

**TechSmart, Inc.**  
**Curriculum as a Service (CaaS) Agreement**

This Curriculum as a Service (CaaS) Agreement ("**Agreement**") is made by and between TechSmart, Inc. ("**TechSmart**"), a Delaware Corporation, and Mountain View Whisman School District ("**School District**"), and shall be effective as of January 1, 2019 ("**Effective Date**"). Each party to this Agreement may also be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

Pursuant to this Agreement and any Schedules, TechSmart will provide School District with the TS Offerings. Therefore, for good and valuable consideration, the receipt and sufficiency of which they each acknowledge, TechSmart and School District agree to be bound by the terms and conditions set forth below.

<b>TECHSMART</b>	<b>SCHOOL DISTRICT</b>
Signature: _____	Signature: _____
Print Name: <u>Bruce M. Levin</u>	Print Name: <u>Ayinde Rudolph</u>
Title: <u>Chief Executive Officer</u>	Title: <u>Superintendent</u>
Date: _____	Date: <u>2/12/19</u>

**TERMS AND CONDITIONS**

1. **Definitions.** The following capitalized terms shall be defined, used and interpreted throughout this Agreement as follows:

1.1 "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the TS Offerings.

1.2 "**Applicable Law**" means any local, state or federal laws or regulations that are applicable to the activities specified or reasonably contemplated under this Agreement.

1.3 "**Authorized User**" means those Teachers or Students who have been approved by School District to use the TS Offerings pursuant to this Agreement and who have been permitted such access by TS.

1.4 "**Fees**" has the meaning set forth in a Schedule.

1.5 "**Harmful Code**" means any software, hardware or other technology, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorized access to or use of, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, the TS Offerings.

1.6 "**Intellectual Property Rights**" means all: (a) copyrights, copyrightable works, registrations for copyrightable works; (b) trademark, trade name, service mark and logo rights, whether in common law or otherwise, and registrations and

applications for registration of any of the foregoing; (c) patent applications, patent rights, continuations and continuations-in-part, and divisions; (d) trade secrets, moral rights, right of publicity, authors' rights, contract, and licensing rights; and (e) goodwill and all other intellectual property rights as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States or any other state, country or jurisdiction.

1.7 "**Personnel**" means employees and independent contractors.

1.8 "**PII**" means any data that could potentially identify a specific individual or any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data.

1.9 "**Resultant Data**" means information, data and other content that is derived by or through the TS CaaS from processing School District Data and is sufficiently different from such School District Data that such School District Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content.

1.10 "**Schedule**" means a schedule attached to this Agreement or a schedule subsequently executed by the Parties which references and incorporates this Agreement, and which schedules are hereby incorporated into and made a part of this Agreement.

1.11 "**School District Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from School District or an Authorized User by or through the TS CaaS. School District Data does not include data collected independently by TechSmart via other sources, including from students directly enrolled with TechSmart to receive TechSmart services or products ("**Direct Data**"), even if the students directly enrolled with TechSmart are also Students and even if that Direct Data constitutes some of the same data as the School District Data.

1.12 "**Selected Schools**" has the meaning set forth in a Schedule.

1.13 "**Semester**" has the meaning set forth in a Schedule.

1.14 "**Student**" means an individual student in the School District identified by School District as authorized to take the Courses.

1.15 "**System Administrator**" means TS employee that is responsible for the upkeep, configuration and operation of the TS CaaS.

1.16 "**Teacher**" means School District teachers identified by School District as authorized to teach the Courses.

1.17 "**Term**" means the period of time beginning on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue until the later of termination or expiration of the last Schedule in effect under this Agreement, or either party terminates this Agreement with 180 days' prior written notice.

1.18 "**Territory**" means the United States of America.

1.19 "**TS CaaS**" means TechSmart' online Computer Science Teaching and Learning Platform through which the TS Content is delivered to Students and Teachers.

