account exceeds any applicable usage limitations (such as the number of paid-for Authorized Users), then without limiting Silverback's other remedies, the fee for any subscription renewal will be charged and paid based on the higher level of usage.

4.3. Payment Terms. Silverback will invoice Customer, and each invoice will be due and payable, in accordance with the payment terms specified in the applicable Service Annex.

4.4. Late Payment. In the event that Customer's account is more than thirty (30) days overdue, Silverback may, in its sole discretion and in addition to its other remedies available under this Agreement or applicable law, suspend Customer's access to the Hosted Service upon ten (10) days' written notice, until Customer has paid the full balance owed, plus any interest due pursuant to Section 4.6.

4.5. Taxes. All fees, expenses and other amounts stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (collectively, "**Taxes**"). Customer will be responsible for payment of all Taxes and any related interest or penalties resulting from any payments made hereunder, other than any Taxes based on Silverback's net income.

4.6. Interest. If Silverback has not received payment within thirty (30) days after the due date, Silverback reserves the right to accrue interest on past due amounts at the rate of one percent (1.0%) per month or the highest rate permitted by applicable law, whichever is lower, calculated from the date such amount was due until the date that payment is received by Silverback.

5. INTELLECTUAL PROPERTY

5.1. Silverback Property. As between Silverback and Customer, Silverback exclusively owns all rights, title and interests in and to the Hosted Service, the Silverback Content, all software,

systems, algorithms, processes, interfaces, techniques, data, and other materials and technologies embodied in or used to provide the Hosted Service (other than Customer Data and Customer Content), all forms and templates designed, created, or modified using tools included in or furnished with the Hosted Service, and all Intellectual Property Rights in any of the foregoing.

5.2. Customer Property. As between Customer and Silverback, Customer exclusively owns all rights, title and interest in and to all Customer Data and Customer Content, and all Intellectual Property Rights therein.

5.3. License to Silverback. Customer hereby grants to Silverback: (i) a non-exclusive, irrevocable, royalty-free license during the term of this Agreement to reproduce, distribute, create derivative works of, display, extract, process, and otherwise use the Customer Data and Customer Content, if any, in order to implement, configure, and operate the Hosted Service for Customer; and (ii) a non-exclusive, irrevocable, perpetual, royalty-free license to use, reproduce, extract and otherwise process the Customer Data, in aggregated or other de-identified form only, for Silverback's internal purposes to develop, maintain, support and improve the Hosted Service and its other products, services, and technologies. Silverback's rights under clause 5.3(ii) above will not include using, reproducing, extracting or otherwise processing any personally identifiable information.

5.4. Student Educational Records. The following provisions of this Section 5.4 shall apply to the extent, if any, that the Customer Data includes any student educational records. Nothing in this Agreement is intended to diminish any students' (or their parent's) rights in relation to their educational records. The parties acknowledge that student educational records are subject to the United States Family Educational Rights and Privacy Act (FERPA) and may be subject to other federal, state, and local privacy laws and regulations. Each party agrees to safeguard student educational records in its possession or control in compliance with all applicable requirements of FERPA and such other laws and regulations. Silverback specifically agrees not to disclose any personally identifiable information from education records in violation of FERPA, not to use such information for any sales, marketing, advertising, or other prohibited purposes,

and to protect such information as Confidential Information of Customer for purposes of this Agreement. The parties agree that Silverback is permitted to process or monitor such information solely to provide and maintain the integrity of the Hosted Service. Silverback will promptly notify Customer of any known unauthorized use or disclosure of student educational records in Silverback's possession or control, and will take commercially reasonable corrective efforts to mitigate the effects and to prevent the recurrence of such violation.

6. CONFIDENTIALITY

6.1. Definition. As used herein, "**Confidential Information**" means: (i) any information or materials that are disclosed in writing and that are clearly labeled as proprietary, confidential or with words of similar meaning at the time of disclosure; (ii) all information or materials that are orally or visually disclosed and that are identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure; and (iii) any information of any nature described in this Agreement as confidential. Silverback Confidential Information includes, without limitation, the Silverback Content, the Hosted Service, any associated documentation, and any nonpublic financial information, pricing, business plans, techniques, methods, and processes furnished or made available by Silverback. Customer Data and, if applicable, any nonpublic Customer Content are the Confidential Information of Customer. The terms and conditions of this Agreement will be deemed the Confidential Information of both parties.

