



SCHEDULE A: ELUMEN[®] TERM AND FEE SCHEDULE

Schedule A describes the fees and term associated with the relationship between eLumen Inc. (a Delaware corporation) and Compton College.

CUSTOMER INFORMATION:			
Client:	Compton College	Principal Contact:	Lauren Sosenko
Title:	Director of Research and Planning	Phone: Email:	310-900-1600, ext. 2871 lsosenko@compton.edu
Address:	1111 E. Artesia Boulevard, Compton, CA 90221		
Billing Contact:	David Leung	Title:	Director of Accounting
Address:	1111 E. Artesia Boulevard, Compton, CA 90221		
Phone:	310-900-1600 ext. 2103	Email Address:	dleung@compton.edu
Fax:	n/a		
Initial Term of Agreement:	Two (2) years		

Compton College Pricing Summary

Fees for eLumen[®] Software modules are detailed below. The actual fees accrued for eLumen[®] Software will vary based on the modules and number of Full Time Equivalent students licensed to Client. The pricing quoted below is based on 3,868 FTEs per IPEDS:

<https://nces.ed.gov/ipeds/datacenter/institutionprofile.aspx?unitId=112686>

Item	Year 1	Year 2
eLumen for Outcomes Assessment and Strategic Initiative (annual recurring)	\$27,000	\$27,000
eLumen Implementation Services for Outcomes Assessment and Strategic Initiative (one time)	\$15,000	
TOTAL DUE UPON EXECUTION	\$42,000	

NOTES AND ASSUMPTIONS

1. The Standard Onboarding Support Package includes all reasonably necessary consultation requested in connection with use of the Professional Services stated in the eLumen Standard Onboard description as defined in Schedule B of this agreement.
2. Additional Support Requests for support that are beyond the scope of Standard Onboard Support described above (“Additional Support”) may be made and shall be at billed at \$250/hour.
3. Fee Schedule Changes. Except as provided in paragraph 1 and 2 above and Section 3a of the Agreement, this Fee Schedule may only be amended by the written agreement of the Parties.

By their signatures below, the Parties accept the foregoing Fee Schedule.

Payment is due Net 30

IN WITNESS WHEREOF, the parties hereto have executed this cover page as of the date written below.

eLumen[®] Inc.

Compton College


steve cohen (Oct 12, 2020 11:05 CDT)

Signature
Steve Cohen – Chief Financial Officer

Date: Oct 12, 2020

Signature

Date:

**eLumen® Software
CLIENT SERVICES
AGREEMENT**

THIS CLIENT SERVICES AGREEMENT (the “Agreement”) is made as of November 1, 2020 (“Effective Date”).

**THE PARTIES
TO THIS
AGREEMENT**

eLumen® Inc. , (“eLumen”) a Delaware corporation	<i>Client</i> (“Client”) Compton College
Address: 1300 Godward Street, Suite 3850 Minneapolis, Minnesota 55413	Address: 1111 E. Artesia Boulevard Compton, CA 90221

The Services

eLumen[®] has developed and is the owner of all right, title, and interest in and to certain computer programs and related documentation known as eLumen[®] Software (as defined below). The Software provides Clients the capability of defining, analyzing, and communicating data to track and analyze curriculum and student achievement. This Agreement sets forth the terms and conditions for Client's access to and use of the Services on a secure basis through an internet site hosted by eLumen[®]. The module(s) and support services purchased by Client are designated on the attached Fee Schedule. Client may upgrade or change its module(s) or service level by contacting eLumen[®] and agreeing to a new Fee Schedule.

THE TERMS AND CONDITIONS

1. **DEFINITIONS.** The following definitions shall apply to this Agreement:
 - A. **"AUP"** shall mean the End User License Agreement and Terms and Conditions of Website Use, which includes an acceptable use policy, which eLumen may amend from time to time by posting a revised version on its website (<http://elumenconnect.com>).
 - B. **"Authorized Users"** shall mean the students and personnel designated by Client.
 - C. **"Client Data"** refers to all content, copy, pictures, and/or data provided by Client that is owned by Client and resides in Client's services environment.
 - D. **"Confidential Information"** means any information, knowledge, and know-how, not known to the general public and disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Client Data is Client's Confidential Information. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement, (ii) was known to a party prior to the date of this Agreement and can be proven so through documentation, (iii) is received from a third party who did not acquire or disclose the same by a wrongful act; or (iv) can be shown by documentation to have been independently developed by a party without reference to the other party's Confidential Information. It is understood that the Client is subject to UH Executive Policy E2.214: Institutional Data Classification Categories and Information Security Guidelines. If a request under the UH Executive Policy E2.214 is made to view eLumen's Confidential Information, Client shall notify eLumen of the request and the date that such records will be released to the requester unless eLumen obtains a court order enjoining that disclosure. If eLumen fails to obtain a court order enjoining that disclosure, the Client will release the requested information on the date specified.
 - E. **"Content"** means information and data uploaded to the Site by Client and its Authorized Users.
 - F. **"Derivative Works"** means a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement.
 - G. **"Documentation"** means any and all text material that describes the design, functions, operation, and use of the Services or the Software. The Documentation shall consist of all on-

line screens designed for instructional purposes, operator and user manuals, training materials, guides, listings, specifications, and other materials for use in conjunction with the Software.