1.20 "**TS Content**" means TechSmart' curriculum and educational course materials, including accompanying text, diagrams, videos, code, programs, projects, instruction manuals, software and all related materials, in various subjects that TechSmart makes available to School District under this Agreement (each such subject, a "**Course**"). Throughout the Term, School District may only offer those versions of Courses to Students as listed in TechSmart' then-current Course catalog ("**Course Catalog**") or as set forth in a Schedule. All Courses shall be delivered in the English language and in the format specified by TechSmart.

1.21 "**TS Offerings**" means, collectively, the TS CaaS, the TS Content and the TS Services.

1.22 "**TS Services**" means any services to be delivered by TechSmart to School District under this Agreement or a Schedule.

## 2. Authorization: Services Description.

2.1 Subject to and conditioned on School District's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, TechSmart hereby authorizes School District to access and use, solely in the Territory and during the applicable Semester(s), the TS Offerings by and through Authorized Users in the Selected Schools, for the purpose of delivering Courses to Students in accordance with the terms and conditions in this Agreement, the Schedule(s) and TechSmart' Terms of Use and Privacy Policies (available at <http://www.TechSmart.com>). This authorization is non-exclusive, non-sublicenseable and non-transferable.

2.2 School District shall offer all Courses to Students solely for completion within the Semester. Courses may not be extended or redistributed, reproduced or retransmitted by School District or Students to any third parties.

~~2.3~~ School District shall offer all Courses to Students in the form delivered by TechSmart, without any modification or alteration of any kind. School District shall not break up, divide, modify, alter, change, delete or add to, or append material to any Course without the prior written approval of TechSmart or unless otherwise specified in a student's Individualized Education Plan or Section 504 Accommodation plan. Each set of Access Credentials may only be used by the single named Authorized User specified by TechSmart, and School District will ensure its Teachers, Students and staff comply with the foregoing.

2.4 School District shall not and shall not permit any other person to: (a) copy, modify or create derivative works or improvements of the TS Offerings; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any of the TS Offerings to any person, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, decompile or disassemble the TS CaaS or any software that TechSmart delivers to School District pursuant to this Agreement, and shall not use the TS Offerings as a basis for developing its own educational course materials; (d) allow Authorized Users to share or distribute Access Credentials; (e) bypass or breach any security device or protection used by the TS Offerings or access or use the TS Offerings other than by an Authorized User through the use of his or her own then valid Access Credentials; or (f) input, upload, transmit or otherwise provide to or through the TS CaaS, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code.

2.5 TechSmart shall deliver all Courses specified in this Agreement to School District via the TS CaaS or as otherwise expressly set forth in a Schedule. School District shall maintain all TS Content in a safe and secure manner to prevent unauthorized access, use or distribution.

2.6 TechSmart may suspend, terminate or otherwise deny School District or its Authorized Users' access to or use of all or any part of the TS Offerings, without incurring any resulting obligation or liability, if: (a) TechSmart receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires TechSmart to do so; or (b) TechSmart believes, in its good faith and reasonable discretion, that: (i) School District or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the TS Offerings beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) School District or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; (iii) School District or any Authorized User has uploaded to, or used the TS Offerings for, any inappropriate purpose, including but not limited to, demeaning or pornographic activity or harassment; or (iv) this Agreement expires or is terminated. This Section 2.6 does not limit any of TechSmart's other rights or remedies, whether at law, in equity, or under this Agreement.

2.7 TechSmart shall provide School District with written notice before making material changes to its privacy policies related to any and all services specified in this Agreement.

### 3. School District Obligations.

3.1 Equipment and Access. School District, and/or its Teachers or Students will be responsible for obtaining all equipment, including without limitation, all necessary hardware, software, modems, connections, bandwidth, and access to the Internet required for the delivery of and access to the TS Offerings, and all costs associated with the same. School District shall at all times during the Term: (a) provide TechSmart's Personnel with such access to School District's premises as is necessary for TechSmart to perform the TS Offerings in accordance with this Agreement; and (b) provide all cooperation and assistance as TechSmart may reasonably request to enable TechSmart to exercise its rights and perform its obligations under and in connection with this Agreement. TechSmart is not responsible or liable for any delay or failure of performance caused in whole or in part by School District's delay in performing, or failure to perform, any of its obligations under this Agreement.

