

## **SUMMIT LEARNING PROGRAM PARTICIPATION AGREEMENT**

This Summit Learning Program Participation Agreement ("Agreement"), is effective August 1, 2017 ("Effective Date"), and is by and between Summit Public Schools ("Summit"), having an office at 900 Island Drive, Redwood City, CA 94065, and the educational institution identified below ("Partner School") (each of Summit and Partner School, a "Party" and together the "Parties"), and governs Summit's provision of the Summit Learning Program (the "Program") and the Summit Learning Platform ("Platform") to Partner School. This Agreement describes and sets forth the general legal terms governing the Program and the Platform, and Summit's representations regarding the collection and use of data in connection with the Program consistent with the Family Educational Rights and Privacy Act ("FERPA") and other relevant state and federal laws governing student privacy.

### **1. THE SUMMIT LEARNING PROGRAM**

Summit is excited to provide the Program to support schools across the country in implementing a personalized, student-driven learning model. By using the Program, schools will have the opportunity to:

- Develop a deep understanding of personalized classrooms through the lens of Summit's experience and theory of instruction.
- Create personalized classrooms that equip students for their future.
- Join a community of like-minded educators across the country.
- Receive customer support from Summit and its partners to implement the Program and to access Summit's library of curriculum and assessments.
- Participate in training offered by Summit during the summer and throughout the school year.
- Receive individualized support throughout the school year.

### **2. INTELLECTUAL PROPERTY AND LICENSES**

(a) Intellectual Property. The Program and Platform may contain material derived in whole or in part from material supplied by Summit as well as other sources, and such material is protected by United States copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. Except as expressly licensed to Partner School herein, all content, information, materials, computer code, and software that is part of the Program and Platform and anything developed or provided by or on behalf of Summit under this Agreement is the property of Summit or third parties. Summit and its licensors reserve all past, present, and future right, title, ownership, and interest in the Program and Platform, and derivative works thereof (including, but not limited to, all photographs, animations, statistics, graphics, text, user interface, scripts and software used to implement the Program or Platform or any other materials in the Program or Platform), associated copyrights, trademarks, logos, trade secrets, patents, service marks, know-how, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to the Program or Platform ("Intellectual Property"). Partner School understands that Summit and its licensors solely and exclusively owns the Intellectual Property, and Partner School has no ownership rights to any of Summit's Intellectual Property or the Program or the Platform. All rights to the Program and Platform not expressly granted herein are reserved by Summit.

Partner School agrees to abide by all applicable copyright and other intellectual property laws, and to notify Summit of any unauthorized access or use of the Program or Platform.

(b) License by Summit. Unless stated otherwise in this Agreement, Summit grants any students currently enrolled in Partner Schools and any authorized parents or guardians, teachers, employees, officials, or agents of Partner School (collectively, "Users"), and Partner Schools, the non-exclusive, non-assignable, non-transferable, limited right to access and use for no charge the Platform during the term of this Agreement solely for noncommercial educational purposes and subject to the terms of this Agreement. Summit grants Partner School and its teacher and employee Users a non-exclusive, non-assignable, non-transferable, limited right to use, download, copy, modify, perform, or display educational materials made available in the Platform or Program for noncommercial, in-class instructional purposes during the term of this Agreement.

(c) Ownership and License by Partner School. Partner School grants Summit a limited, transferable license to use and display Partner School's name and logo for purposes of operating the Platform. Partner School grants Summit a limited, transfer license to use Partner School Confidential Information and Student Data (each as defined below) as set forth in this Agreement. Partner School is solely responsible for the selection, compatibility, licensing, development, accuracy, performance, operation, maintenance, and support of all applications, information, software, and data, including any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, or images, that Partner School or its Users create, install, upload or transfer on, from or through the Platform ("Content"). Teachers or other school officials or agents who are Users may contribute educational content through the Platform ("Teacher Content"). If Partner School or its teachers, school officials or agents contribute Teacher Content, such Teacher Content is licensed under the Creative Commons Attribution 4.0 License ("CC License"), which is available at <https://creativecommons.org/licenses/by/4.0/>, unless different license terms are selected using the settings that may be provided at the time such content is contributed. If Partner School or its teachers, school officials or agents contribute Teacher Content under the CC License, Partner School warrants and represents that Teacher Content will not contain any personal information and that it has the right and authority to grant the license and other such rights as may be necessary.