- H. **“Enhancements”** means any and all changes or additions to the Software, including new releases and versions thereof other than Modifications that add new functions to, or substantially improve performance of, the Software.
 - I. **“FERPA”** means the U.S. Family Educational Rights and Privacy Act.
 - J. **“Intellectual Property”** means any and all intellectual property associated with the Software, Modifications and Enhancements, including, without limitation, designs, formulas, procedures, methods, apparatus, ideas, creations, improvements, works of authorship, materials, processes, inventions, techniques, data, know-how, show-how, algorithms, programs, subroutines, tools, patents and patentable materials, copyrights and copyrightable materials, and trade secrets.
 - K. **“Modifications”** means any and all changes or additions to the Software, other than Enhancements, that correct errors therein or support new releases thereof.
 - L. **“Party”** means either eLumen[®] or Client and **“Parties”** means both.
 - M. **“Services”** means access through the Site to the Software, use of the Site to upload Content, information on and support for the use of the Services and Software, and such additional and ancillary services and products, which may become available on the Site. Services include, without limitation, any improvements, upgrades and new version releases. If any products or functionality are renamed, repackaged or rebundled by eLumen, Client is entitled to equivalent or better products or functionality at no additional cost to Client.
 - N. **“Site”** means the password-protected secure Internet site hosted and controlled by eLumen[®] to which Client shall be provided access to the Services for the purposes of using the Software.
 - O. **“Software”** means the computer programs and any Documentation related to and comprising the eLumen[®] Software and its various licensed modules as defined in Schedule A, a unique and proprietary software application residing on a server and accessed through a web environment that provides organizations with the capability of defining, documenting, and communicating data on the achievements of students. Unless the context indicates otherwise, as used herein, **“Software”** includes Enhancements and Modifications to the modules listed in Schedule A.
 - P. **“Third Party Product”** means software or other technology owned by a third party that is or will be incorporated into or can reasonably be foreseen as likely to be used in connection with the Software, Modifications or Enhancements.
 - Q. **“Business Day”** means Monday through Friday excluding holidays as specified in the Business Schedule published in the elumen.info website, starting at 8:00 AM Pacific Time and Ending at 5:00 PM Pacific Time.
2. **TERM.** This Agreement is for an Initial Term. This Initial Term is designated in Schedule A. After this Initial Term, this Agreement will automatically extend for one (1) year terms (each a “Renewal Term”) unless eLumen is notified, in writing, by Client of their intent to terminate the Agreement sixty (60) days prior to the initiation of the successive one (1) year term.

3. FEES.

- A. The fees payable by Client (“Fee”) appear on the Fee Schedule attached and incorporated by reference as Schedule A. At the end of the Initial Term or at the end of any Renewal Term, eLumen® may increase the fees appearing on the Fee Schedule for the subsequent Term. Annual fee increases for the Software shall not exceed six percent (6%) in any given year. If there is an increase in annual Fees upon completion of the contract, eLumen shall give Client written notice of such increase at least ninety (90) days prior to the expiration of the applicable Term. Invoices submitted to Client will be due to eLumen® within thirty (30) days of the date on the invoice. Any balances outstanding after thirty (30) days will be subject to a one percent (1%) monthly late fee, or the highest amount allowed by applicable law, whichever is less.
- B. eLumen® shall pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the performance of work under this Agreement, and all applicable sales, use, excise, transportation, privilege, occupational and other taxes applicable to furnish the work performance hereunder and shall save Client harmless from liability for any such contributions, premiums, and taxes for eLumen’s employees and sub-contractors, if applicable. eLumen shall be responsible for taxes assessable against eLumen based on eLumen's income, real or tangible property and employees.

4. TRADEMARK/LOGO USE. eLumen will provide written notice to the Client’s Public Information Office (“PIO”) prior to using the Client 's name and/or logos in any advertisements, promotions, press releases or other media. Within thirty (30) days, the PIO will furnish eLumen with camera-ready artwork for such use. Client, at its sole discretion, may limit or otherwise place conditions on eLumen’s use of Client’s name, and/or logos in which case such limitations shall be incorporated into this Agreement. eLumen shall not revise, change, or otherwise alter any material related to Client’s name and/or logo without written consent from Client and shall obtain prior written permission from Client for each use of its name and logo.