3.2 Teachers. Except as otherwise expressly set forth in a Schedule, School District shall be responsible for: (a) administering and teaching the Courses, including without limitation, administering and providing all Teachers for the

Courses; and (b) School District's staff, Teachers and Students' compliance with this Agreement.

3.3 Regulatory Compliance. School District shall be responsible for ensuring that it is duly authorized and licensed in each jurisdiction in which it is required to be authorized or licensed to offer online educational offerings, including without limitation, in each jurisdiction in which it offers or provides the Courses to Students.

3.4 Other Costs. Except as set forth herein, each Party shall bear all expenses, charges and other costs incurred by it in connection with the performance of the obligations identified for such Party under this Agreement.

### 4. Security; Data.

4.1 School District Control and Responsibility. School District has and will retain sole responsibility for: (a) all School District Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of School District or any Authorized User in connection with the TS Offerings; (c) School District's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by School District or through the use of third-party services ("**School District Systems**"); (d) the security and use of School District's and its Authorized Users' Access Credentials; and (e) all access to and use of the TS Offerings directly or indirectly by or through the School District Systems or its or its Authorized Users' Access Credentials, with or without School District's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

4.2 Access and Security. School District shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the TS Offerings; and (b) control the content and use of School District Data, including the uploading or other provision of School District Data for processing by the TS CaaS.

4.3 Consent to Use School District Data. School District hereby grants all such rights and permissions in or relating to School District Data to TechSmart and its Personnel as are necessary or useful: (a) to provide the TS CaaS and TS Content and to perform the TS Services; and (b) for the purposes of this Agreement, exercise of its rights and performance of its obligations hereunder.

### 5. No Alteration Marks: Marketing and Publicity.

5.1 School District shall not remove any TechSmart trademarks, names or branding ("**TS Marks**") from the TS Content or attempt to re-brand the TS Content (including the

Courses). School District shall not remove any trademark, copyright or other legal notices from the TS CaaS or any TS Content provided under this Agreement. TechSmart grants School District a non-exclusive, non-transferable license during the Term to use the TS Marks in the form provided or otherwise approved in writing by TechSmart. All uses of the TS Marks shall inure exclusively to the benefit of TechSmart.

5.2 School District grants TechSmart a non-exclusive, non-transferable, worldwide, perpetual license to use the School District's trademarks, names or branding in the form provided, or otherwise approved in writing by School District ("School Marks") for use in client and reference lists, in TechSmart promotional materials, and as further described in a Schedule in electronic format. All uses of the School Marks shall inure exclusively to the benefit of School District. School District may revoke TechSmart rights regarding trademarks, names or branding for as long as the agreement is active.

## 6. Fees and Payment Terms.

6.1 License and Service Fees. School District shall pay TechSmart the Fees set forth in a Schedule. All Fees payable by School District shall be due and payable as set forth in a Schedule. All Fees shall be paid in U.S. dollars and are exclusive of taxes and similar assessments. School District shall be responsible for all sales taxes, use taxes and any other taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding only U.S. taxes based solely upon TechSmart's gross income. TechSmart will owe no fees or compensation to School District (including facility rental fees) related to its performance under this Agreement.

## 7. Confidentiality.

7.1 Definition of Confidential Information. TechSmart, Inc. is hereinafter considered to be "other school officials" within the meaning of FERPA. A school official is a person or company with whom the District has contracted to perform a special task and who has a legitimate educational interest in the records they have access to. TechSmart, Inc. agrees to comply with both FERPA and corresponding California law respecting student education records. Personally identifiable information obtained from the District by the Contractor in the performance of their services: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §§99.31, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill the Contractor's responsibilities under this Agreement.