6.2. Exclusions. Confidential Information will not include information that: (i) is or becomes generally publicly known through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession, without confidentiality restrictions, prior to the disclosure; (iii) is rightfully disclosed to the receiving party by a third party without a breach of any obligation to the disclosing party; or (iv) is independently developed by the receiving party without use of any Confidential Information of the disclosing party.

6.3. Use and Nondisclosure. During the term of this Agreement and for a period of five (5) years thereafter, neither party will disclose the other

party's Confidential Information to any third party or use the other party's Confidential Information for any purposes other than for the exercise of its rights and performance of its obligations under this Agreement. Each party may disclose the other party's Confidential Information only to those of its employees and contractors who need to know such Confidential Information for a party's exercise of its rights and performance of its obligations under this Agreement; provided, however, that each such employee and contractor must be bound by a written agreement that contains use and nondisclosure restrictions at least as protective of the Confidential Information as those set forth in this Agreement. Each party will use the same efforts to protect the confidentiality of the other party's Confidential Information that it ordinarily uses to protect the confidentiality of its own confidential information of like importance, but in no event less than reasonable efforts.

6.4. Permitted Disclosure. The foregoing provisions of this Section 6 will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, or as required by law, provided that the party required to make such a disclosure gives reasonable notice (where permissible) to the other party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital or potential private investors in or acquirers of such party.

7. WARRANTY

7.1. Warranty for Hosted Service. Silverback warrants that the Hosted Service will provide the functionality set forth in the service description of the applicable Service Annex. As Customer's sole and exclusive remedy and Silverback's entire liability for any breach of the foregoing warranty, Silverback will, at its sole option and expense, modify the Hosted Service so that it conforms to the foregoing warranty or refund to Customer the fees paid for any unused portion of Customer's subscription for the non-conforming Hosted Service.

7.2. Disclaimer. Customer assumes sole responsibility and liability for results obtained from use of the Hosted Service and for conclusions drawn from such use. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, SILVERBACK MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED BY SILVERBACK. WITHOUT LIMITING THE FOREGOING, SILVERBACK DISCLAIMS ANY WARRANTY THAT THE HOSTED SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. SILVERBACK FURTHER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE HOSTED SERVICE AS TO ITS MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SILVERBACK FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM SILVERBACK OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

8. INDEMNIFICATION

8.1. Indemnification by Customer. Customer will defend, indemnify and hold harmless Silverback from and against any liabilities, damages, costs and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim: (i) that the Customer Data or Customer Content, or the uploading or processing thereof in connection with the Hosted Service, infringes, misappropriates or violates the rights of a third party, including, but not limited to, a third party's Intellectual Property Rights; or (ii) based on Customer's or an Authorized User's use of the Hosted Service (other than any claim for which Silverback is responsible under Section 8.2). Customer's obligations under this Section 8.1 are contingent upon: (i) Silverback providing Customer with prompt written notice of such claim; (ii) Silverback providing reasonable cooperation to Customer, at Customer's expense, in the defense and settlement of such claim; and (iii) Customer having sole authority to defend or settle such claim.

8.2. Indemnification by Silverback. Silverback will defend any suit or action brought against Customer by a third party to the extent that it is based upon a third-party claim that the Hosted Service infringes a United States patent or any copyright or misappropriates a trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Silverback's obligations under this Section 8.2 are contingent upon: (i) Customer providing Silverback with prompt written notice of such claim; (ii) Customer providing reasonable cooperation to Silverback, at Silverback's expense, in the defense and settlement of such claim; and (iii) Silverback having sole authority to defend or settle such claim. In the event that Silverback's right to provide the Hosted Service is enjoined or in Silverback's reasonable opinion is likely to be enjoined, Silverback may obtain the right to continue providing the Hosted Service, replace or modify the Hosted Service so that it becomes non-infringing, or, if such remedies are not reasonably available, terminate this Agreement without liability to Customer. Silverback will have no liability under this Section 8.2 to the extent that any third-party claim described herein is attributable to any Customer Data or Customer Content, or is based on use of the Hosted Service in a manner that breaches this Agreement, or results from any failure to comply with written instructions that Silverback provides to Customer with respect to the Hosted Service. THE FOREGOING STATES SILVERBACK'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY THE HOSTED SERVICE.

9. LIMITATION OF LIABILITY

9.1. Exclusion of Damages. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTION 6, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF INCOME, DATA, PROFITS, OR REVENUE, ANY BUSINESS INTERRUPTION, THE COST OF SUBSTITUTE SERVICES, OR

OTHER ECONOMIC LOSS, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

9.2. Total Liability. IN NO EVENT WILL SILVERBACK'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE HOSTED SERVICE OR IMPLEMENTATION SERVICES EXCEED THE TOTAL FEES PAID BY CUSTOMER IN THE TWELVE-MONTH PERIOD PRECEDING ANY CLAIM OR ACTION, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.