If Partner School provides feedback, comments or suggestions for improvements to the Platform (in written, oral, or any other form) ("Feedback"), Partner School represents and warrants that (a) it has the right to disclose the Feedback, (b) the Feedback does not violate the rights of any other person or entity, and (c) the Feedback does not contain the confidential or proprietary information of any third party or parties. Partner School (i) acknowledges that Summit may have something similar to the Feedback already under consideration or in development and (ii) assigns to Summit its entire right, title, and interest (including any intellectual property rights) in and to Feedback. To the extent that any right, title, or interest cannot be assigned under applicable law, Partner School hereby waives such right, title or interest and consents to any action of Summit, its service providers, successors, and assigns that would violate such right, title, or interest in the absence of such consent. Partner School agrees to execute any documents necessary to effect the foregoing assignment, waivers, or consents.

### **3. PLATFORM ACCESS & ADMINISTRATOR ACCOUNTS**

Partner School shall ensure that any access to the Platform, Summit Confidential Information (as defined below), Summit Intellectual Property, and Student Data (as defined below) is limited to only Partner School personnel who require such access to use the Platform in compliance with this Agreement. When enabled by Summit, Partner School may designate one or more administrators who will have the right to set up, access, and manage Partner School's User accounts ("Administrator Accounts"). Partner School is responsible for (a) maintaining the security and confidentiality of all Administrator Accounts and any passwords associated therewith; (b) all activities that occur under the Administrator Accounts; and (c) obtaining all necessary rights, permissions, or consents to access, monitor, use, or disclose any Student Data from other Users' accounts. Partner School and its Users' use of the Platform must be in compliance with this Agreement and the Summit Learning Platform Terms of Service, and Partner School is solely responsible for Users' compliance therewith. Partner School will notify Summit of any known User violations of the Terms of Service, and Partner School agrees to cooperate with Summit in taking reasonable steps to remediate User violations. Notwithstanding the foregoing, Summit reserves the right to immediately terminate any User in its sole discretion in accordance with the Terms of Service. Partner School shall ensure that all Partner School employees, contractors and agents shall, comply with all laws, rules and regulations applicable to the use of the Program and the Platform.

### **4. ROLES AND RESPONSIBILITIES**

(a) By signing this document, Summit and Partner School agree to work together in good faith to implement personalized learning supported by the Program and the Platform. Partner School will communicate regularly about needs, opportunities, and progress, as well as goals, priorities and timelines for the ongoing evolution of the Program and the Platform.

(b) Summit's Responsibilities. Summit agrees to provide:

- Professional development and school coaching through its mentors, who are education leaders with experience in teaching and mentoring for personalized directed learning. Summit will assign a mentor to work directly with Partner School.
- Workshops, webinars, and other online or in-person learning opportunities, in Summit's sole discretion.

(c) Partner School's Responsibilities. Partner School agrees to:

- Send a representative to Summit training programs.
- Work with the assigned mentor throughout the school year.
- Be responsible for all costs and expenses resulting from Partner School's participation in the Platform.
- Make reasonable efforts to help Summit and its partners and service providers improve the Program and Platform, including, but not limited to, by (a) providing feedback on mentoring and

curriculum; (b) coordinating with Summit to improve or design features and functionality; (c) working with Summit to improve customer support; and (d) requiring that students who use the Platform take the Northwest Evaluation Association Measures of Academic Progress assessment, or an equivalent assessment agreed to by Summit and Partner School, three times during each school year that they use the Platform.