5. CLIENT’S RIGHTS AND OBLIGATIONS. Client agrees to the following:

- A. Upon eLumen®’s acceptance of Client’s order and for Term, Client has the nonexclusive, non-assignable, royalty free, worldwide limited right to use the Services solely for Client’s internal business operations and subject to the terms of the Agreement.
- B. In order to use or access the Services, Client will obtain access to the Internet, either directly or through devices that access web-based content, and pay any service fees associated with such access, and provide all equipment necessary to make such Internet connection.
- C. Prior to accessing the Site and using the Services, Client will designate its Authorized Users and assign usernames and passwords to each Authorized User. Client accepts full responsibility for safeguarding their access to the Services and for protecting the Services and Client’s Content from unauthorized access. Client shall ensure that each Authorized User is in compliance with the terms and conditions of this Agreement, which by their nature are intended to be applicable to Authorized Users.
- D. Client shall ensure that its Authorized Users’ software, networks, computer equipment, terminals, peripheral equipment, smartphones, telecommunications systems and network connections comply with any specifications provided by eLumen® from time to time.

- E. eLumen® will be immediately notified of any loss or theft or unauthorized use of any of a user name, password, and/or other personal or company identification numbers that may be assigned by Client.
 - F. Client will, and will require Authorized Users to, access and use the Services only in compliance with applicable law, this Agreement, and the AUP.
 - G. Client has the requisite authority to use and store any confidential, proprietary or personally identifiable information included in the Content. Client is solely responsible for the development and use of Client Data. Without limiting the generality of the preceding sentence, eLumen is not responsible for compliance of Client Data with all laws and regulations and the AUP.
 - H. The Services and Software may be able to be used in connection with third party software, applications, products and platforms (“Third Party Tools”). In relation to any Third-Party Tools:
 - i. Client must not interface any Third-Party Tools with the Software and Services without eLumen®’s prior written consent;
 - ii. if the Client elects to use or interface any Third-Party Tools, Client shall be deemed to have indemnified eLumen from and against any loss and/or damage that eLumen may incur as a result of the Client’s use thereof and/or interfacing therewith;
 - iii. eLumen does not warrant that the Software and/or Services are compatible with the Third-Party Tools; and
 - iv. Any such Third-Party Tools are subject to their own terms and conditions and the applicable flow through provisions. If Client does not agree to abide by the applicable terms for any such Third-Party Tools, then Client should not install or use such Third-Party Tools.
 - I. In no event shall eLumen be liable for any act or omission of the Client or an Authorized User and any non-performance of its obligations under this Agreement where caused by any act or omission of the Client or an Authorized User. If eLumen is delayed or prevented from complying with an obligation under this Agreement due to an act or omission of the Client or an Authorized User, in such circumstances and without prejudice to any other of eLumen’s rights, eLumen’s obligations will be postponed or relieved accordingly to the extent affected by that act or omission.
 - J. Except as expressly and specifically provided in this Agreement, the Client assumes sole responsibility for results obtained from access to the Software and related Services by the Client and Authorized Users, and for conclusions drawn from such use. eLumen shall have no liability for any damage caused by errors or omissions in any information, Client Data, instructions or scripts accessed by the Client or Authorized Users in connection with the Services, or any actions taken by eLumen at the Client's direction;
- 6. ACCEPTABLE USE.** eLumen’s current AUP is attached hereto as Schedule B. All terms, provisions and agreements set forth in the AUP (except to the extent expressly modified herein) are hereby incorporated herein by reference with the same force and effect as though fully set forth herein. eLumen may amend the AUP unilaterally by posting revisions to its website and such

revisions are binding on Client. To the extent that any terms set forth in this Agreement are inconsistent with the terms of the AUP, the terms set forth herein shall apply.

7. DATA SECURITY AND FERPA. eLumen's protocols for protection of Content and to ensure compliance with FERPA are as follows:

- A. The Services are designed to store all sensitive and personally identifiable information in an encrypted format. Encrypted data elements include but are not limited to: First Name, Last Name, Email, Student Id, Login Id, and Phone Number.
- B. Only Client's authorized representatives will have access to the encryption keys, which are required in order to view encrypted data. Accordingly, all private and sensitive Content will be indecipherable while it is "at rest" on the physical database. No FERPA-protected or confidential Content will be transmitted without encryption or on an unsecured network connection. During network transmissions, confidentiality of such data will be maintained via an industry standard SSL (Secure Socket Layer) connection.
- C. eLumen® employees and agents have no access to FERPA-protected or confidential Content unless specifically authorized by Client in writing and then only on a temporary basis, for up to five (5) days for each written authorized use, unless otherwise agreed upon, for a specific purpose, e.g., troubleshooting during Support Services. When eLumen® employees and agents are provided access by Client to Content and student data, records and information including paper and electronic student education record information ("Student Information"):
 - i. eLumen will be considered a "school official" for purposes of receipt of such Student Information. eLumen acknowledges it is familiar with all legal restrictions associated with the use and nondisclosure of Student Information. Both Client and eLumen® certify that they will abide by Hawaii and United States laws concerning confidential Student Information and Student Information, including, but not limited to, FERPA and Education Code section 49060 et seq. Student Information is hereby included in the definition of Client Confidential Information.
 - ii. eLumen agrees to hold Student Information in strict confidence. eLumen shall not use or disclose Student Information received from, or on behalf of, Client, except as permitted or required by the Agreement, or as required by law. eLumen agrees that it will protect the Student Information it receives from, or on behalf of, Client, according to commercially acceptable standards and no less rigorously than it protects its own confidential information. eLumen shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all maintained or transmitted Student Information received from or on behalf of Client or its students and these measures will be extended by contract to all subcontractors used by eLumen.
 - iii. Upon termination, cancellation, expiration or other conclusion of the Agreement, eLumen shall return all Student Information to Client in a usable format acceptable to Client within fifteen (15) days after such termination, cancellation or expiration, or such other date as mutually agreed to in writing between the Client and eLumen. If return is not feasible as determined by Client in written notice to eLumen, eLumen shall destroy any and all Student Information.

- iv. If Client reasonably determines in good faith that eLumen has materially breached any of its obligations relating to Student Information, Client, in its sole discretion, shall have the right to provide eLumen with a fifteen (15) day period to cure the breach, or terminate the Agreement immediately if cure is not possible. Client shall provide written notice to eLumen describing the violation and the action it intends to take.
 - v. eLumen shall notify Client of unauthorized access, use or disclosure of Student Information within one (1) calendar day of discovery, and shall provide a written report to Client in the most expedient time possible and without unreasonable delay (if possible within one (1) business day of validating discovery and after release by law enforcement, if applicable). To the extent of eLumen's actual knowledge, eLumen's report shall identify: (a) the nature of the unauthorized access, use or disclosure; (b) the Student Information accessed, used or disclosed; (c) who made the unauthorized access, use or received the unauthorized disclosure; (d) what eLumen has done or shall do to mitigate any effect of the unauthorized access use or disclosure; and (e) what corrective action eLumen has taken or shall take to prevent future similar unauthorized access, use or disclosure. eLumen shall provide such other information, including a written report, as requested by Client. eLumen will coordinate with Client to promptly notify students in accordance with the UH Executive Policy E2.214: Institutional Data Classification Categories and Information Security Guidelines. eLumen similarly will report to, coordinate and cooperate with Client in the event of any break-in or attempted break-in to eLumen's provided software systems or security protocols, network(s), or data center(s) which contain Student Information. eLumen shall indemnify, defend and hold Client harmless from all claims, liabilities, damages or judgments involving a third party, including Client's costs and attorney's fees, which arise as a result of eLumen's failure to meet any of its obligations under this Section.
- D. The Client controls the Content uploaded to Client's database and its disposition. eLumen's hosted environment for the Services provides for automatic daily back-ups of Client's Content. Client may request additional back-ups to store and maintain Content off-site.
- E. eLumen® will not access or disclose any Content entered by Client unless authorized by Client in writing and/or compelled to do so by law. If eLumen® is ordered to make such disclosure, eLumen® will notify Client and to allow it the opportunity to oppose such disclosure.
- F. eLumen® shall permit Client to retain Content stored on the Site for a minimum of three (3) years after termination of this agreement or the date of the last paid invoice, whichever is later.
- G. eLumen® will host the Client's application services® and database at a U.S. datacenter. The eLumen® services are currently hosted in Amazon's US-West (Oregon) center with fail-over to US-East (Virginia). The client shall be notified in writing thirty (30) days prior to any territorial changes to eLumen's hosting providers/infrastructure. Client's Data shall not be stored outside of the United States.
- 8. PROPRIETARY RIGHTS.** Subject to the terms and conditions of this Agreement, and conditioned on Client's and its Authorized Users' compliance therewith, eLumen® hereby grants

to Client a non-exclusive, non-sublicensable and non-transferable, limited license to use the Services and Software solely as permitted in this Agreement during the Term. Client shall not copy, modify, rent, lease, sell, assign, distribute, reverse engineer, or breach any security device related to, the Software.

Client will retain all ownership and intellectual property rights in and to Client's Data. eLumen[®] retains all of its ownership and license rights in the Software and all associated Modifications and Enhancements (including, without limitation, all Intellectual Property, Documentation and all Derivative Works). eLumen[®] owns and retains all applicable rights to patents, copyrights, trademarks, trade secret rights, mask rights, trademark and service mark rights, and any and all other proprietary rights of any kind whatsoever (collectively, the "Rights") now existing or later arising in connection with the Software and any and all updates, improvements, Enhancements, Modifications or Derivative Works regardless of whether the Enhancements, Modifications or Derivative Works are suggested or developed by eLumen[®], Client, or any other person or organization. eLumen[®] reserves the right to audit the Client's use of the Software with respect to features, functionality, and time without accessing confidential Content.

9. EARLY TERMINATION FOR DEFAULT OR BREACH; EFFECTS OF TERMINATION.

- A. eLumen[®] shall have the right to terminate this Agreement upon thirty (30) days' notice, unless Client cures such default within the thirty (30) days provided Client or shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Client commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.
- B. Client shall have the right, if eLumen has materially breached any of its obligations relating to Student Information, in its sole discretion, to provide eLumen[®] with a fifteen (15) day period to cure the breach, or terminate the Agreement immediately if cure is not possible. In the event of any other default by eLumen[®], Client shall have the right to immediately terminate this Agreement upon thirty (30) days' notice, unless eLumen cures such default within the thirty (30) days provided eLumen[®] shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and eLumen commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. If Client terminates for cause, eLumen[®] shall refund a prorated portion of any unused annual Fees paid by Client. In the event that a dispute arises between eLumen[®] and Client, eLumen[®] expressly agrees to continue to perform its obligations under this Agreement during the pendency of the dispute. Each party agrees to the other that it shall diligently and in good faith attempt to resolve any disputes which may arise.
- C. Upon termination of this Agreement, Client's access to the Services and Software shall cease and Client shall promptly return all copies of any Documentation in its possession or control. Client shall delete all copies of Documentation residing in on or off-line computer memory, and destroy all copies of such Documentation. Client shall, within ten (10) business days from the effective date of the termination, certify in writing by an officer or director of the Client, based on that officer's or director's actual knowledge, that all copies of the Documentation have been returned, deleted, and/or destroyed. In the absence of any direction from Client, eLumen[®] shall retain all Client Data for the time period specified in Section 7(F). Any time after the termination of this Agreement, Client may deliver a written request to eLumen[®] for the delivery to Client of the then most recent backup of the Client Data. eLumen[®] shall deliver Client Data to Client in a usable format as mutually agreed to between Client and eLumen[®] within fifteen (15) days of its receipt of such a written request. After delivery of the Client Data pursuant to this Section,

eLumen® shall no longer be subject the requirements of Section 7(F) and may destroy or otherwise dispose of any of the Client Data in its possession.

10. SERVICE LEVEL AGREEMENT. The following sets forth eLumen®'s agreement with respect to service levels provided to Client.

- A. eLumen® provides IT support for the Services in the form of telephone support, monitored email support, remote assistance using Remote Desktop, and a Virtual Private Network where available. Coverage parameters are as follows:
- E-mail support (preferred): 8:00 A.M. to 5:00 P.M. Monday – Friday Pacific Time.
 - E-mails received outside of office hours will be collected; however, no action can be guaranteed until the next working day.
 - Telephone support: 8:00 A.M. to 5:00 P.M. Monday – Friday Pacific Time.
 - Calls received outside of office hours will be forwarded to a mobile phone service and best efforts will be made to answer / action the call.
 - Twenty-four (24)-hour self-service online support is available through the application's knowledge base and ticketing system.
- B. eLumen® will respond to Service-related incidents and/or requests submitted by the Client within twenty-four (24) business hours. Support will be provided in the shortest time frame possible depending on the complexity of the issue.
- C. Service-Level Agreement uptime is guaranteed to be ninety-eight percent (98%) availability in any calendar month, not including scheduled maintenance.
- D. From time to time, the Services may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocation, repairs and other similar activities necessary during the operation and upgrade of the Services. eLumen® will post notice of periodic interruptions of the Services or "maintenance windows" from time to time to perform such activities and no reduction of payments will be made in the case of such temporary interruption of Services or "maintenance windows" previously posted. In the event of a temporary interruption in Services that is outside of such "maintenance windows" and is caused by a failure in the Software or servers or network connections, eLumen® shall issue to Client credits, to be used against future service fees, in an amount equal to the pro rata portion of the Fee paid by Client for the portion of the Services not furnished as a result of such interruption in Services, and if service is discontinued for any reason, the credits shall be in the form of a rebate at the end of service. Provided, however, that in no event shall eLumen® be liable for interruption or delays in transmission or errors or defects in transmission or failure to transmit caused by causes beyond its control, including without limitation acts of God or failure of any internet provider. In no event shall eLumen® be liable for any damages due to interruption of Services.