9.3. Acknowledgement. The parties acknowledge that the limitations and exclusions contained in this Section 9 and elsewhere in this Agreement have been the subject of negotiation between the parties and represent the parties' agreement based upon the perceived level of risk associated with their respective obligations under this Agreement and the payments made hereunder. Accordingly, the parties agree that such limitations and exclusions will survive and apply even if any exclusive remedy specified in this Agreement is found to have failed of its essential purpose.

10. TERM AND TERMINATION

10.1. Subscription Term. Customer's subscription for each Hosted Service will be effective for the initial subscription period specified in the applicable Service Annex, and shall thereafter renew automatically for successive periods of one (1) year each (or such other renewal period as may be specified in the Service Annex), unless and until either party notifies the other of non-renewal at least forty-five (45) days in advance.

10.2. Agreement Term. This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with its terms, will remain in effect as long as any Subscription Term is ongoing. This Agreement will expire automatically when all Subscription Terms have expired or been terminated.

10.3. Termination for Cause. Either party may terminate this Agreement (including all Service Annexes), and/or any affected Service Annex individually, upon written notice if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days following written notice thereof from the non-breaching party.

10.4. Effect of Termination. Upon the expiration or any termination of this Agreement (or of the applicable Service Annex): (i) all rights granted by Silverback hereunder to access and use the Hosted Service will automatically terminate; (ii) Customer and all Authorized Users will immediately cease all use of the Hosted Service; and (iii) except as otherwise specified in this Agreement, each party will return or delete, and make no further use of, any Confidential Information of the other party in its possession or control. Upon any expiration or termination of this Agreement (or of the applicable Service Annex), Silverback will have no obligation to maintain or provide access to any Customer Data or Customer Content, and may delete all Customer Data and Customer Content stored in the Hosted Service or otherwise in Silverback's possession or control. For clarity, if fewer than all Service Annexes are being terminated, the foregoing will not be construed as requiring or permitting either party to delete or return information that is pertinent to any continuing Hosted Service.

10.5. Survival. The rights and obligations of the parties under Sections 4, 5, 6, 8, 9, 10.4, 10.5, and 11 will survive any expiration or termination of this Agreement.

11. GENERAL

11.1. Governing Law. This Agreement and all matters arising out of or relating to this Agreement will be governed by the laws of the State of Idaho, without regard to its conflict of laws provisions. Any legal action or proceeding relating to this Agreement will be brought exclusively in the state or federal courts located in Idaho. Silverback and Customer hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

11.2. Assignment. Customer may not assign or transfer this Agreement, in whole or in part, without Silverback's prior written consent, and any

attempted assignment or transfer without such consent will be null. Silverback may assign or transfer this Agreement at any time, in its sole discretion. Subject to the foregoing restrictions, this Agreement will be binding upon and will inure to the benefit of the parties' permitted successors and assigns.

11.3. Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

11.4. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

11.5. Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; (iii) upon confirmation of delivery by email, or (iv) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices will be sent to the addresses set forth above or to such other address as may be specified by either party to the other party in accordance with this Section.

11.6. Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities hereunder. Without limiting the foregoing, Customer agrees to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Hosted Services, nor any direct product thereof, are: (i) exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by such export laws and regulations.

11.7. Relationship Between the Parties. Nothing in this Agreement will be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.

11.8. Force Majeure. Neither party will be liable due to any failure or delay in the performance of its obligations due to events beyond its reasonable control, including but not limited to denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from as long as the Force Majeure Event continues and such party continues to use commercially reasonable efforts to resume performance.

11.9. Entire Agreement. This Agreement together with its exhibits constitutes the complete and exclusive agreement between the parties concerning

its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning its subject matter. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

11.10. Non-Exclusive Remedies. Except as expressly set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

11.11. Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original and all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representatives to execute this Agreement as of the Effective Date.

Silverback Learning Solutions, Inc.