## **5. RESTRICTIONS ON USE**

Partner School may not license, sell, rent, lease, assign, distribute, host, or otherwise commercially exploit or make available the Platform and/or any components thereof, to any third party, except as permitted under the terms of this Agreement. Unless expressly permitted by Summit in writing, neither Partner School nor its Users (as defined below) may copy, reproduce, distribute, publish, enter into a database, display, perform, modify, create derivative works from, transmit, or in any way exploit any part of the Program or Platform. Partner School agrees not to, and will use commercially reasonable efforts to make sure no third party may: (1) remove or alter any of Summit's trademarks and/or logos, any legal notices included in the Program, and/or any related assets; (2) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Platform, or any component thereof, or to build or support (and/or assist a third-party in building or supporting) products or service in competition with Summit, by any means whatsoever; (3) reproduce the Platform in any form or by any means, except as expressly permitted in this Agreement; (4) attempt to create a substitute or similar service through use of, or access to, the Platform; (5) copy any features, functions, or graphics of the Platform or develop, build, or support (and/or assist a third-party in building or supporting) a competitive product; or (6) use any of Summit's trademarks, trade names, service marks, copyrights, or logos in any manner which creates the impression that such items belong to or are associated with Partner School or are used with Summit's consent, except as otherwise provided herein. Partner School agrees and acknowledges that if it violates the terms of this Section, Summit shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions.

## **6. DATA PRIVACY**

### **(a) Data Privacy Terms.**

- **Confidential Information.** In the performance of the Agreement, Summit may have access to or receive certain information provided by Partner School that is not generally known to others ("Partner School Confidential Information"). Such Partner School Confidential Information may include information that is created or submitted by Partner School or Users or is gathered by Summit through the operation of the Platform and includes, but is not limited to, Student Data (defined below) and other data that identifies a specific User, such as a name, address, student identification number, phone number, email address, gender, date of birth, ethnicity, race, disabilities, school, grade, grades and grade point averages, grade level promotion and matriculation, coursework, test scores, assessment data, highest grade completed, attendance, school discipline history, narratives input by students about their own goals and learning plans, communications with teachers and other students, notes and feedback to or about students, observations from students' mentor about individual students, college admission test scores, AP

and IP test information, college eligibility and acceptance, employment, Partner School financial information, and Partner School business plans. It is understood and agreed that Partner School Confidential Information also includes proprietary or confidential information of third parties provided by Partner School to Summit. Partner School Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Summit; (ii) made available to Summit by an independent third party having the legal right to make such disclosure; (iii) information that can be established and documented by Summit to have been independently developed or obtained by Summit without violating the confidentiality obligations of this Agreement and any other agreements with Partner School; and (iv) Feedback.

- **Student Data.** "Student Data" means any data, information, records, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, maintained by, transmitted, created, or provided by Partner School, either directly or through its students, employees, agents, and subcontractors, including all information used, created, maintained or generated through Partner School's use of the Platform that is directly related to a Partner School student. For purposes of this Agreement, Student Data shall still be considered Partner School Confidential Information; additional requirements regarding Student Data specifically are described below.
- **De-Identified Data.** "De-Identified Data" is information that has all direct and indirect personal identifiers removed such that the data cannot reasonably be used to identify or contact a student or User. This includes, but is not limited to, persistent unique identifiers, name, ID numbers, date of birth, and school ID. Summit agrees not to attempt or have any third party attempt to re-identify De-Identified Data.

(b) Summit's Use of Partner School Confidential Information. Summit will at all times comply with the provisions of its posted Privacy Policy in providing the Platform. If there is a conflict between this Agreement and the Privacy Policy, the terms of this Agreement control. Summit shall only use Partner School Confidential Information for the purpose of operating and improving the Platform, and shall not disclose Partner School Confidential Information except to those of its officers, agents, employees, service providers, and partners who have a need to access it for said purpose.

(c) Application of FERPA and Other Laws. To the extent that Partner School Confidential Information includes personally identifiable information from education records that are subject to the Family Educational Rights and Privacy Act ("FERPA"), Partner School and Summit agree that Summit is a "School Official" (as that term is used in FERPA and its implementing regulations). Partner School shall not take any action or fail to take any action that could cause Summit or any third party to violate any applicable laws, rules, or regulations governing the privacy and security of Partner School Confidential Information, including without limitation FERPA. Summit shall comply with applicable federal and state laws to the extent such laws govern Summit's operation of the Platform. Summit further agrees not to copy or reproduce in any manner whatsoever Partner School Confidential Information without the prior written consent of Partner School, except where required for its own internal use strictly in accordance with this Agreement or except, if applicable law permits, where Summit has received consent from a student User's parent or guardian or a student User who is at least 18 years of age or the age of majority in the User's jurisdiction of

residence.