7.2 The Parties agree that, with the exception of any and all "confidential student information" as defined in this Agreement, Resultant Data and School District Data are TechSmart Confidential Information. Resultant Data and School District Data are TechSmart Confidential Information. Recipient

will receive and hold Disclosing Party's Confidential Information in trust and confidence and will treat such Confidential Information with the same degree of care as it accords to its own Confidential Information of like sensitivity, but in no event less than a reasonable level of care, and will not disseminate, or in any way disclose Disclosing Party's Confidential Information to any third party. Recipient further agrees that it and its employees, agents and contractors will use Disclosing Party's Confidential Information only for the purposes contemplated by this Agreement. Notwithstanding the immediately preceding sentence, TechSmart is not restricted by this section from using Resultant Data or School District Data for the purpose of improving curriculum, instruction or learning outcomes and this section will not limit TechSmart's rights to use School District Data as otherwise permitted by this Agreement. In no circumstance will Resultant Data be associated with Student or Teacher PII. Within thirty (30) days after the date of termination of this Agreement, Disclosing Party may request, in writing (email is sufficient), and Recipient shall, either return all of Disclosing Party's Confidential Information to Disclosing Party or certify in writing to Disclosing Party the destruction of such Confidential Information. TechSmart shall treat the terms and conditions of this Agreement as confidential; provided however, either Party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that Party's business.

7.3 Notwithstanding anything to the contrary in this Section 7.1, TechSmart may disclose or produce any School District Data if and to the extent required by any discovery request, subpoena, court order or governmental action, provided that TechSmart gives School District reasonable advance notice of the same so as to afford School District a reasonable opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure.

## SAFEGUARDS AGAINST UNAUTHORIZED ACCESS AND RE-DISCLOSURE

7.4 TechSmart agrees to establish and implement the following minimum safeguards for maintaining the confidentiality of the "confidential student information" provided by School District and as defined above pursuant to this Agreement:

- a) Access to the "confidential student information" provided by School District to TechSmart will be restricted to the System Administrator on behalf of TechSmart, to perform official duties in the performance of work that requires access to the "confidential student information" as detailed in the Agreement.
- b) TechSmart agrees not to sell the "confidential student information" and further agrees not to share the "confidential student information".
- c) TechSmart will protect the "confidential student information" in a manner that prevents unauthorized persons from accessing

the information by means of computer, remote terminal, or other means.

d) TechSmart agrees to maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of the "confidential student information."

e) TechSmart agrees to destroy the "confidential student information" within a reasonable period of time if the School District requests destruction of same.

#### REDISCLASURE OF CONFIDENTIAL INFORMATION

7.5 Re-disclosure of then "confidential student information" received from School District by TechSmart to any person who is not expressly identified by or pursuant to this Agreement as a person authorized to receive and process such information is prohibited by this Agreement and various state and federal laws such as those cited above in the context of the definition of "confidential student information".

7.6 Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information that Recipient can establish: (a) has entered the public domain without Recipient's breach of any obligation owed to Disclosing Party; (b) is rightfully received by Recipient from a third party without confidentiality restrictions; (c) is known to Recipient prior to first receipt by Recipient from Disclosing Party hereunder; or (d) is independently developed by Recipient without reference to Disclosing Party's Confidential Information.

7.7 Injunctive Relief. The Parties agree that in the event of any breach or threatened breach of this Section 7 or Section 8 of this Agreement, the non-breaching Party may suffer an irreparable injury, such that no remedy at law will afford that Party adequate protection against or appropriate compensation for such injury. Accordingly, in addition to remedies available at law, the Parties hereby agree that the non-breaching Party shall be entitled to seek specific performance as well as such injunctive relief as may be granted by a court of competent jurisdiction.

#### 8. Proprietary Rights Ownership.

8.1 Reservation of Rights. TechSmart shall own all right, title and interest, including without limitation all Intellectual Property Rights, embodied in or otherwise applicable to the TS Offerings, including, without limitation Courses, Marks and any other material provided by TechSmart to School District under this Agreement. While School District is prohibited from making any modifications, alterations or changes to the TS Content, all right, title and interest, including without limitation, any Intellectual Property Rights, in any such modifications that are made thereto or any derivative works of the TS Content, shall be automatically assigned to and owned solely by TechSmart.

Except for the licenses expressly conveyed to School District hereunder, TechSmart reserves all rights in and to the TS Offerings.