Kimberly School District #414 (Customer)

Signed: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Exhibit A
Initial Service Annex(es)

The initial Service Annex(es) consist of the following:

- Exhibit A-1: Silverback Teacher Vitae™ Service Annex
- Exhibit A-2: Silverback Mileposts™ Service Annex
- Exhibit A-3: Silverback edifyAssess™ Service Annex

Exhibit A-2
Silverback Mileposts™ Service Annex

This Service Annex for the Silverback Mileposts™ service is effective as of July 1, 2019 (“**Start Date**”), and is incorporated into and governed by the Master Software Subscription Agreement Silverback Learning Solutions, Inc. (“**Silverback**”) and Kimberly School District (“**Customer**”) dated July 1, 2019.

I. Hosted Service Description

MILEPOSTS SERVICE

The Mileposts system is a software-as-a-service (SaaS) Web-based system with the following deployment and delivery features:

- Centralized infrastructure with redundancy at the application and database level
- Secure, scalable, open integration
- Minimal client installation requirements and load on local systems
- Access via web browser
- Automated synchronization with most SIS systems for student moves/adds/changes

NOTE: Mileposts does not capture, track, or report on attendance or grades.

The Mileposts system is built upon the Microsoft .NET technology stack and Microsoft SQL Server, which include an Object Relational Mapper (ORM) for data layer abstraction, a tiered service-level implementation, object-oriented design and programming and open data interchange standards. The user interface presentation layer is based upon HTML, CSS and JavaScript and does not require additional presentation layer software such as Adobe Flash.

Upon installation, users can create and manage:

- Authenticated, authorized access using the SIS rosters as a customizable starting point
- Individualized learning plans for students, as well as specialized learning plans for customizable subgroups, using customizable templates
- Student program participation and referrals customizable per implementation
- Response to Intervention (RtI) management including tier-based interventions and customizable templates for interventions and accommodations
- 360° Accountability Agreements with approval process for educators, parents, and students
- Integrated assessment data from a variety of state and district systems, to the extent compatible with the platform, plus the ability for the teacher to add additional assessment data
- Benchmarking tools to aggregate and display student progress according to customizable benchmarks
- File import capabilities to support inclusion of third-party supporting data for a student’s plan basis or plan progress (example: Dibels, AIMSweb)
- Reporting capabilities and data exports with certain selectable filters for static and dynamic data aggregations in Microsoft Excel, Microsoft Word, Adobe PDF, and/or Comma Separated Values (CSV) formats.

Archival Procedures

Partitioned Customer Data is backed up regularly. Weekly full backups combined with daily incremental backups are executed and stored in a secure, physically redundant location to enable Silverback to provide data recovery. Daily incremental backups are taken from the database server(s) to facilitate data restoration in the event of catastrophic hardware failure. Planned outages occur in off-peak hours whenever reasonably possible. These events are communicated in advance and designed and scheduled to minimize the impact on continuity of service.

In most instances, planned outages should only be required during software deployments and for system software and hardware maintenance.

II. Implementation Project Plan

Project Summary

The following plan outlines the scope, required resources, and proposed schedule to ensure a successful implementation of the Mileposts Service, including the installation, training, and support of the full functionality of the Mileposts solution.

Project Scope

NOTE: Mileposts does not capture, record, or report on attendance or grades.

Silverback’s Client Services team will work with the Customer’s resources to complete the following steps, the specific requirements of which will vary depending on the Customer’s needs:

- Build staff rosters and student rosters per school via files obtained from the Customer’s current Student Information System (“SIS”)
- Establish a synchronization agent from Silverback to the SIS for automated nightly updates of:
 - Student and staff rosters
 - Student demographics
 - Federal program affiliation
- Populate **three (3) years** of standardized assessment data for the state assessments and up to ten (10) additional assessments into Mileposts annually
 - Additional years and additional numbers of assessments will be charged additional fees for the upload process for any year in which the additional assessments are uploaded.
 - Customer must deliver the assessment data to Silverback at least two (2) weeks in advance of when the upload must be entered into Mileposts.
- Implement district strategy into Mileposts for customization of:
 - Programs – i.e. special enrollments
 - Plans – i.e. 504, Title 1, ELP, RTI, etc.
 - Interventions - tiers and strategies per intervention type
 - Templates - used for plan and intervention narratives (6 by Silverback, addition at extra costs); and
 - Benchmarks – set up based on the State assessments and quantifiable data in Mileposts. Additional district benchmarks can be added for additional fees, based on an hourly rate.
- Training of administrators and staff of the Customer, to include the following required training:

Training Topic	Minimum Participants
Webinar #1 – User/Domain Training	Technical Staff
Webinar #2 – Customization of Mileposts Training	Technical Staff
Module #1 – Leadership Training	Administrative Staff
Module #2 – Introduction of Mileposts to Staff	Educational Staff
Module #3 – Plans, Behavior Tools, Gooru	Educational Staff

Required Client Resource Planning

Labor Resources – Silverback Client Services team requires planned, focused interactions with specific Customer resources as identified below and strongly encourages Customer leadership to identify, estimate time commitments for, prepare, and motivate these resources to help achieve a smooth, on-time implementation. Sometimes multiple staff may be required to fulfill a single resource skill set outlined below. Alternatively, multiple skill sets might be obtainable within a single staff member. The time estimates below are approximate, broken out by resource, not by individual, and will be further defined on a task-by-task basis.