(d) Security Controls for Confidential Information. Summit and Partner School shall employ administrative, physical, and technical safeguards to secure Partner School Confidential Information (as defined below) and Summit Confidential Information (defined below) from unauthorized disclosure or access, including when transmitting and storing such information. Summit shall use commercially reasonable efforts to secure such information, at a minimum with no less protection than Summit uses to protect Summit Confidential Information.

(e) Dissemination of Information. Summit shall not disseminate any Partner School Confidential Information to a third party without the prior written consent of Partner School except to operate the Platform under this Agreement. If Summit is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Partner School Confidential Information that may be in Summit's possession as a result of providing the Platform under the Agreement, Summit shall immediately give notice to Partner School and its General Counsel with the understanding that Partner School shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Summit shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended.

(f) Publicity. Summit shall not issue publicity news releases, grant press interviews, or use any Partner School Confidential Information or Content, including but not limited to Partner School's logos, during or after the performance or delivery of the Program without the prior express written consent of authorized representatives of Partner School. Furthermore, Summit may not photograph or film or cause others to photograph or film within any Partner School facility without the prior express written consent of Partner School.

(g) Destruction of Partner School Confidential Information. Summit shall, at Partner School's option, destroy part or all of Partner School Confidential Information within a reasonable time period following the written demand. If no demand is made, it shall destroy all Partner School Confidential Information within a reasonable time following the termination of this Agreement, where applicable law requires. In the event Partner School elects to have Summit destroy Partner School Confidential Information, Summit shall provide an affidavit attesting to such destruction. For avoidance of doubt, failure to provide such notification constitutes a material breach of this Agreement, unless Summit provides such notification within a reasonable time after it is requested by Partner School.

(h) Unauthorized Access, Use, and Disclosure. If either party discovers any incident that involves, or which the party believes may involve, the attempted or successful unauthorized access, use, loss, modification and/or disclosure of Partner School Confidential Information or Summit Confidential Information (defined below) (each, a "Security Incident") it shall: (i) notify the other party as soon as reasonably practicable; (ii) take prompt and appropriate action to prevent further unauthorized access, use, or disclosure; (iii) cooperate with each other and any government authorities with respect to the investigation and mitigation of the Security Incident, including the discharge of the other party's duties under the law; and (iv) take such other actions to remedy the Security Incident,

including, if required under any federal or state law, providing notification to the affected persons. Notwithstanding the foregoing, Summit will bear no financial responsibilities in connection with breaches caused by the willfulness, recklessness, or negligence of Partner School or any of its Users.

(i) Employees, Agents, Service Providers, and Partners. Summit agrees to provide its employees, agents, service providers, and partners only such Partner School Confidential Information that is necessary for the operation and improvement of the Program pursuant to this Agreement and to cause its employees, agents, service providers, and employees to undertake the same obligations as agreed to herein by Summit.

(j) Additional Obligations Regarding Treatment of Student Data. In addition to the above stated obligations for the treatment and handling of Partner School Confidential Information, Summit shall abide by the following obligations when handling Student Data:

- **Restrictions on Student Data Use.** Summit shall not use Student Data, including persistent unique identifiers to amass a profile about a Partner School student or otherwise identify a Partner School student except in furtherance of educational purposes. Summit will use Student Data only for the purpose of fulfilling its duties and delivering the Platform under this Agreement, and for improving the Platform in a way that does not otherwise violate the terms of this Agreement regarding the treatment of Student Data.
- **Limited Collection of Student Data.** Summit will collect only Student Data necessary to operate the Platform and to fulfill its duties as outlined in this Agreement.
- **No Marketing and Advertising to Students.** Summit shall not advertise or market to a student or his/her parents/guardians when the advertising or marketing is based upon any of that student's Student Data that Summit has acquired through the Platform. Summit also prohibits the service providers and partners it works with to help run the Platform from using Student Data from the Platform to advertise or market to students or their parents/guardians.
- **No Student Data Mining for Non-Educational Purposes.** Summit is prohibited from mining Student Data for any purposes other than operating and improving the Platform or as agreed to by the Parties.
- **Destruction of Student Data.** Summit will ensure that all Student Data in its possession and in the possession of any agents, service providers, or partners to whom Summit may have transferred Student Data, are destroyed at the direction of Partner School when Student Data is no longer needed for its specified purpose, under the terms of Section 6(g) above. Summit will also provide Partner School with access to Student Data in accordance with Partner School's legal requirements. The Parties will work together to offer Users tools to access, correct, or delete Student Data, consistent with applicable law.
- **Limited Disclosure of Student Data.** Summit is prohibited from selling, trading, or otherwise transferring Student Data to any third parties, except with the express written prior consent of Partner School and Partner School's General Counsel. This prohibition does not apply to the