8.2 Feedback. If School District provides comments, feedback, ideas, reports, suggestions, data or other information to TechSmart (collectively "Feedback"), School District acknowledges and agrees that: (a) Feedback does not contain confidential or proprietary information; (b) TechSmart shall be entitled to use or disclose (or choose not to use or disclose) such Feedback for any purpose, in any way, in any media worldwide; (c) TechSmart may have something similar to the Feedback already under consideration or in development; (d) Feedback automatically becomes the property of TechSmart without any obligation of TechSmart to School District; and (e) School District is not entitled to any compensation or reimbursement of any kind from TechSmart under any circumstances.

9. Nondiscrimination. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this agreement because of race, color, creed, religion, national origin, age, handicap, honorably discharged veteran or military status, sex, sexual orientation, marital status, genetic information, pregnancy, the presence or the perceived presence of any sensory, mental or physical disability or any other basis prohibited by applicable local, state or federal law, provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the individual from performing the essential functions of his or her employment position, even with reasonable accommodation. The parties agree to abide by the standards of responsibility toward the disabled as specified by the Americans with Disabilities Act and applicable state law. In the event that one of the parties hereto refuses to comply with the above provision, this Agreement may be canceled, terminated, or suspended in whole or in part by the other party.

#### 10. Warranties; Indemnification.

10.1 Warranties. Each Party represents and warrants to the other Party that: (a) it has the full corporate right, power, and authority to enter into the Agreement and to perform the acts required of it under the Agreement; (b) is permitted by Applicable Law and regulations to enter into this Agreement; (c) when executed and delivered, the Agreement will constitute a legal, valid, and binding obligation, enforceable against it; and (d) it is not subject to any other agreement that would conflict with its ability to perform its obligations under this Agreement. In addition, School District represents and warrants that: (y) it has obtained proper permission (including as required by Applicable Law) to provide the TS Offerings to the Students and Teachers; and (z) has and will have the necessary rights and consents in and relating to the School District Data so that, as received by TechSmart and processed in accordance with this Agreement,

they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, any privacy or other rights of any third party, or violate any Applicable Law.

10.2 Indemnification of TechSmart. Each party to this Agreement shall be responsible for any and all acts and omissions of its own employees, officers, directors, trustees and agents. Each party shall defend, hold harmless, and indemnify the other party from and against any and all third party claims, damages, and liability of any kind arising from the negligence of its own employees, officers, directors, trustees, and agents.

10.3 Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TechSmart DISCLAIMS ALL WARRANTIES, OBLIGATIONS, AND LIABILITIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND WHETHER ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY BUG, ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE TS OFFERINGS OR OTHER ITEMS OR SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO ANY: (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; OR (C) CLAIM OF INFRINGEMENT.

11. Limitation of Liability. EXCEPT WITH RESPECT TO ANY BREACH BY SCHOOL DISTRICT OF ITS OBLIGATIONS RELATED TO TechSmart' INTELLECTUAL PROPERTY RIGHTS, A PARTY'S BREACH OF SECTION 7 (CONFIDENTIALITY) AND ANY AMOUNTS PAYABLE TO A THIRD PARTY PURSUANT TO INDEMNIFICATION OBLIGATIONS HEREUNDER: (A) UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES), ARISING FROM OR RELATING TO THE AGREEMENT, INCLUDING LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST BUSINESS OPPORTUNITIES, OR LOST BUSINESS; AND (B) THE AGGREGATE LIABILITY OF EACH PARTY ARISING FROM OR RELATING TO THE AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE WILL NOT EXCEED TEN THOUSAND DOLLARS (U.S. \$10,000). IN ADDITION, EXCEPT FOR CLAIMS ARISING FROM TechSmart' GROSS NEGLIGENCE OR WILFUL MISCONDUCT, TechSmart WILL NOT BE LIABLE FOR ANY CLAIMS RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM TechSmart' PERFORMANCE UNDER THIS AGREEMENT. NOTHING IN THIS SECTION WILL LIMIT SCHOOL DISTRICT'S OBLIGATION TO PAY TechSmart PURSUANT TO SECTION 6.