11. WARRANTY AND DISCLAIMER. Each party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all laws applicable to it related to data privacy, international communications and the transmission of technical or personal data. eLumen warrants that during the Term (i) the Software and Services shall perform substantially in accordance with the Agreement, except where non-performance is not

material; and (ii) the functionality of the Software and Services will not be materially or substantially decreased during the Term and shall meet the service levels set forth in the Service Level Agreement (Section 10). eLumen warrants that during the Term of this Agreement installers and/or executables made available by eLumen to the Client are free from material defects in workmanship. eLumen further warrants that during the Term of the Agreement the Software and Services shall operate materially and substantially in accordance with the functional specifications in the Agreement under normal, proper and intended usage and that the Software and Services do not contain any malicious code, computer worms, viruses or other harmful code or disabling device or any unlawful, discriminatory, libelous, harmful, obscene or otherwise objectionable material of any kind. eLumen® further warrants that (a) eLumen has the right to possess, use and license the Services to Client for the purposes contemplated herein and stated in the Agreement and (b) that to eLumen's knowledge, the Software and Services do not infringe any copyright, trademark or trade secret of any third party; provided, however, that notwithstanding any other terms of this Agreement to the contrary, eLumen shall have no obligation to Client with respect to any claim that arises from any modification of the Software and Services by Client or any third party not authorized by eLumen. eLUMEN® DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT eLUMEN® WILL CORRECT ALL SERVICES ERRORS. CLIENT ACKNOWLEDGES THAT eLUMEN® DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. eLUMEN® IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND eLUMEN® HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. eLUMEN® SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

12. LIMITATION OF LIABILITY. IN NO EVENT WILL eLUMEN'S LIABILITY UNDER OR RELATING TO THIS AGREEMENT OR ANY USE MADE BY THE CLIENT OR ANY AUTHORIZED USERS OF THE SOFTWARE OR RELATED SERVICES OR ANY PART THEREOF EXCEED THE AMOUNT CLIENT ACTUALLY PAID UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM UP TO BUT NOT EXCEEDING THE AMOUNT OF eLUMEN'S INSURANCE COVERAGE FOR SUCH CLAIM. CLIENT AGREES THAT IN NO EVENT SHALL eLUMEN® OR ITS AGENTS, EMPLOYEES, DIRECTORS OR SUPPLIERS BE LIABLE TO CLIENT, OR ANYONE CLAIMING THROUGH CLIENT, FOR (A) CLIENT'S INTENTIONAL ACTS, OMISSIONS OR NEGLIGENT ACTS; OR (B) FAILURE BY CLIENT TO COMPLY WITH CLIENT'S OBLIGATIONS UNDER THIS AGREEMENT, AND/OR APPLICABLE STATE, FEDERAL OR INTERNATIONAL LAW AND REGULATION; OR (C) INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE TYPE OF CLAIM FROM WHICH THEY ARISE, EVEN IF THE POSSIBILITY OF SUCH DAMAGES WAS FORESEEABLE.

13. CONFIDENTIAL INFORMATION. Subject to any state or federal laws requiring disclosure, each party agrees, during the term of this Agreement and for five (5) years after termination or expiration of the Agreement, that it will protect the other party's Confidential Information in strict confidence with the same standard of care it uses to protect its own Confidential Information or in

a commercially reasonable manner, whichever is greater, except for any information protected under confidentiality laws which shall be held in such confidence in perpetuity. Except as allowed in this Agreement, neither party will use or disclose Confidential Information, except to Affiliates, employees, and agents who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees, and agents to which it has disclosed Confidential Information) may use Confidential Information only to exercise rights and to fulfill its obligations under this Agreement, while using reasonable care to protect such Confidential Information. To the extent of any conflict between this Section 13 and Section 7 hereof, Section 7 will control. As noted above, it is understood that each party is subject to the UH Executive Policy E2.214: Institutional Data Classification Categories and Information Security Guidelines.

14. INDEMNIFICATION. eLumen® shall defend, indemnify and hold Client harmless against any loss, damage or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Client by a third party alleging that the use of the Service as contemplated hereunder infringes a copyright, a U.S. patent, trade name, trade secret, trademark or other proprietary or contractual right of a third party, excluding such claims caused by the Client. Additionally, eLumen agrees to and does hereby indemnify, hold harmless and defend Client and its Board of Regents, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense (including attorneys' fees), of any nature whatsoever ("Damages"), which may be incurred by reason of any injury to or death of any person(s), or damage to or loss of any property or any and all other actions, claims, liens, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization, caused by any act, neglect, default, or omission of eLumen, or any person, firm or corporation employed by eLumen, either directly or by independent contract, arising out of, or related to, the services covered by this Agreement, whether said Damages occur either on or off Client's property, except for liability for Damages which result from the Client or its officers, employees or agents. eLumen® and Client (each an "Indemnifying Party") will defend the other party ("Indemnified Party") against any claim, demand, suit or proceeding made or brought against Indemnified Party by a third party arising out of the Indemnifying Party's actual or alleged negligence, willful misconduct, violation of law, or breach of this Agreement by the Indemnifying Party (a "Claim"), and will further indemnify the Indemnified Party from any damages, attorney fees and costs finally awarded against the Indemnified Party as a result of, or for any amounts paid by Indemnified Party under a court-approved settlement of, a Claim.