purchase, merger, or other type of acquisition of Summit by another entity, provided that Summit or successor entity continues to be subject to the provisions of this Agreement with respect to previously acquired Student Data. This prohibition also does not apply to the access to or disclosure of Student Data to authorized parents or legal guardians, as permitted by law, or subcontractors, in connection with operating or improving the Platform.

- **Access.** Any Student Data held by Summit will be made available to Partner School upon request of Partner School. The identity of all persons having access to Student Data through Summit will be documented and access will be logged.
- **Security Controls.** Summit will train responsible individuals and implement other reasonable controls designed to protect the security and confidentiality of Student Data and prevent use of Student Data by any third party, except as otherwise permitted under this Agreement. Summit will store and process Student Data in a manner that is at least as rigorous as accepted industry practices. This includes appropriate administrative, physical, and technical safeguards to secure Student Data from unauthorized access, disclosure, and use. Specifically, Summit shall:
  - Securely transmit and store all Student Data, using secure transportation protocols such as HTTPS when in transit.
  - Adopt and implement industry recognized security practices to establish secure application(s), network, and infrastructure architectures.
  - Employ appropriate intrusion detection, monitoring and logging capabilities to detect and respond to potential security breach attempts.
  - Conduct testing of new functionalities to reconfirm system security measures are retained and functional.
  - Conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
  - Adopt a written incident response plan, which it shall provide to Partner School upon request.
  - Implement appropriate identification and authentication methods such as reasonable industry practices on password management and other commonly accepted methods.
    - Securely transmit login credentials, authenticate users, and store user passwords.
    - Employ "data at rest" encryption to protect Student Data.
    - Back-up Student Data daily and adopt and implement a disaster recovery plan.
    - Conduct criminal background checks of employees prior to providing access to Student Data and prohibit access to Student Data by any person with criminal or other relevant unsatisfactory information that presents an unreasonable risk to Partner School or its Users.

(k) Use of De-Identified Data. Summit may use De-Identified Data for product development, research, or other purposes related to developing and improving the Program. Summit may use De-Identified Data to demonstrate the effectiveness of Summit's products or services, including in its marketing, provided that Summit's marketing shall not identify or suggest that Partner School or any of its students, employees, agents, or subcontractors approve of, recommend, vouch for, or otherwise positively advance the use of Summit's sites, products, services, or technology without the prior written consent of the individual identified and Partner School. Summit's use of such De-Identified Data shall survive



termination of this Agreement or any request by Partner School to return or destroy Partner School Confidential Information.

## **7. SUMMIT CONFIDENTIAL INFORMATION**

"Summit Confidential Information" includes, without limitation, all technical and nontechnical information provided by Summit to Partner School that is either (a) designated as confidential at the time of disclosure, or (b) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure. All technical and non-technical information concerning or related to Summit's products, services, online properties, financial data, and business and marketing plans shall be deemed Summit Confidential Information. Partner School will not (1) use any Summit Confidential Information except for the sole benefit of Summit and only to the extent necessary to fulfill its obligations under this Agreement; or (2) disclose any Summit Confidential Information to any person or entity, except to its own employees who have a need to know and are bound by non-disclosure obligations that are no less restrictive than those set forth in this Agreement. If Partner School receives a request for Summit Confidential Information under the Freedom of Information Act or a similar state records law or by the order of a court of similar judicial or administrative body, Partner School shall notify Summit of such request promptly and in writing and cooperate with Summit, at the Partner School's reasonable request and expense, in any lawful action to contest or limit the scope of such requested disclosure. Except as expressly permitted in this Agreement or required by law, Partner School shall not use Summit's name, logo or trademarks and shall not confirm or comment on any information, public or otherwise, concerning Summit.