## 12. Termination.

12.1 Termination on Breach. In the event of a material breach of this Agreement by either Party where no other remedy is specified, the non-breaching Party may terminate the Agreement by giving the breaching Party written notice of the breach and the non-breaching Party's intention to terminate the Agreement (a "Termination Notice"). If the breach has not been cured within the cure period specified within the Termination Notice, which cure period shall not be less than thirty (30) days following the date of delivery of such Termination Notice, this Agreement shall automatically terminate.

12.2 Additional Termination Rights. TechSmart shall also have the right to terminate this Agreement upon ten (10) days prior written notice if School District fails to pay any amounts properly accruing in TechSmart' favor under this Agreement when such payments become due and such failure to pay has not been cured within the 10-day period.

12.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason, School District shall immediately cease accessing the TS Offerings and any further marketing or distribution of the TS Content. In addition, School District shall promptly remove all TS Content in the School District's possession and promptly (but in no event later than ten days following such termination or expiration) certify in writing to TechSmart that it has done so. Further, upon termination or expiration of this Agreement, any and all confidential student information provided by School District pursuant to this agreement shall either be immediately returned to School District or immediately destroyed.

12.4 Survival of Obligations. Sections 1, 2.3, 3.3, 4 through 13 of this Agreement, any sections which, by their terms, are intended to survive, and any claims for amounts properly payable by School District to TechSmart hereunder, shall survive any termination or expiration of this Agreement, howsoever occurring.

## 13. General.

13.1 Export Regulations. School District shall not export, directly or indirectly, the TS Content to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

13.2 Notice. Any notice required or permitted to be given under this Agreement shall be given in writing and, except as otherwise authorized in this Agreement, shall be delivered in person, facsimile transmission or by certified or registered mail, postage prepaid, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail or upon acknowledgment of receipt of facsimile transmission. Notices shall be sent to the individuals

specified below at the addresses set forth below, the facsimile numbers below (if any), or such other persons or addresses as either Party may specify in writing:

IF TO TECHSMART:  
TechSmart, Inc.  
Attn: Bruce M. Levin, CEO  
407 101<sup>st</sup> Ave  
Bellevue, WA 98004

IF TO SCHOOL DISTRICT:  
Mountain View Whisman School District  
Attn: Dr. Ayinde Rudolph, Superintendent  
1400 Montecito Ave.  
Mountain View, CA 94043

13.3 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

13.4 Waiver or Delay. A waiver of a breach of any term of this Agreement must be in a writing signed by the waiving Party and shall not be construed as a waiver of any succeeding breach of that term or as a waiver of the term itself. No failure or delay by either Party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be a waiver of any of the other terms and conditions of this Agreement. Except as otherwise specified herein (e.g., where an exclusive remedy is specified) the exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

13.5 Force Majeure. If the performance of this Agreement is adversely restricted or if either Party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the Party affected, then the Party affected, upon giving prompt written notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so restricted); provided, however, that the Party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13.6 Severability; Interpretation. In the event any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. No

provision of this Agreement shall be construed against either Party solely by virtue of its authorship.

13.7 Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Washington and, where such laws are preempted by the laws of the United States, by the internal laws of the United States, in each case without regard to: (a) conflicts of laws principles; and (b) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods.

13.8 Venue and Jurisdiction. In the event of any claim or dispute arising out of or relating to this Agreement, the Parties shall submit to the exclusive jurisdiction of and venue in any court of competent jurisdiction situated in King County, Washington. Each Party hereby waives all defenses of lack of personal jurisdiction and forum non-conveniens in connection with any action brought in the foregoing courts.

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

13.10 Entire Agreement. This Agreement represents the entire agreement of the Parties and supersedes any prior or collateral agreements, communications, representations or understandings between them with respect to the subject matter hereof. This Agreement may not be modified or supplemented except in a writing executed by a duly authorized representative of each Party.

13.11 Compliance with Applicable Law. Each Party shall at all times comply with all Applicable Law in performing the obligations specified for it in this Agreement.