- **Client Contact Resource** – Customer’s primary contact with Silverback who will champion the project and maintain continuity of the process by acting as the lead facilitator, reviewer, and communicator of the Agreement and Plan specifics.
Time commitment: At least 1 hour per week throughout the subscription period
- **Information Technology Resource** – Individual with authorization and access to SIS as well as Customer’s internal servers for assisting in installation of the remote sync process. This person should have knowledge about SIS programming to be able to produce staff and student rosters in electronic Comma Separated Value (CSV) format, as well as knowledge on specific SIS fields to help locate and/or update student and staff unique identifiers and student special enrollment fields.
Time commitment: At least 10 hours for this project and 2 hours every six months ongoing
- **Assessment Coordination Resource** – Individual able to provide raw data assessment files to Silverback on an ongoing basis from all assessment systems (state and district level) to maintain accuracy and freshness of data within the system. Individual should also know about the identifier process used to maintain unique student identification within each assessment system.
Time commitment: At least 6-10 hours on this project and 1 hour per month ongoing
- **Teacher Leader Resource(s)** – Individual to provide leadership in the establishment of programs, plans, interventions, and benchmarks configured to the Customer’s needs. Individual should also plan to attend the initial Mileposts training sessions and, henceforward, be a resource for assisting school staff in learning the Mileposts system. This group is usually led by Customer’s Curriculum Coordinator or RTI Coordinator and is comprised of principals and a few teacher leaders across each school, along with special services leaders for the district (Special Ed, RTI, Gifted & Talented, etc.)
Time commitment: 2 hours multiplied by the total number of teacher leaders for the project planning stage, plus 6-8 hours multiplied by the total number of teacher leaders for the one-day Mileposts training session, and additional time afterward to continue the internal training.
- **Professional Development Resource** – Individual to facilitate the training sessions led by Silverback, and will own the staff-wide training strategy.
Time commitment: At least 8-12 hours for the initial project, plus 2 hours per month ongoing

Non-Labor Resources – Silverback will require authorization and access to the SIS and internal server(s) to install a small software interface (remote synchronization agent), which requires a software agent along with supporting software from Microsoft.NET to be installed on the Customer’s server within the Customer’s firewall.

Project Plan Schedule

The Plan schedule will be mutually agreed upon based on availability of Silverback’s and Customer’s resources. Changes to the Plan schedule will be managed by the Silverback’s Client Services team and Customer’s Client Contact Resource, as required.

III. Fees and Payment

Service Fees

In consideration for the performance of Silverback’s obligations under this Agreement, Customer will pay to Silverback the following fees:

Item	Students or Units	Unit Price	Extended Price
Mileposts subscription license (1-year)	2,046	\$10.00	\$20,460.00
Implementation fee (one-time)	1	\$1,000.00	\$1,000.00
Professional development (training) fee			INCLUDED
Total			\$21,460.00

Subscription License units equals the total number of students per the Student Information System.

Professional development

The training/professional development fee for one unit covers either one full day or two half-day trainings with one instructor in each session. Additional instructors or additional professional development sessions are optional and available for an additional fee.

Expense Reimbursement

Customer will reimburse Silverback for reasonable and customary travel, lodging and other related expenses incurred by Silverback’s employees and contractors for travel in connection with the performance of services under this agreement. At Customer’s request, Silverback will provide Customer with receipts and other documentation for all such expenses.

Payment Terms

Silverback will invoice Customer for the subscription license, implementation fee, and the professional development described above upon contract execution. Travel expenses related to professional development will be invoiced *as incurred*. Each invoice is due and payable within thirty (30) calendar days following the invoice date.

Future invoices for each subsequent renewal must be paid within thirty (30) calendar days of the date of invoice.

Initial Term

One (1) year commencing upon Start Date.

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representatives to execute this Service Annex as of the Start Date identified above.

Silverback Learning Solutions, Inc.

Kimberly School District #414 (Customer)

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____