15. COMPLIANCE WITH APPLICABLE LAWS. Except as noted in Voluntary Product Accessibility template (VPAT) supplied to client, each party agrees to comply with all federal, State and local laws, rules, regulations and ordinances that are now or may in the future become applicable to provision and use of the Services and Software covered by this Agreement. eLumen certifies that it is familiar with the federal and state laws, as well as any other applicable requirements for the storage and transmission of Client Data and, except as noted in VPAT supplied to client eLumen will comply with all such requirements. eLumen and all eLumen's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

16. ACCESSIBILITY OF INFORMATION TECHNOLOGY. eLumen hereby warrants that the Work to be provided under this Agreement complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. eLumen agrees to promptly respond to and resolve any complaint regarding accessibility of its products brought to its attention. eLumen further agrees to indemnify and hold harmless Honolulu Community College using the

Service Provider's products from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this Agreement.

- 17. INSURANCE.** eLumen[®] agrees to carry, in full force and effect, at eLumen's expense, the following insurance coverages: (i) a comprehensive Commercial General Liability insurance with limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury, broad form property and blanket contractual liability, written on an "occurrence" form; (ii) Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000); (iii) Employer's Liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence; (iv) Workers' Compensation insurance as required by statutory insurance requirement of the State of Hawaii; and (v) Automobile Liability covering all owned, non-owned and hired vehicles with combined single limit for bodily injury and/or property damage of not less than One Million Dollars (\$1,000,000) and (iv) Cyber Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence and aggregate for the policy period to cover claims involving Network Security, Privacy violations, damage to or destruction of electronic information, information theft, any release of private information, alteration of electronic information, Business Interruption, Cyber Extortion, Denial of Service and coverage needs to include remediation costs for expenses incurred relating to notification expenses, call centers, Information Technology forensics, and Public Relations support following an incident or breach. eLumen agrees to name Client as an additional insured under said policies.
- 18. AUDIT.** eLumen[®] security procedures, financial records and supporting documents shall be available for inspection, reproduction and audit by the Client or its auditors at Client's request.
- 19. TIME IS OF THE ESSENCE.** Time is of the essence of all terms, covenants and conditions of this Agreement and except as otherwise provided herein, all of the terms, covenants and conditions of this Agreement shall apply to, benefit and bind the successors or assigns of the respective parties, jointly and individually.
- 20. INDEPENDENT CONTRACTOR.** For purposes of this Agreement, all persons employed by eLumen[®] in the performance of services and functions with respect to this Agreement shall be deemed employees of eLumen[®] and no eLumen[®] employee shall be considered as an employee of the Client under the jurisdiction of Client, nor shall such eLumen employees be entitled to benefits of any kind or nature normally provided employees of the Client and/or to which Client's employees are normally entitled, including, but not limited to, State Unemployment Compensation, Worker's Compensation, or have any Client pension, civil service, or other status while an employee of the eLumen[®]. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Client and eLumen[®].
- 21. ATTORNEY FEES.** If any legal action is necessary to enforce this License, the prevailing Party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which it may be entitled.
- 22. NOTICE.** All notices required or permitted to be given by one Party to the other under this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the Parties at the respective addresses set forth above or to such other address as the Party to receive the notice has designated by notice to the other Party. Notices sent to Client shall be sent to the attention of the Assistant Superintendent/Vice President, Business Services.

- 23. GOVERNING LAW; JURISDICTION AND VENUE.** This Agreement shall be governed by and construed under the laws of the State of Minnesota. Each of the Parties consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting within the State of Minnesota. Service of process in any such proceeding may be made by certified mail, return receipt requested, directed to the respective Party at the address at which it is to receive notice as provided herein.
- 24. SEVERABILITY.** If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.
- 25. NON-DISCRIMINATION.** eLumen® agrees not to engage in unlawful discrimination in the employment of persons, or in the acceptance, assignment, treatment on the basis of race, color, religion, nationality, national origin, ancestry, sex, gender, gender identity, gender expression, ethnicity, age, medical condition, mental or physical disability, marital status, sexual orientation or Vietnam-era veteran status.
- 26. NO WAIVER.** The failure by any Party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.
- 27. NON-EXCLUSIVITY.** eLumen® acknowledges that Client may enter into Contracts with other parties for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.
- 28. COMPLETE AGREEMENT.** Appended to this Agreement is Schedule A, the Fee Schedule and together this Agreement and the Fee Schedule comprise the complete agreement of the Parties. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference.
- 29. BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party. Neither this Agreement nor any of the rights or obligations hereunder shall be assigned or delegated by either party hereto without the prior written consent of the other party; provided, however, this Agreement may be assigned by eLumen® to an Affiliate or any person or entity which succeeds to the interests of eLumen® by reason of a merger, consolidation, or reorganization involving eLumen® or a sale of all or substantially all of the assets or equity of eLumen®. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- 30. NO THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries to this Agreement.
- 31. SURVIVAL.** The following Sections will survive expiration or termination of this Agreement: 1, 5(I), 5(J), 8, 9(C), 11 through 14, 23, 24, and 26 through 31.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

eLumen® Inc.

Compton College


[steve cohen \(Oct 12, 2020 11:05 CDT\)](#)

Signature
Steve Cohen – Chief Financial Officer
Date: Oct 12, 2020

Signature

Date:

SCHEDULE B: ELUMEN® IMPLEMENTATION STATEMENT OF WORK

eLumen provides a dedicated Customer Success Manager (CSM) to manage each implementation project. The project sponsor and leads will have direct contact information for their assigned CSM. The CSM will set regular check-in meetings with the project leads up to once per week and answer technical and administrative support emails and calls during normal business hours.

The client commits to providing an assigned data steward or similar resource that the CSM can guide and train through the implementation process and post-launch whose responsibility will be to maintain the platform and to help support adoption and training of eLumen by staff, faculty and students over time.

Technical Implementation

The Technical Implementation project includes an eLumen production and test site with at least one academic term of enrollment data. Authentication will be achieved through either internal eLumen Authentication or one of the eLumen supported methods of Single Sign-on (LDAP, CAS, Shibboleth, etc.).

eLumen will provide:

- Two eLumen instances (where “Client” will be replaced with the URL label specified by the client that ensures uniqueness):
 - Production: [Client].elumenapp.com
 - Test: [Client]test.elumenapp.com
- Up to 2 hours of guidance and setting of Organization Configuration
- Up to 3 hours of training plus documentation for a data loader
- Technical documentation and configuration of eLumen for authentication

The Client will provide:

- Personnel to determine a single organization configuration that supports implementation of Compcourse and program curriculum, assessment, and strategic initiative
- A single point of contact for preparation of the data load
- A preliminary XML data load of organizations, academic terms, and key personnel
- A CSV file containing basic course information for all catalog courses
- A repeatable enrollment XML data load process
- A single point of contact for configuration of authentication (if required)

Assessment Implementation

The Assessment Implementation includes Student Learning Outcomes (SLO)s and assessment rubric planning and scoring on both the test and production sites configured to the Client’s preferences for rubric design and faculty configuration.

eLumen will provide:

- Up to 3 test loads of CSLO, PSLO, and ISLO data into test using the eLumen SLO Import Template
- 1 import of CSLO, PSLO, and ISLO data into production using the eLumen SLO Import Template
- Up to 3 hours of guidance on configuration of the assessment platform
- Up to 4 hours of planning and assessment creation training for project leads
- Up to 4 hours of planning and assessment creation training for Coordinator users
- Up to 3 hours of assessment scoring and faculty training guidance for project leads

The Client will provide:

- A single point of contact for assessment implementation
- A spreadsheet for CSLO, PSLO, and ISLO data in the designated format
- Configuration of eLumen assessment settings to meet the institution's desired assessment strategy
- Creation of all assessment rubrics within eLumen
- Planning of all assessment rubrics to the sections within eLumen
- Scoring and evaluation of assessment data
- Support for faculty end users

Strategic Initiative Implementation

The Strategic Initiative Implementation includes templates for collecting continuous improvement reporting and the tracking of goals, actions, resource requests, and budget allocation.

eLumen will provide:

- Up to 2 hours of guidance and training on configuring templates
- Up to 2 hours of guidance and training on setup and completion of strategic initiatives

The Client will provide:

- A single point of contact for Strategic Initiative implementation
- Design and development of Strategic Initiative Templates within eLumen
- Distribution and configuration of Strategic Initiatives for organizations within eLumen
- Files and written responses for Strategic Initiatives
- Training and support for end users




Compton College eLumen CSA 10-12-2020 (for execution - 2 years)

Final Audit Report

2020-10-12

Created:	2020-10-12
By:	Mitchell Shively (mitch@elumen.info)
Status:	Signed
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-  Document created by Mitchell Shively (mitch@elumen.info)
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