13.12 Counterparts; Exchanges by Email or Fax. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by email or fax shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

**SCHEDULE 1**

This Schedule 1 ("**Schedule**") is entered into as of January 1, 2018 (the "**Schedule Effective Date**") and made a part of the Curriculum as a Service (CaaS) Agreement ("**Agreement**"), between School District and TechSmart, with an effective date of January 1, 2018 (the "**Agreement**"). All capitalized terms not defined in this Schedule have the respective meanings set forth in the Agreement or in the exhibits attached to this Schedule. To the extent that any term of this Schedule conflicts with any of the terms of the Agreement, and this Schedule explicitly states that it intends to modify the conflicting terms, this Schedule supersedes the Agreement.

**OVERVIEW**

TechSmart offers computer science educational course materials designed for delivery to K-12 students via an online computer science teaching & learning platform, or curriculum as a service (CaaS). School District provides educational content directly to K-12 students and desires to use the TS CaaS and to license from TechSmart the TS Content specified herein computer science courses for delivery to certain of School District's elementary and junior school students. As part of the computer science courses, School District will also purchase from TechSmart the TS Services described in Exhibit B in support of School District's delivery of the TS Content to students.

<b>School Year</b>	2018-19 & 2019-20
<b>Schedule Term</b>	Schedule Effective Date January 1, 2019 through June 30, 2020
<b>Courses</b>	CS10 - Coding in Skylark 1 CS101 - Coding in Python 1
<b>Authorized Users</b>	Trained teacher & student licenses.
<b>Schools</b>	Crittenden Middle School Graham Middle School Theuerkauf Elementary School Mariana Castro Elementary School
<b>Teacher Coding Bootcamps</b>	CST10: Coding in Skylark 1 for Teachers CST101: Coding in Python 1 for Teachers
<b>Fees and Consideration</b>	<p>Coding Bootcamp Training</p> <p>CST10: Coding in Skylark 1 for Teachers (23) elementary school teachers x \$1,250 = \$28,750</p> <p>CST101: Coding in Python 1 for Teachers (15) middle school teachers x \$2,500 = <u>\$37,500</u> \$66,250</p> <p>Curriculum as a Service</p> <p>CS Curriculum + Platform 4 schools x \$5,500 = \$22,000 8th Grade Math w/Coding Core Content Pack x \$0 = <u>\$ 0</u> \$22,000</p> <p>Teacher Live Support</p> <p>(23) elementary school teachers x \$250 = \$ 5,750 (15) middle school teachers x \$400 = <u>\$ 6,000</u> \$11,750</p> <p align="right">Total Fees = \$100,000</p>
<b>Coding Bootcamp Warranty</b>	If a teacher who has completed a Coding Bootcamp (CST) leaves the district or is unable or unwilling to teach the computer science class they were trained for during the next school year, then during that year the district can send a replacement teacher to a scheduled Coding Bootcamp at another location at no additional cost. This will be a one-time replacement training and is not renewable. This replacement training will only be for a teacher that will be teaching the computer at a school listed in Schedule 1.



<b>Payment Due Date</b>	<p>\$100,000 due by 3/31/19</p> <p>TechSmart will invoice School District 30 days prior to payment due date. School District will provide payment no later than the due date specified above.</p>
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1. **Project Manager** - School District will provide an assigned staff member to serve in the role of Project Manager to assist in coordination of all activities related to Teacher Coding Bootcamp training, scheduling, class setup, and other activities that may arise from time to time.
2. **Teachers attending Coding Bootcamp Training** - School District will provide a roster of teachers attending Coding Bootcamp Training no later than 30 days before the start date of the training. This roster will include: teacher first name, teacher last name, teacher email address, grade level, school, coding bootcamp attending.
3. **Teachers teaching Coding Courses** - School District will provide a roster of teachers that will be teaching the Coding courses no later than 30 days before the start date of the class. This roster will include: teacher first name, teacher last name, teacher email address, grade level, school, coding course to be taught.
4. **Setup of TechSmart Platform** - School District teachers will utilize the TechSmart Platform to set up their Coding classes, entering information related to their teaching schedule and student roster.
5. **Systems Requirements** - School District will provide the necessary hardware, software and Internet connections required for the delivery of and access to the TS Offerings. The following are the minimum requirements:
  - Student & Teacher computers: O/S: Mac OSX 10.7 or higher, Windows 7 or higher or Chromebook. Processor 1 GHz processor, Memory 512MB, Monitor Resolution 1600x900 (1920 x 1080 preferred), Internet Browser- Google Chrome.
  - Internet Connection: Broadband (high speed) Internet connection with a minimum consistent speed of 1.5Mbps.
  - Classroom:
    - Middle School: Two LCD Projectors per classroom with WUXGA resolution (1920 x 1200 widescreen 16:10 Aspect Ratio).
    - Elementary School: One LCD Projector per classroom with WUXGA resolution (1920 x 1200 widescreen 16:10 Aspect Ratio).

**TECHSMART**

**SCHOOL DISTRICT**

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

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

Print Name: Bruce M. Levin

Print Name: Ayinde Rudolph

Title: Chief Executive Officer

Title: Superintendent

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

Date: 2/12/19

**EXHIBIT A**  
**Computer Science Courses**

TechSmart will provide the TS CaaS pursuant to this Agreement and the terms set forth in this Exhibit A. TechSmart may upgrade or update the TS CaaS and the Courses any time in its sole discretion. TechSmart will provide reasonable notice to School District of any material changes which would materially alter or affect School District's or Students' use of the TS CaaS or Courses.

**CS10: Coding in Skylark 1**

Full Year: 35 weeks. Grades 2-5. Such course is comprised of the following:

- Lesson instructional content
- Coding Techniques, Coding Exercises and Coding Projects
- Student Assessments
- Homework Assignments
- Lesson-by-Lesson Teacher's Guides and Resources

Such Course includes the following instructional units and lessons:

- Unit 1: Frames- 1.1 Frames, 1.2 Variables
- Unit 2: Coding Basics- 2.1 Input & Output, 2.2 Conditionals & Random
- Unit 3: Screen & Advanced Conditionals- 3.1 Coordinates, 3.2 Mouse & Keyboard, 3.3 Else If & Else

**CS101: Coding in Python 1 Courses**

Semester Courses: 19 weeks each. Such Course is comprised of the following:

- Lesson instructional content
- Coding Exercises and Coding Projects
- Student Assessments
- Homework Assignments
- Lesson Videos and Lesson Notes
- Lesson-by-Lesson Teacher's Guides and Resources

CS101 includes the following instructional units and lessons:

- Unit 1: Data- Statements & Variables, Values and Expressions
- Unit 2: Decisions- Conditionals (If), Conditionals (Else), Boolean, While Loops, Randomness & Libraries, Debugging, Program Analysis
- Unit 3: Drawing- Lines, Shapes & Colors, Animation, Program Structure, Mouse & Keyboard, Time

**8th Grade Math with Coding**

This includes the development of instructional materials, coding exercises and projects that integrate into the 8th Grade Math course. The goal will be to introduce coding alongside math content, and to illustrate how coding and math can support each other and the many benefits that each can provide to the other. The course is designed such that students may code engaging math-centric programs without any prior coding knowledge, learning the basics of coding as they progress through the course.

**EXHIBIT B**  
**TS Services Description**

- **Teacher Coding Bootcamps.** The TechSmart Teacher Coding Bootcamps will provide instruction and training for District Teachers and is designed to help them teach the courses listed in Schedule 1 to Students (“Coding Bootcamps”). The Coding Camps will consist of the following:
  - CST10: Coding in Skylark 1 for Teachers Course curriculum
  - CST101: Coding in Python 1 for Teachers Course curriculum
  - Computer Science Teaching Platform user training
  - TechSmart Computer Science Pedagogy Training
  
- **Teacher Support:** TechSmart will provide the following teacher support services:
  - Live Support - Online technical and teaching support delivered via the Live Support chat module of the TechSmart Platform.
  - Office Hours- Scheduled one-on-one web meetings with teachers once a month.
  - Professional Learning Community
  
- **Dates.**
  - Coding Bootcamp Teacher Training: Mutually agreed upon dates to be determined planning phase of the project.