## **8. CHANGES TO THE PLATFORM**

From time to time, Summit may update or perform maintenance on the Platform. Summit shall have the right to revise or update the functionality and look of the Platform from time to time in its sole discretion. Partner School agrees that Summit shall not be liable to Partner School or any third party for any modification, suspension or termination of the Platform.

## **9. LINKS AND OTHER THIRD PARTY MATERIALS**

Certain content, components, or features of the Platform, or Data contributed by Users may include materials from third parties and/or hyperlinks to other web sites, resources or content (together, "third-party materials"). Because Summit may have no control over such third parties and/or materials, Partner School acknowledges and agrees that Summit is not responsible for the availability of such third-party materials, and shall in no way be liable or responsible for any third-party materials on or available from such third-party materials used by Partner School or Partner School's Users.

## **10. TERM AND TERMINATION**

(a) Term. This Agreement shall commence on the date both Parties accept this Agreement, and shall continue until terminated in accordance with this Agreement.

(b) Either Party may terminate this Agreement for its convenience, by giving at least 30 days' written notice to the other Party.

(c) Either Party (the "Non-breaching Party") may terminate this Agreement, effective immediately upon written notice to the other party ("Breaching Party") if the Breaching Party materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the Non-breaching Party.

(d) Survival. In the event of termination, the following provisions will survive: 2, 6, 7, 11-16.

## **11. WARRANTY DISCLAIMERS**

PARTNER SCHOOL EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PLATFORM, SOFTWARE, AND ANY ASSOCIATED CONTENT ARE PROVIDED ON AN "AS AVAILABLE" BASIS. SUMMIT AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (COLLECTIVELY, "SUMMIT" FOR THE PURPOSES OF SECTIONS 11 AND 12 HEREIN) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS, AND NON-INFRINGEMENT. IN PARTICULAR, SUMMIT MAKES NO WARRANTY THAT (I) THE PLATFORM WILL MEET PARTNER SCHOOL'S REQUIREMENTS; (II) PARTNER SCHOOL'S USE OF THE PLATFORM WILL BE TIMELY, UNINTERRUPTED, SECURE, OR FREE FROM ERRORS, LOSS, CORRUPTION, ATTACK, VIRUSES, OR HACKING; (III) ANY INFORMATION OBTAINED BY PARTNER SCHOOL AS A RESULT OF THE PLATFORM WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN THE SOFTWARE PROVIDED TO PARTNER SCHOOL AS PART OF THE PLATFORM WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PLATFORM IS ACCESSED AT PARTNER SCHOOL'S AND USERS' OWN DISCRETION AND RISK, AND PARTNER SCHOOL AND ITS USERS WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO PARTNER SCHOOL'S OR ITS USERS' DEVICES, COMPUTERS, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

Partner School acknowledges that Summit is not responsible or liable in any way for any content provided by Partner School or its Users. However, at all times Summit has the right, but not the obligation, to determine whether content is appropriate and in compliance with this Agreement, and may pre-screen, move, refuse, modify and/or remove content at any time, without prior notice and in its sole discretion, if such content is found to be in violation of this Agreement, illegal or otherwise objectionable.

## **12. LIMITATIONS ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SUMMIT BE LIABLE TO PARTNER SCHOOL, USERS, OR ANY OTHER THIRD PARTY FOR ANY DIRECT, PERSONAL INJURY, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY

DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, LOSS OF GOODWILL, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, ANY OTHER TANGIBLE OR INTANGIBLE DAMAGES OR LOSSES (EVEN IF SUMMIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RELATED TO OR RESULTING FROM: (I) THE USE OR INABILITY TO USE THE PLATFORM, SOFTWARE, ANY FEATURES, FUNCTIONALITY, CONTENT, MATERIALS, OR THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE PLATFORM; (II) ANY CHANGES MADE TO THE PLATFORM OR ANY TEMPORARY OR PERMANENT CESSATION OF THE PLATFORM OR ANY PART THEREOF; (III) THE UNAUTHORIZED ACCESS TO OR ALTERATION OF THE PLATFORM, PARTNER SCHOOL'S OR ITS END USERS' TRANSMISSIONS OR DATA; (IV) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE AND/OR SEND OR RECEIVE TRANSMISSIONS OR DATA ON OR THROUGH THE PLATFORM; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PLATFORM; OR (VI) ANY OTHER MATTER RELATING TO THE PLATFORM. UNLESS OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL SUMMIT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT (INCLUDING LIABILITY FOR FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACT OR TORT CLAIM) EXCEED \$10,000. THE PARTIES AGREE THAT THE ABOVE PROVISIONS FAIRLY ALLOCATE THE PARTIES' RISKS AND ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN.

### 13. INDEMNIFICATION

(a) Summit shall defend, indemnify, and hold harmless Partner School, its officers, employees, and agents, assignees and successors-in-interest from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of Summit's performance under this Agreement, provided such losses, expenses, damages and liabilities are not caused by the negligence of the Partner School, its officers, employees, and agents. Such indemnification shall be subject to the limitation of liability in Section 12.

(b) Partner School shall defend, indemnify and hold Summit, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Partner School, its officers, employees, or agents. Such indemnification shall be subject to the limitation of liability in Section 12.

(c) The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the indemnified party, at its expense, to participate in the defense or settlement of the claim, provided, however that the indemnifying party has the sole control of the defense. The indemnified party shall reasonably cooperate with the indemnifying party in defending the action, and the indemnifying party will not agree to settle or otherwise resolve the

action without the consent of the indemnified party, which consent shall not be unreasonably withheld.

#### 14. NOTICES

All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, to the Parties to the Agreement and addressed, if to Partner School, to the address set forth on the Signature Page, and if to Summit, as follows:

If to Summit: Summit Public Schools, 900 Island Drive, Redwood City, CA 94065

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by electronic mail, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation.

#### 15. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties further submit to and waive any objections to the personal jurisdiction of and venue in San Mateo County, California for any litigation arising out of this Agreement. If Partner School is a U.S. public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Partner School is domiciled, except that body of law concerning conflicts of law; and (b) any litigation or other dispute resolution between Partner School and Summit arising out of or relating to this Agreement, the Platform, or Partner School's relationship with Summit will take place in federal court within the Northern District of California, and Partner School and Summit hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Partner School is domiciled.

#### 16. GENERAL PROVISIONS

(a) Entire Agreement. This Agreement constitutes the final and entire agreement between the Parties regarding its subject matter, and supersedes all other related oral or written agreements or policies.

(b) Relationship of the Parties. This Agreement will not be construed as creating any agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between Partner School and Summit, and Partner School will not represent to the contrary, whether expressly, by implication, appearance or otherwise. Except as otherwise expressly provided in this Agreement, this Agreement is not for the benefit of any third parties. Neither Party will make any commitment, by contract or otherwise, binding upon the other Party or present that it has the authority to do so.

(c) Assignment; Resale; No Waiver. This Agreement will be binding upon and inure to the benefit of all of Summit's and Partner School's successors and assigns, which will be bound by all of the obligations of their predecessors or assignors. No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing and signed by a duly authorized representative of Summit, and

no single waiver will constitute a continuing or subsequent waiver.

(d) Modifications and Severability. This Agreement may be modified only: (a) by a written amendment signed by both Parties, or (b) to the extent expressly permitted by this Agreement (e.g., by Summit upon notice to Partner School). In the event that Partner School refuses to accept such changes, Summit will have the right to terminate this Agreement in accordance with Section 10. If any provision of this Agreement is found to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision is to be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.

**Partner School Information:**

Partner School Name:

Principal Contact Person:

Address:

Title:

Phone:

Fax:

Email Address:

The Parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

**PARTNER:**

**SUMMIT**

By (Signature):

By (Signature):

Name (Printed):

Name (Printed):

Title:

Title:

Date:

Date: