

# Summit Learning Program Agreement

This **SUMMIT LEARNING PROGRAM AGREEMENT** (the “Program Agreement”), is effective as of the Effective Date (defined on the signature page hereto), and is by and between **T.L.P. Education**, a California nonprofit public benefit corporation (“Summit Learning”), having an address at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017 and \_\_\_\_\_ (the “Local Education Agency” or “LEA”) on behalf of itself and the schools listed on Schedule I hereto (each a “Participating School” and collectively with LEA, the “Partner School”) (each of Summit Learning and the Partner School, a “Party” and together the “Parties”), and governs Summit Learning’s provision of the Summit Learning Program (the “Program”) and the Summit Learning Platform (the “Platform”), and any other products and services that the Program may provide now or in the future (collectively, the “Service” or the “Services”) to the Partner School. Participation in the Program includes, among other things, the Base Curriculum (defined herein), professional development and training, ongoing support and mentorship, and access to the Services.

## 1. BACKGROUND

**1.1 Our Mission.** The Program was created by Summit Public Schools to prepare a diverse student population for success in college, career and life, and to be thoughtful, contributing members of society. Inspired by the vision to equip every student to lead a fulfilled life, Summit Public Schools developed its approach to teaching and learning - the Program - over the course of 15 years. Today, Summit Learning, under license with Summit Public Schools, works to have broader impact by helping schools bring the Program to their classrooms for free.

**1.2 History of the Program.** Since 2015, the Program has grown to support more than 380 schools across the nation, helping them bring Summit Learning to their classrooms, for free. Developed by teachers for teachers, the Program gives schools the tools, resources and professional development to implement and tailor Summit Learning for their communities.

**1.3 Our Organization.** T.L.P. Education is a California nonprofit public benefit corporation founded in 2018. T.L.P. Education is organized and operated for charitable and educational purposes as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Working with Teachers, Learners, and education Partners, T.L.P. Education provides knowledge, tools, and training to schools across the country through the Program. Together, we are helping educators achieve their goals, students realize their full potential, and schools serve their diverse communities

**1.4 Selection & Agreement to Participate.** Summit Learning has selected the Partner School to receive Services hereunder and invites the Partner School to participate in and to access the Program. By signing this Program Agreement, the Partner School agrees to all terms and conditions contained in this Program Agreement, the Summit Learning Platform Partner School Terms of Service (the “Partner School Terms of Service”) and the Data Privacy Addendum (the “Data Privacy Addendum”), which are incorporated herein

(collectively the “Agreement”).

- The Program Agreement establishes a collaboration between Summit Learning and the Partner School and sets forth the legal terms governing the Program and the Services.
- The Partner School Terms of Service, attached as Exhibit A hereto, set forth the requirements as of the date hereof that the Partner School is required to follow in order to use the Services. The Partner School Terms of Service shall be updated, from time to time, and posted on the Summit Learning Website (as defined herein) and when posted shall be incorporated into the Agreement by this reference. By accepting the Partner School Terms of Service, Partner School acknowledges and agrees that its teachers, employees, officials, agents, and the parents and legal guardians of currently enrolled students (collectively, “Licensed Users”) will agree to a User Agreement (the current version is posted on the Summit Learning Website) in order to use the Services.
- The Data Privacy Addendum attached as Exhibit B hereto governs Student Data (as defined therein) transmitted to Summit Learning from the Partner School pursuant to this Program Agreement and the Partner School Terms of Service.

**1.5 Collaboration.** By signing this Program Agreement, Summit Learning and the Partner School agree to work together in good faith to implement personalized learning supported by the Program and the Services. In connection with the Partner School’s participation in the Program, Summit Learning expects the Partner School to communicate regularly about needs, opportunities, and progress, as well as goals, priorities, and timelines for the ongoing evolution of the Program and the Services. If Participating Schools are set forth on Schedule I, the LEA hereby warrants and represents to Summit Learning that it has the authority to bind, and hereby through its execution of this Program Agreement, hereby binds such Participating Schools to the terms and conditions of the Agreement and agrees that the LEA shall be liable for any breaches of any of the terms and conditions of the Agreement by any of its Participating Schools.

**1.6 Cost.** There is no cost to the Partner School, and Summit Learning will not charge the Partner School or its Users (defined herein) to use the Program or the Services.

## **2. GRANT OF THE PROGRAM AND THE SERVICES**

**2.1 Curriculum and Assessments.** Summit Learning will provide access to the Base Curriculum (the “Base Curriculum”), which will include projects, playlists of content, and assessments from which the Partner School can build upon and modify in order to meet the needs of their communities, district and/or state. The Base Curriculum includes standards-based curricula and assessments for English, math, science, and social studies (grades 4–12) and a sampling of additional elective courses.

Subject to this Program Agreement and the Partner School Terms of Service, Summit Learning grants permission to teachers, employees, officials, and agents at the Partner School to adapt or create new focus areas and projects. In connection therewith, Summit Learning will provide to the Partner School, on an as-available basis (i) access to the curriculum team; (ii) access to support when building out resources and projects that are in line with Summit Learning; and (iii) the ability to submit resources for Summit Learning to review and consider for addition to the Base Curriculum.

**2.2 Ongoing Support.** Summit Learning shall provide ongoing support and coaching to the Partner School through the provision of a mentor (a “Summit Learning Success Manager”) during school years in which the Partner School participates in the Program. In connection therewith, Summit Learning agrees to make available to the Partner School, on an as-available basis:

- A Summit Learning Success Manager who will provide support through regular coaching calls, and to the extent the Partner School and Summit Learning deem necessary, school visits, in order to support the Partner School through the change management process as the Partner School implements Summit Learning;
- Access to a nationwide community of Summit Learning educators and an invitation to share best practices, challenges and more;
- Access to a library of resources (e.g. presentation templates for parent nights, Summit Learning classroom posters, etc.); and
- Access to webinars, on-demand training sessions, and in-person training sessions and workshops from a range of Summit Learning teams, including engineering and communications.

**2.3 Professional Development.** Pursuant to this Program Agreement, Summit Learning shall provide, on an as-available basis, mandatory and optional professional development services for the teachers and administrators whom the Partner School designates to participate in the implementation and launch of Summit Learning at the Partner School (collectively, the “Implementation Team”). The Partner School and the Implementation Team shall follow the professional development requirements posted on the Summit Learning Website under the caption “Professional Development Requirements”, which are incorporated by reference into this Program Agreement. Summit Learning may at any time change the timing, cadence or frequency of the professional development services.

**2.4 Additional Schools.** If the LEA is a school district and Summit Learning approves the participation of additional schools within such school district in the Program, then Summit Learning and the LEA agree to update Schedule I to this Program Agreement and each such additional school shall become a Participating School subject to the terms and conditions of this Agreement. Additionally, if the LEA and Summit Learning agree to the removal of a Participating School from Schedule I to this Agreement, such school shall no longer be a Participating School upon removal of such school from Schedule I. Notwithstanding any update to Schedule I, both parties acknowledge the Effective Date of this Program Agreement will be the date originally set forth above. Further, the Parties hereto agree and acknowledge that any change to Schedule I does not and will not constitute an amendment or waiver of any of the material terms and conditions contained in this Program Agreement.

### 3. GRANT REQUIREMENTS AND COMPLIANCE

**3.1 General.** In connection with and as a condition to its receipt of Services and in order to launch and implement the Program in the Partner School, Partner School agrees to:

- Follow the program requirements posted on the Summit Learning Website under the

caption “Program Requirements”, which are incorporated by reference into this Program Agreement;

- Follow the technical requirements posted on the Summit Learning Website under the caption “Technical Requirements”, which are incorporated by reference into this Program Agreement;
- Follow the professional development requirements posted on the Summit Learning Website under the caption “Professional Development Requirements”, which are incorporated by reference into this Program Agreement; and
- Communicate regularly with the Summit Learning Success Manager.

**3.2 Access to the Services.** Partner School agrees to limit access to the Program and the Services to students currently enrolled in the Partner School with an account on the Services (“Student Users”). In addition, Partner School agrees to limit access to the Program and the Services to the parents and legal guardians of Student Users, and the teachers, employees, officials, or agents of the Partner School (collectively, “Licensed Users”) who have accepted the User Agreement. The Student Users and Licensed Users are, collectively, referred to herein as the “Users”.

**3.3 Compliance with Program Agreement, Data Privacy Addendum, Partner School Terms of Service and User Agreement.** The Partner School’s use of the Services must be in compliance with the Agreement. The Partner School will provide information and education, and where needed, create policies and regulations, to ensure that all of its Users comply with the User Agreement, and where applicable this Program Agreement and Data Privacy Addendum. Partner School acknowledges and agrees that all content shared by its Users on the Services is the responsibility of the Partner School and the User from whom the User Content originated.

In the event a User violates this Program Agreement, Data Privacy Addendum, or User Agreement, the Partner School shall promptly notify Summit Learning and shall cooperate with Summit Learning in taking reasonable steps to remediate such violations. In the event that the Partner School fails to correct the violation after notice from Summit Learning, Summit Learning may terminate or suspend the Users’ access to the Services, in whole or in part, as necessary to stop the violation. Partner School agrees and acknowledges that if Partner School or any of its Users violates this Program Agreement, Data Privacy Addendum, or Partner School Terms of Service, Summit Learning shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions. Notwithstanding the foregoing, Summit Learning reserves the right to immediately suspend any User or the Partner School, in Summit Learning’s sole discretion for any reason (with or without cause) and terminate the Partner School in accordance with Section 5 hereof.

#### 4. INTELLECTUAL PROPERTY

**4.1 Intellectual Property.** The Program and Services may contain material derived in whole or in part from material supplied by Summit Learning 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. All rights to the Program and the Services not expressly granted in the Agreement or User Agreement are reserved by Summit Learning. The Partner School and its Users shall abide by the intellectual property provisions set forth in the Partner School Terms of Service and User Agreement and all applicable copyright and other intellectual property laws.

## **5. TERM AND TERMINATION**

### **5.1 Term.**

**A.** This Agreement shall commence on the Effective Date, and shall terminate in accordance with subsections 5.1.B or 5.1.C, as applicable, or on such earlier date as set forth in Section 5.2, Section 5.3, and Section 5.4 hereof.

**B.** If the Partner School is an individual school, this Agreement will terminate on the date that is four (4) years after the date on which the Partner School's students first begin using the Services.

**C.** If the Partner School is a school district, this Agreement will terminate on the date that is four (4) years after the date on which the students attending the first Participating School to join Summit Learning first begin using the Services under this Agreement.

**5.2 Notice of Intent to Terminate.** Either Party may terminate this Agreement for its convenience, by giving at least thirty (30) days' written notice to the other Party.

**5.3 Breach of Agreement.** Either Party (the "Non-breaching Party") may terminate this Agreement, effective immediately upon delivery of written notice to the other Party ("Breaching Party") if the Breaching Party materially breaches any provision of this Program Agreement or any other part of the Agreement, as the case may be, and does not cure the breach within thirty (30) days after receiving written notice thereof from the Non-breaching Party.

**5.4 Compliance with Program Requirements.** To the extent Summit Learning determines that Partner School is not substantially in compliance with the Program Requirements, Summit Learning reserves the right to suspend or terminate this Agreement effective immediately.

**5.5 Survival.** In the event of termination of this Agreement, the following provisions of this Program Agreement will survive: Section 7 (Representation and Warranties of Summit Learning), Section 8 (Limitation on Liability), Section 9 (Notices), Section 10 (Governing Law), and Section 11 (General Provisions).

## **6. INDEMNIFICATION**

**6.1 Scope.** To the extent permissible under applicable state law, each Party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party (the "Indemnitee"), its officers, employees, and

agents, assignees and successors-in-interest from and against third party claims and will pay the resulting non-appealable judgments, fines, settlements, court costs and reasonable attorneys' fees ("Indemnified Loss") resulting from or arising out of **(a)** the Indemnifying Party's performance under this Program Agreement, Partner School Terms of Service and Data Privacy Addendum, but only in proportion to and to the extent such Indemnified Loss is caused by the negligence, recklessness, willful misconduct, or intentional acts or omissions of the Indemnifying Party, its officers, employees, or agents, or, additionally, with respect to the LEA, its Participating Schools and their respective officers, employees, agents or Users; and **(b)** allegations that the Indemnifying Party has infringed a third party's intellectual property rights. Such indemnification shall be subject to the limitation of liability in Section 8.

**6.2 Status and Defense of Claims.** The indemnifying Party shall keep the other Party 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.

## 7. REPRESENTATIONS AND WARRANTIES OF SUMMIT LEARNING

**7.1 General.** Summit Learning represents and warrants that the following shall be true and correct as of the Effective Date of this Program Agreement and shall continue to be true and correct during the Term of this Program Agreement:

**A. Program and Service Operation.** During the term of this Agreement, Summit Learning shall use commercially reasonable efforts to ensure that the Program and the Services shall be provided in compliance with Summit Learning's then-most current documentation for the Program or written specifications for the corresponding other Services, as the case may be. Summit Learning shall use commercially reasonable efforts to correct, as soon as practicable, any failure of the Program and the Services to be provided in compliance with Summit Learning's then-most current documentation for the Program or written specifications for the other corresponding Services, as the case may be.

**B. Changes to Program and the Services.** From time to time, Summit Learning may implement changes and improvements to the Services, including by conducting maintenance, updating the functionality and look of the Services, and adding or removing functionalities or features. Summit Learning may also stop providing the Services to the Partner School or its Users, or add or create new limits to the Services or restrict access by Partner School or its Users access to all or a part of the Service at any time.

**C. Publicity.** Summit Learning shall not issue publicity news releases, grant press interviews, or use any Student Data or Content, including but not limited to the logos of the LEA or a

Participating School, without the prior express written consent of a representative from the LEA or Participating School. Furthermore, Summit Learning may not photograph or film or cause others to photograph or film within any of the facilities of the LEA or a Participating School without the prior express written consent of the LEA or Participating School.

**7.2 Additional Obligations Regarding Treatment of Student Data.** Summit Learning agrees to the obligations set forth in the Data Privacy Addendum regarding the handling of Student Data and Personally Identifiable Information.

## **8. LIMITATION ON LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR, WITH RESPECT TO SUMMIT LEARNING, ADDITIONALLY WITH RESPECT TO ALL PARTICIPATING SCHOOLS COLLECTIVELY, FOR (A) CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM ANY CLAIM OR ACTION BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY; OR (B) DAMAGES IN EXCESS OF \$10,000 IN THE AGGREGATE. SUMMIT LEARNING SHALL NOT BE LIABLE FOR PARTNER SCHOOL'S INABILITY TO USE THE PROGRAM OR THE SERVICES DUE TO (I) SCHEDULED DOWNTIME; (II) UNAVAILABILITY DUE TO FACTORS OUTSIDE OF SUMMIT LEARNING'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OF GOD, ACTS OF GOVERNMENT, FLOOD, FIRE, EARTHQUAKES, CIVIL UNREST, ACTS OF TERROR, STRIKES OR OTHER LABOR PROBLEMS; (III) UNAVAILABILITY THAT RESULTS FROM EQUIPMENT AND/OR SOFTWARE OF THIRD PARTIES WHERE SUCH EQUIPMENT AND/OR SOFTWARE IS NOT WITHIN THE REASONABLE CONTROL OF SUMMIT LEARNING; (IV) UNAVAILABILITY CAUSED BY ABUSE OR MISUSE OF THE SERVICES OR PROGRAM (OR ANY COMPONENT THEREOF) BY THE LEA, ANY PARTICIPATING SCHOOL OR THEIR RESPECTIVE USERS; OR (V) UNAVAILABILITY CAUSED BY USE OR MAINTENANCE OF THE SERVICES OR PROGRAM BY PARTNER SCHOOL IN A MANNER NOT MATERIALLY CONFORMING TO THE GUIDANCE PROVIDED BY SUMMIT LEARNING OR IN THIS PROGRAM AGREEMENT. DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **9. NOTICES**

**9.1 General.** Unless stated otherwise in this Agreement or User Agreement, 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 Summit Learning and the Partner School, including any participating school therein, if any, and addressed to Summit Learning as set forth below or addressed to the Partner School and any school therein, if any, as set forth in Schedule I or addressed to such other address as may have been given by written notice in accordance with this provision:

If to Summit Learning:  
T.L.P. Education, c/o Procopio Law Firm,  
1117 California Ave #200, Palo Alto, CA 94304; or  
[legal@summitlearning.org](mailto:legal@summitlearning.org)

All notices, communications, or consents required by or relating to this Agreement may also be

communicated by electronic mail to Summit Learning at [support@summitlearning.org](mailto:support@summitlearning.org) and to the Partner School at the email address set forth on Schedule I, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Notices shall be effective three (3) business days after receipt of delivery by the U.S. Post Office or one (1) day after deposit with a commercial overnight courier.

**9.2 Principal Contact Person.** Any notices, communications, or consents required by or relating to this Agreement from Summit Learning to the Partner School will be sent to the attention of the person(s) listed on Schedule I (the "Principal Contact Person"). The Principal Contact Person shall be authorized to act on behalf of the Partner School and to make decisions for the Partner School.

## 10. GOVERNING LAW

Unless the LEA is a United States public and accredited educational institution, (a) this Agreement will be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principle; and (b) any litigation or other dispute resolution between the LEA and Summit Learning arising out of or related to this Agreement, the Services, or the LEA's (or a Participating School's) relationship with Summit Learning will take place exclusively in the state or federal court seated in San Mateo County, California and the LEA (on its own behalf and on behalf of each Participating School) and Summit Learning hereby submit to and waive any objections to the exclusive personal jurisdiction of and venue of such courts.

If the LEA is a United States public and accredited educational institution, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the United States) in which the LEA is domiciled, except that body of law concerning conflicts of law; and (b) any litigation or other dispute resolution between the LEA and Summit Learning arising out of or relating to this Agreement, the Services, or the LEA's (or a Participating School's) relationship with Summit Learning will take place exclusively in federal court within the Northern District of California, and the LEA (on its own behalf and on behalf of each Participating School) and Summit Learning hereby submit to and waive any objections to the exclusive personal jurisdiction of and venue of such court unless such consent is expressly prohibited by the laws of the state in which the Partner School is domiciled.

## 11. GENERAL PROVISIONS

**11.1 Entire Agreement; No Waiver.** This Agreement, including the exhibits attached hereto, constitute the final and entire agreement between the Parties regarding its subject matter, and supersede all other related oral or written agreements or policies. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege unless expressly waived in writing and signed by duly authorized representatives of both Parties. No single waiver shall constitute a continuing or subsequent waiver.



**11.2 Relationship of the Parties.** This Agreement will not be construed as creating any agency relationship, or a general partnership, limited partnership, limited liability partnership, joint venture, fiduciary duty, or any other form of legal association between the Partner School and Summit Learning, and the 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.

**11.3 Assignment; Resale.** This Agreement will be binding upon and inure to the benefit of all of Summit Learning's and the Partner School's successors and assigns, which will be bound by all of the obligations of their predecessors or assignors.

**11.4 Modifications and Severability.** This Program Agreement and Data Privacy Addendum may be modified only by a written amendment signed by both Parties, except to the extent Summit Learning is otherwise expressly permitted by this Program Agreement or Data Privacy Addendum. In the event that the Partner School refuses to accept such changes, Summit Learning will have the right to terminate this Program Agreement in accordance with Section 5.2 hereof. If any provision of this Program Agreement or the exhibits attached hereto is found to be unenforceable or invalid, such unenforceability or invalidity will not render this Program 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.

**11.5 Material Modifications to Privacy Policy.** If Summit Learning makes any material changes to its Privacy Policy, it shall provide advance notice on the Privacy Policy, elsewhere on the Services, or via electronic communication to the Partner School's Principal Contact Person before the effective date of such changes.

**11.6 Material Modifications to Partner School Terms of Service and User Agreement.** If Summit Learning makes any material changes to the Partner School Terms of Service or User Agreement, it shall provide advance notice on the Partner School Terms of Service or User Agreement, elsewhere on the Services, or via electronic communication to the Partner School's Principal Contact Person before the effective date of such changes. If the change has a material adverse impact on the Partner School and Partner School does not agree to the change, Partner School may terminate this Program Agreement in accordance with Section 5.2 hereof.

**11.7 Priority of Agreements.** This Program Agreement shall govern the relationship between the Partner School and Summit Learning. If there is a conflict between this Program Agreement and the Partner School Terms of Service, Data Privacy Addendum, or any other agreement between the Partner School and Summit Learning (collectively, "Other Documents"), the terms of this Program Agreement shall apply and take precedence unless specifically provided otherwise in this Program Agreement or the Other Documents. In the event of any conflict between the terms of the Other Documents, the conflict shall be resolved in favor of the Partner School Terms of Service, unless specifically provided otherwise in the

Other Documents, such as with respect to the treatment of Student Data for which the terms of the Data Privacy Addendum shall apply and take precedence.

**11.8 Section Headings.** Section headings have been inserted in this Program Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not part of this Program Agreement and will not be used in the interpretation of any provisions of this Program Agreement.

IN WITNESS WHEREOF, the undersigned have duly authorized, executed and delivered this Program Agreement as of the date written below.

**T.L.P. Education**

By (Signature): 

Name (Printed): Andrew Goldin

Title: Executive Director

By (Signature):

Name (Printed):

Title:

Dated:

**EXHIBIT A PARTNER  
SCHOOL TERMS OF  
SERVICE**

**EXHIBIT B DATA PRIVACY  
ADDENDUM**

# Summit Learning Platform

## Partner School Terms of Service

Effective Date: June 22, 2020

### 1. AGREEING TO OUR TERMS

T.L.P. Education (“**Summit Learning**,” “**we**,” or “**us**”), a California nonprofit public benefit organization and a 501(c)(3) nonprofit organization, operates the Summit Learning Program (the “**Program**”), including the Summit Learning Platform (the “**Platform**”) located at [www.summitlearning.org](http://www.summitlearning.org), and any other products and services that the Program may provide now or in the future (collectively, the “**Service**” or “**Services**”).

Summit Learning offers the Services to Partner School (as defined in the related Program Agreement), and at Partner School’s discretion, to (a) students currently enrolled in Partner School (“**Student Users**”), (b) the parents and legal guardians of Student Users, and (c) Partner School’s teachers, employees, officials, or agents (“**School Personnel**”) ((b) and (c) collectively, “**Licensed Users**” and Licensed Users together with Student Users, “**Users**”).

By accessing or using the Services, and by executing the Program Agreement, Partner School acknowledges that Partner School agrees to these Partner School Terms of Service (the “**Terms**”), which are a legal contract between Partner School and Summit Learning.

Partner School acknowledges and agrees that its Users will be subject to the User Agreement (“**User Agreement**”), Privacy Policy (“**Privacy Policy**”) and any other posted guidelines, policies or rules applicable to specific features of the Services, which may be posted from time to time on the website (collectively, the “**Guidelines**”), which are hereby incorporated by reference. If there is any inconsistency between the Terms and any of the Guidelines, the additional Guidelines will prevail to the extent of the inconsistency. When used herein, “**Agreement**” shall refer to these Terms, the Program Agreement, the Data Privacy Addendum (“**Data Privacy Addendum**”) attached thereto, and the Guidelines.

The right to access and use the Services is revoked in jurisdictions where it may be prohibited, if any.

### 2. THE SERVICES

#### 2.1 LICENSE TO USE THE SERVICES

Summit Learning grants Partner School a non-exclusive, non-assignable, non-transferable, limited right to access and use for no charge the Services during the term of and subject to the Program Agreement solely for noncommercial educational purposes and subject to the Agreement.

Summit Learning grants Partner School a non-exclusive, non-assignable, non-transferable, limited right and for no charge to use, download, copy, modify, perform, or display educational materials made

available in the Services or Program for noncommercial, in-class instructional purposes during the term of and subject to the Program Agreement.

## **2.2 INTELLECTUAL PROPERTY**

The Services and the Summit Technology are intended solely for the personal, non-commercial use of our users and may only be used in accordance with this Agreement. "Summit Technology" means all past, present and future software, hardware and technology used to provide the Services (including Summit Learning proprietary code and third-party software), user interfaces, all content and other materials displayed or performed on the Services, such as text, graphics, articles, photographs, images, illustrations and the design, structure, sequence and "look and feel" of the Services, and derivative works thereof and all other intellectual property, including all Summit Learning Marks. "Summit Learning Marks" means the trademarks, service marks, logos, or any other trade name, trademarks, service marks and other distinctive or proprietary brand features of Summit Learning.

Summit Technology is protected by copyright and other intellectual property laws. Using our Service does not give Partner School ownership of any intellectual property rights in the Services or the Summit Technology. Partner School agrees that, as between Partner School and Summit Learning, all the intellectual property rights in the Services and Summit Technology, which does not include User Content (as defined below), are owned by Summit Learning or its licensors, and all rights to the Services not expressly granted herein are reserved by Summit Learning. These terms do not grant Partner School the right to use any Summit Learning Marks.

Partner School agrees to protect Summit Technology and to abide by all copyright and other intellectual property laws.

## **2.3 COPYRIGHT PROTECTION**

It is Summit Learning's policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act ("DMCA"). For more information, please review Summit Learning's [DMCA Notification Guidelines](https://help.summitlearning.org/hc/en-us/sections/360000142588-Privacy-Security-FAQs) [available at, <https://help.summitlearning.org/hc/en-us/sections/360000142588-Privacy-Security-FAQs>] Summit Learning may remove any allegedly infringing content without any liability to Partner School. Summit Learning will promptly terminate without notice any User's access to the Services where the User is a "repeat infringer" of copyrights. Summit Learning, however, reserves the right to identify and terminate Users under any circumstances it deems appropriate, including after only a single instance of allegedly infringing behavior by that User.

## **2.4 RESTRICTIONS ON USE**

Partner School agrees not to, and shall use commercially reasonable efforts to ensure that its Users and third parties do not:

- license, sell, rent, lease, loan, assign, distribute, host or otherwise commercially exploit, make available, or sell access to the Services, Summit Technology, or any component thereof, to third parties except as specifically permitted under these Terms;
- use, store, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, create derivative works from, display, license, sell or otherwise exploit the Summit

Technology, or any component thereof, for any purposes other than as expressly permitted under this Agreement;

- reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Services, or any component thereof;
- build or support (and/or assist a third-party in building or supporting) products or services in competition with Summit Learning, by any means whatsoever or access the Service to build a product using similar ideas, features, functions, interface or graphics of the Service;
- remove, obscure, or alter any copyright, logo, trademark, or other legal notices displayed in or along with the Services and/or any related assets or otherwise use any of Summit Technology, or any component thereof, in any manner that creates the impression that such Summit Technology, or any component thereof, belongs to Partner School or that use by Partner School is associated with Summit Learning or with Summit Learning's consent except and only to the extent permitted by Summit Learning, or as otherwise provided herein; or
- circumvent, disable or otherwise interfere with security-related features or features that prevent or restrict use or copying of any User Content or Summit Technology, or any component thereof, or enforce limitations on use of the Services, User Content, Summit Technology, or any component thereof.

## **2.5 CHANGES TO THE SERVICES**

From time to time, Summit Learning may implement changes and improvements to the Services, including by conducting maintenance, updating the functionality and look of the Services, and adding or removing functionalities or features. We may also stop providing the Services to Partner School or its Users, or add or create new limits to the Services or restrict access by Partner School or its Users to all or a part of the Service at any time without liability.

Partner School agrees that Summit Learning shall not be liable to Partner School, its Users, or any third party for any modification, suspension or termination of the Services.

Even though Summit Learning intends for the Services to be generally available, the Services may not be available during routine or periodic maintenance. In addition, the Program Agreement describes other instances in which the Services may be suspended or otherwise unavailable.

Users own User Content and, subject to availability of the Services, Summit Learning will preserve access to such User Content. If Summit Learning discontinues a component of the Services that would affect such access, where reasonably possible, Summit Learning will give Partner School and its Users the opportunity to get such User Content out of that part of the Services. Please see the Summit Learning [Frequently Asked Questions](https://help.summitlearning.org) [available at, <https://help.summitlearning.org>] ("FAQs") for more information.

## **3. USE OF THE SERVICES**

### **3.1 Account Registration & Access**

A Partner School will create accounts (each, an “**Administrator Account**”) for Licensed Users that are authorized to set up, access, and manage accounts for other Licensed Users and Student Users (each a “**User Account**”).

If Partner School creates an Administrator Account, Partner School is responsible for (a) maintaining the security and confidentiality of such account and its account credentials; (b) all activities that occur under the Administrator Account; and (c) obtaining all necessary rights, permissions, or consents to access, monitor, use, or disclose any data from accounts of other Users.

Summit Learning reserves the right to refuse registration of or cancel a User Account or Administrator Account in our sole discretion. Summit Learning is not liable for any losses by any party caused by an unauthorized use of an Administrator Account. Notwithstanding the foregoing, Partner School may be liable for the losses of Summit Learning or others due to such unauthorized use.

### **3.2 Acceptable Use of the Services**

Summit Learning has established rules for Users to follow when using the Services (“**Service Rules**”), which are set forth in the User Agreement (available on the Summit Learning Website). Partner School is obligated to ensure that its Users, including its Student Users, comply with all terms of the User Agreement, including but not limited to the Service Rules.

Partner School agrees to immediately notify Summit Learning at [acceptableuse@summitlearning.org](mailto:acceptableuse@summitlearning.org) upon learning of any violation of the Service Rules, or of any known or suspected unauthorized use or access of a User Account or Administrator Account.

## **4. PARTNER SCHOOL INFORMATION AND CONTENT**

### **4.1 User Content and Teacher Content**

The Services enable Partner School and its Users to provide, share or post certain content or information, including, but not limited to, audio recordings, photographs, videos, documents, online educational resources, or other materials, Student Data (as defined in the Data Privacy Addendum), Teacher Content (as defined below) and Feedback, (as defined below) (collectively, “**User Content**”). User Content may be used by Summit Learning in connection with the Services and may be visible to or shared with Summit Learning, other Partner Schools, and certain other Users. The Summit Learning Privacy Policy provides additional information on the types of information different Users are able to provide.

School Personnel may contribute educational content, create answers to assessments, create derivative works (e.g., completion of assignments, projects, etc.), and transmit said data and content within the Partner School’s systems through the Services (collectively, “**Teacher Content**”).

Partner Schools and Users may submit feedback, comments or suggestions for improvements to the Services (in written, oral, or any other form) (“**Feedback**”).

### **4.2 Ownership**

Consistent with applicable Law, as between Summit Learning and Partner School and its Users, Partner School and its Users retain all ownership rights Partner School and its Users have in any User Content.

Summit Learning does not claim any ownership rights in the User Content. Please note that, while Partner School and its Users retain ownership of User Content, any template or layout used to arrange or organize such User Content through tools and features made available through any of the Services are not proprietary to Partner School and its Users, and the rights to such template or layout will remain with Summit Learning or our service providers.

### 4.3 License

- A. User Content.** Partner School acknowledges and agrees that all User Content shared in the Services is the responsibility of the Partner School, and the User from whom the User Content originated. Partner School represents, covenants, and agrees on behalf of Partner School or its Student User that the submitting User has all required rights to submit, post, upload, or otherwise own, use, or disseminate the User Content it submits or uploads without violating third party rights.

Partner School hereby grants to Summit Learning a limited, non-exclusive, sublicensable (as necessary to provide the Services, including distributing Teacher Content), worldwide, royalty-free, and transferable (only to a successor) right and license to:

- (1) use, host, copy, store, distribute, publicly perform and display, publish (in whole or in part), modify, and create derivative works from (such as changes Summit Learning makes so that the content works better with the Services) User Content as necessary to provide, improve and make the Services available to Partner School and its Users, including through any future media in which the Services may be distributed;
- (2) use, modify, prepare derivative works, publish, distribute and sublicense Feedback without any compensation to Partner School or any other party;
- (3) use and disclose metrics and analytics regarding the User Content in an aggregate or another non-personally identifiable manner (including, for use in improving the Services);
- (4) use any de-identified User Content for any lawful purpose subject to the Data Privacy Addendum; and
- (5) use for other purposes permitted by the Data Privacy Addendum and the Privacy Policy.

Summit Learning will only share and use personal information in accordance with Summit Learning's current Privacy Policy.

- B. Default License for Teacher Content.** By default, if Partner School or its School Personnel contribute Teacher Content, such Teacher Content will be licensed royalty-free to Summit Learning under the [Creative Commons Attribution 4.0 License](https://creativecommons.org/licenses/by/4.0/) [available at <https://creativecommons.org/licenses/by/4.0/>] (“CC License”). Such Teacher Content shall be available to the Partner School and its Users, but Summit Learning may also sub-license such Teacher Content to other Users of the Platform at other schools. Partner School acknowledges and agrees that Teacher Content will be licensed under the CC License unless Partner School or its School Personnel “opt-out” of sharing to other schools. Such Teacher Content will continue to be licensed under the CC License until School Personnel “turns off” such sharing for that particular Teacher Content. However, Partner School understands and agrees that if Partner



School or its School Personnel "turn-off" sharing for Teacher Content (i) the Teacher Content will be available to Licensed Users within the Partner School only; (ii) the change is prospective and does not terminate any sub-licenses to the underlying Teacher Content previously granted by Summit Learning to any third parties (such as teachers from other schools and districts), and (iii) Summit Learning thereafter shall not grant any additional sub-licenses for the underlying Teacher Content to third parties such as other schools.

- C. License Termination.** The license in Section 4.3(A)(1) above will terminate with respect to any User Content when Partner School (i) deletes such User Content containing intellectual property rights (like images or videos) or personally identifiable information (such as that in Student Data); (ii) deletes the account associated with such User Content; or (iii) with respect to the ability to sub-license Teacher Content to third parties, turns off sharing of Teacher Content as set forth in 4.3(B). Such termination may not apply to User Content that has been shared with others, including previously sublicensed Teacher Content, or User Content that may be in or related to messages sent through Summit Learning. User Content may persist in backup copies for a reasonable period of time following deletion (but will not be available to others).

**4.4 Representations Regarding Teacher Content.** If Partner School or its School Personnel contribute Teacher Content under the CC License, Partner School and the School Personnel represent and warrant that Teacher Content does not contain any Student Data and that Partner School and School Personnel have the right and authority to grant the license and other such rights as may be necessary.

#### **4.5 Responsibility for User Content and Summit Learning's Rights.**

Partner School acknowledges and agrees that Summit Learning reserves the right, at any time and without prior notice, to pre-screen, reject, move, edit, delete, or remove any User Content contributed to the Services that Summit Learning, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or otherwise harmful to the Services or Users, consistent with applicable Law, but Summit Learning does not assume the obligation. The submission of any User Content through any third party links or applications made available or accessible in the Services shall be subject to such third parties' terms and privacy policies. Additionally, Summit Learning does not guarantee that Summit Learning will publish any User Content.

By submitting User Content, Partner School represents and warrants that Partner School has all rights in the User Content, including to disclose such User Content and to grant Summit Learning the foregoing licenses to the User Content. User Content must comply with these Terms, including guidelines under the caption "Acceptable Use of the Services", the User Agreement, and any other specific User (e.g., teacher, parent, or student) requirements. If Partner School and its School Personnel include links to external websites, including Third-Party Content and Websites (as described below), in User Content, Partner School or its School Personnel must verify the quality and substance of each external link. Partner School and its School Personnel are solely responsible for any such links. Summit Learning is not liable or responsible for any links created by Partner School or its School Personnel, or for any damages, direct or indirect, arising therefrom.

All information posted or transmitted through the Service, including User Content, is the responsibility of the person that posted it and/or the Partner School, and Summit Learning will not be liable for any errors or omissions in any such content. Summit Learning cannot guarantee the identity of any other Users that Partner School and its Users may interact with in the course of using the Services, or the

authenticity of any data which Users may provide about themselves. Partner School and its Users access User Content at their own risk and will be solely responsible for any damage or loss to any party resulting therefrom.

## **5. LINKS, THIRD-PARTY CONTENT, AND THIRD-PARTY WEBSITES**

The Services may include content originating from and created by other users and third parties, including information about third-party products and services; links to third-party websites that are not owned or controlled by Summit Learning; and/or third-party applications, such as YouTube video, including, but not limited to, third-party applications that are integrated directly with the Services through application programming interfaces (each an "API") ("**Third-Party Content and Websites**"). Third-Party Content and Websites may allow Partner School and its Users to interact through and communicate with third parties. The inclusion of Third-Party Content and Websites on the Services does not imply our affiliation or endorsement of such Third-Party Content and Websites. Partner School agrees that Summit Learning is not responsible for any such Third-Party Content and Websites, including the accuracy, integrity, quality, legality, usefulness, safety, privacy practices or intellectual property rights of or relating to such Third-Party Content and Websites, and Partner School and its Users access such Third-Party Content and Websites at their own risk. Summit Learning has no obligation to monitor such Third-Party Content and Third-Party Websites. Partner School is solely responsible for any accounts that Partner School creates, data or User Content that Partner School or its Users share or store, and/or the interactions of Partner School or its Users with or on Third Party Content and Websites, all of which are governed by any terms or policies for such Third Party Content and Websites. If required to provide the Services, Partner School hereby authorizes and grants Summit Learning a right to use any names, passwords, API keys or other keys for such Third Party Content and Websites solely as necessary to provide the Services to Partner School.

Partner School understands that by using the Services Partner School and its Users may be exposed to Third-Party Content and Websites, and that Partner School and its Users use the Services at their own risk.

## **6. USER DISPUTES AND RELEASES**

Summit Learning is not responsible for the actions, content, information or data of third parties, including Users. Partner School and its Users are solely responsible for their interactions with other Users of the Services, and any other parties with whom Partner School or its Users may interact with through the Services. Summit Learning reserves the right but has no obligation, to become involved in any way with these disputes.

If Partner School has a dispute with one or more Users, Partner School releases us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes, including damages for loss of profits, goodwill, use, privacy or data.

## **7. TERMINATION AND SUSPENSION**

Certain Licensed Users may terminate their use of the Services; provided, however, that Partner School may require satisfaction of certain requirements prior to termination of Administrator Accounts or accounts of School Personnel.

Partner School acknowledges that, if Partner School or any of its Users knowingly, intentionally or negligently violate these Terms, Summit Learning may suspend Partner School's license to the Program and the Services, in whole or in part, until the violation is stopped or terminate Partner School's license to the Program and the Services. In the event that the Partner School fails to correct the violation after reasonable notice from Summit Learning, Summit Learning may terminate Partner School's license to the Services, in whole or in part, as necessary to stop the violation. Partner School agrees and acknowledges that if Partner School or any of its Users violate the terms of this Section 7, Summit Learning shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions. In the event Summit Learning suspends or terminates a User's use of the Services or account, Summit Learning will promptly provide notice to the Principal Contact Person at Partner School.

Upon termination of Partner School's license to the Services, Partner School's right to use the Service will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## **8. ADDITIONAL TERMS BY USER TYPE**

### **8.1 School Personnel**

School Personnel must obtain any necessary approvals from Partner School's authorities and administrators before using the Services. Upon termination of School Personnel employment, engagement, or contractual relationship with the Partner School, terminated School Personnel must cease use of the Services and return and cease using all login information in their possession. If at any time Partner School learns a user of the Services claims to be affiliated with Partner School who is not, in fact, affiliated with Partner School, Partner School agrees to notify Summit Learning immediately at [security@summitlearning.org](mailto:security@summitlearning.org).

### **8.2 Students**

- A. Authorization to Use the Services.** Partner School understands and acknowledges that (1) the Children's Online Privacy Protection Act ("**COPPA**") does not directly apply to nonprofit organizations such as Summit Learning; (2) COPPA sets forth guidelines regarding the collection and use of personal information from children under 13 years of age; (3) Summit Learning voluntarily complies with COPPA's guidelines regarding Student Users under the age of 13; and (4) by entering into the Agreement, Partner School has authorized Summit Learning to collect and use certain personal information from Student Users under 13 years of age as set forth in the Agreement.

Partner School, through Administrator Accounts, may grant permission to Student Users to have User Accounts and use the Services. Partner School understands and acknowledges that Student Users are not authorized to use the Services unless a Partner School has granted permission to such Student Users for the Student Users to have User Accounts and use the Services. If Partner School creates User Accounts for Student Users, Partner School acknowledges and agrees that Partner School has authority to do so.

Partner School will be solely responsible (and hereby agrees that Summit Learning is not responsible) for: (1) providing any legally required notices and obtaining any necessary permissions, including

permissions under COPPA for children under 13 years of age for Student Users to use the Services; and (2) providing any legally required means for a parent or legal guardian to review or correct any Student Data in the Services. Under no circumstances will Summit Learning be liable for the Partner School or its School Personnel's failure to consult their school's authorities and administrators or for failing to obtain permission when required.

**B. Clever and Other Third-Party Integrations.** Partner School and its School Personnel is solely responsible for monitoring, auditing and otherwise ensuring the quality of any data exposed to Summit Learning through the Clever API or other third-party learning management systems.

### **8.3 Parents/Legal Guardians.**

Partner School, including through Administrator Accounts or School Personnel, may send an invitation to parents and legal guardians to use the Services and create accounts for the parents and legal guardians who accept the invitation to use the Services ("**Parent Account**"). Partner School will provide Summit Learning with a parent's or legal guardian's email address, phone number, and information linking the parent to an individual Student User. Upon receiving this information, Summit Learning will automatically send the parent/legal guardian of a Student User an email or SMS text message with details regarding how to activate a Parent Account. Parent Accounts allow parents/legal guardians to track their child's progress in the Services.

Summit Learning, on behalf of and at the direction of a Partner School, may send parents/legal guardians informational text messages from Partner School, including, but not limited to, messages: (1) providing information related to their or their child's use of the Services; (2) supplying information that they request; or (3) responding to their inquiries regarding their account or use of Summit Learning.

## **9. LIABILITY, WARRANTY DISCLAIMERS, AND OTHER LEGAL INFORMATION**

### **9.1 Representations & Warranties**

Partner School warrants, represents and agrees that Partner School will not provide any User Content or otherwise use the Services in a manner that (i) infringes, violates or misappropriates another's intellectual property rights, rights of publicity or privacy, or other rights; (ii) violates any applicable Law or which would render Summit Learning in violation of any applicable Law; (iii) is harmful, fraudulent, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable; or (iv) jeopardizes the security of a Partner School account or the Services in any way, such as by allowing someone else access to a user account or password. Additionally, Partner School represents, warrants and agrees that Partner School (i) possesses all rights necessary to provide User Content and grant Summit Learning the rights in this Agreement (ii) Partner School will comply with the Laws in connection with its use of the Service, and (iii) Partner School is solely responsible for providing notices and obtaining any consents required by applicable Law for Users to use the Services or to provide User Content.

### **9.2 Warranty Disclaimer**

USE OF THE SERVICES IS ENTIRELY AT THE RISK OF PARTNER SCHOOL. PARTNER SCHOOL EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SERVICES, SOFTWARE, AND ANY ASSOCIATED SUMMIT LEARNING TECHNOLOGY, USER CONTENT OR CONTENT ARE PROVIDED "AS IS", "WITH ALL FAULTS," AND "AS AVAILABLE."

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUMMIT LEARNING AND OUR AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS (COLLECTIVELY, "SUMMIT LEARNING" FOR PURPOSES OF SECTION 10.2 AND SECTION 10.3 HEREIN) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (1) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE, QUIET ENJOYMENT, NO LIENS AND NO ENCUMBRANCES; (2) THE WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS AND NON-INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY PERSON; (3) THE WARRANTIES ARISING THROUGH COURSE OF DEALING OR USAGE IN TRADE; AND (4) THE WARRANTIES RELATING TO THE ACCURACY, RELIABILITY, CORRECTNESS, OR COMPLETENESS OF DATA OR CONTENT (INCLUDING USER CONTENT) MADE AVAILABLE ON THE SERVICES OR OTHERWISE BY SUMMIT LEARNING.

EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, SUMMIT LEARNING MAKES NO WARRANTY THAT (I) THE SERVICES WILL MEET THE NEEDS OR REQUIREMENTS OF PARTNER SCHOOL OR THE NEEDS OR REQUIREMENTS OF ANY OTHER PERSON; (II) USE OF THE SERVICES WILL BE TIMELY, SECURE, ACCURATE, COMPLETE, UP-TO-DATE, FREE OF VIRUSES, UNINTERRUPTED, OR FREE FROM ERRORS, LOSS, CORRUPTION, ATTACK, VIRUSES, OR HACKING; AND (III) ANY INFORMATION OBTAINED BY PARTNER SCHOOL AS A RESULT OF THE SERVICES WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN ANY PART OF THE SERVICES PROVIDED TO PARTNER SCHOOL WILL BE CORRECTED.

IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED OR STATUTORY WARRANTIES TO APPLY TO PARTNER SCHOOL, THE ABOVE EXCLUSIONS WILL APPLY TO PARTNER SCHOOL TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

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

## **10. DISPUTE RESOLUTION**

### **10.1 Arbitration and Class Action Waiver**

With respect to any and all disputes arising out of or in connection with the Services, Summit Learning and Partner School agrees to negotiate in good faith and undertake reasonable efforts to cooperate with one another in order to achieve a mutually satisfactory resolution. To the extent permitted by Law, if Partner School and Summit Learning do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration as described in this section.

**Partner School and Summit Learning are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury.**

Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. Any court with jurisdiction over the parties may enforce the arbitrator's award.

To the extent permitted by Law, any claim or dispute under or relating to the Agreement must be filed within one year in an arbitration proceeding. The one-year period begins when the claim or notice of dispute first could be filed. If a claim or dispute isn't filed within one year, it's permanently barred.

If the arbitration provision in this Section is found to be unenforceable or invalid, the parties agree that any suit or proceeding arising out of or relating to these Terms will be brought in the federal or state courts, as applicable, in San Mateo County, California, and each party irrevocably submits to the jurisdiction and venue of such courts.

#### **10.1.1 Federal Arbitration Act**

Partner School and Summit Learning (“**the parties**” or “**both parties**”) agree that the Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

#### **10.1.2 Initial Dispute Resolution**

In the event of a dispute, claim, or controversy arising out of or relating to the Agreement or the Services, any person’s access to and/or use of the Services, and/or the provision of content, services, and/or technology on or through the Services (collectively, “**Claims**”), both parties must first give the other notice of the Claim. This notice must include a brief written statement with the name, address, and contact information of the party giving it, as well as the facts giving rise to the Claim and the relief requested. Partner School must send any such notice to Summit Learning by email to [legal@summitlearning.org](mailto:legal@summitlearning.org) AND by mail to T.L.P. Education, c/o Procopio Law Firm, 1117 California Ave #200, Palo Alto, CA 94304. If Summit Learning has the contact information for Partner School, Summit Learning will send any such notice to Partner School by U.S. Mail and to the email address on file. The parties must first attempt to resolve any Claims through informal negotiation within thirty (30) days from the date that any notice of a Claim is sent. The parties shall use reasonable, good faith, efforts to settle any Claim through consultation and good faith negotiations. After thirty (30) days, Partner School or Summit Learning may resort to the other alternatives described in this Section 10.1. Notwithstanding the foregoing, the notice and thirty (30) day negotiation period required by this paragraph shall not apply to Claims concerning patents, copyrights, moral rights, trademarks, and trade secrets and claims of piracy or unauthorized use of the Services which will be brought in the federal or state courts, as applicable, in San Mateo County, California, and each party irrevocably submits to the jurisdiction and venue of such courts.

#### **10.1.3 Binding Arbitration**

To the extent permitted by law, Summit Learning and Partner School agree that all disputes arising under the Agreement that cannot be settled through informal negotiation will be settled exclusively through confidential binding arbitration in San Mateo County, California, U.S.A. The arbitrator's award shall be binding and may be entered as a judgment in a court of competent jurisdiction. Partner School agrees that Summit Learning may seek any interim or preliminary relief from a court of competent jurisdiction in San Mateo County, California, U.S.A, necessary to protect its rights or property pending the completion of arbitration. **If Partner School is a U.S. public and accredited educational institution and Partner School’s consent to binding arbitration is expressly prohibited by the laws of the state within the U.S. in which Partner School is domiciled, then this subsection 10.1.3 is hereby waived.**

The arbitration shall be conducted by a single arbitrator, governed by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures (collectively, “**JAMS Rules**”), as modified by these Terms, and administered by JAMS. The JAMS Rules and fee information are available at [www.jamsadr.org](http://www.jamsadr.org) or by calling JAMS at 1-800-352-5267.

The decision of the arbitrator will be in writing and binding and conclusive on Partner School and Summit Learning, and judgment to enforce the decision may be entered by any court of competent jurisdiction. Partner School and Summit Learning agree that dispositive motions, including without limitation motions to dismiss and motions for summary judgment, will be allowed in the arbitration. The arbitrator must follow these Terms and can award the same damages and relief as a court, including injunctive or other equitable relief and attorney's fees. Partner School and Summit Learning understand that absent this mandatory arbitration provision, Partner School and Summit Learning would have the right to sue in court and have a jury trial.

If any clause within this subsection 10.1.3 is found to be illegal or unenforceable, that specific clause will be severed from this Section, and the remainder of its provisions will be given full force and effect.

#### **10.1.4 Class Action Waiver**

To the extent permitted by Law, the parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. The parties agree that each may bring claims against the other only in its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate Claims. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

#### **10.1.5 Confidentiality**

All aspects of the arbitration proceeding, including, but not limited to, the award of the arbitrator and compliance therewith, shall be strictly confidential. Both parties agree to maintain confidentiality unless otherwise required by Law. This paragraph shall not prevent Partner School or Summit Learning from submitting to a court of law any information necessary to enforce the Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

#### **10.2 Changes to this Section**

Summit Learning will provide 60-days' notice of any changes to Section 10. Changes will become effective on the 60th day, and will apply prospectively only to any Claims arising after the 60th day. If a court or arbitrator decides that this subsection on "Changes to this Section" is not enforceable or valid, then this subsection 10.2 shall be severed from Section 10, and the court or arbitrator shall apply the first Arbitration and Class Action Waiver (or similarly named) section in existence after Partner School first installed, accessed, or used any of the Services.

### **11. MISCELLANEOUS**

**11.1 Term.** Except as otherwise stated herein, Summit Learning shall be bound by these Terms for the duration of the Program Agreement.

**11.2 Termination.** In the event that either party seeks to terminate these Terms, they may do so by terminating the Program Agreement as set forth therein.

**11.3 Severability.** If any provision of these Terms is invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable Laws and the remaining provisions will continue in full force and effect.

**11.4 No Waiver.** A failure by Summit Learning to enforce any provisions of the Terms or respond to a breach by Partner School or anyone else shall not in any way waive Summit Learning's right to enforce subsequently any terms or conditions of the Terms or to act with respect to similar breaches.

**11.5 Assignment.** Partner School must not assign these Terms or any rights or obligations herein without the prior written consent of Summit Learning and any attempted assignment in contravention of this provision is null and void and of no force or effect. Summit Learning has the right to assign these Terms, and any of its rights or obligations herein. These Terms are binding upon each party and its respective successors, heirs, trustees, administrators, executors and permitted assigns.

**11.6 Relationship of the Parties.** The parties are independent contractors and not employees, partners, agents, or joint venturers of the other and have no employment relationship whatsoever. No party will make any commitment, by contract or otherwise, binding upon the other party or represent that it has any authority to do so. This is a non-exclusive agreement. Partner School agrees that, except as otherwise expressly provided in these Terms, there shall be no third party beneficiaries to these Terms.

**11.7 Entire Agreement.** These Terms are the entire agreement of the parties and supersede all previous or contemporaneous agreements between the parties relating to its subject matter. In connection with Partner School's use of the Services, Partner School may be asked to consent to policies or terms and conditions in addition to these Terms. Any separate terms will not vary or replace these Terms regarding any use of the Services, unless otherwise expressly stated.



# EXHIBIT B

## DATA PRIVACY ADDENDUM

**Modeled after Version 2.0 of the Student Data Privacy Consortium's Model Contract**

and

### **T.L.P. EDUCATION**

This **DATA PRIVACY ADDENDUM** (this "Data Privacy Addendum") is entered into by and between **PARTNER SCHOOL** (as defined in the related Program Agreement) and **T.L.P. Education** ("Summit Learning"), a California nonprofit public benefit corporation, having an address at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017, on the Effective Date (each of Summit Learning and Partner School, a "Party" and together the "Parties"). The Parties agree to the terms as stated herein.

### **1. PURPOSE AND SCOPE**

**1.1 Purpose of Data Privacy Addendum.** The purpose of this Data Privacy Addendum is to describe the duties and responsibilities to protect Student Data transmitted to Summit Learning from the Partner School and its Users pursuant to the Agreement, including compliance with all applicable federal and state privacy statutes. This Data Privacy Addendum, together with the Summit Learning Platform Partner School Terms of Service ("Terms of Service") and the Summit Learning Program Agreement ("Program Agreement") is the entire agreement between the Partner School and Summit Learning ("Agreement"). This Data Privacy Addendum forms the base level of security. We regularly evaluate our policies and practices to improve the security of our network and systems and to respond to evolving best practices. For more information on our current security practices see Summit Learning Security Whitepaper [available at, <https://summitlearning.org/security>] ("Security Whitepaper").

**1.2 Nature of Services Provided.** Pursuant to and as fully described in the Program Agreement, Summit Learning has agreed to provide the Summit Learning Program (the "Program") and the Summit Learning Platform ("Platform") and any other products and services that the Program may provide now or in the future (collectively, the "Services").

**1.3 Student Data to Be Provided.** In order to use the Services, Partner School and its Users may provide the categories of Student Data described in the Schedule of Data, attached hereto as Exhibit A.

**1.4 Data Privacy Addendum Definitions.** Capitalized terms used herein and not otherwise defined in the Program Agreement or Terms of Service shall have the meanings set forth in Exhibit B hereto or as otherwise defined herein.

## 2. DATA OWNERSHIP AND AUTHORIZED ACCESS

**2.1 Student Data Property of Partner School.** All Student Data or any other Pupil Records transmitted to Summit Learning pursuant to the Program Agreement is and will continue to be the property of, and under the control of, the Partner School, or the party who provided such Student Data or Pupil Records (such as the student or parent). The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data or any other Pupil Records contemplated per the Agreement shall remain the exclusive property of the Partner School or the party who provided such Student Data or Pupil Records (such as the student or parent). For the purposes of the Family Educational Rights and Privacy Act ("FERPA"), to the extent Personally Identifiable Information from Education Records are transmitted to Summit Learning from Partner School, Summit Learning shall be considered a School Official with a legitimate educational interest, under the direct control of the Partner Schools as it pertains to the use of Education Records notwithstanding the above.

**2.2 Parent Access.** As set forth in applicable law, Partner School shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Personally Identifiable Information contained in the related student's Pupil Records and correct erroneous information, consistent with the functionality of Services. Summit Learning shall respond within 30 days to the Partner School's request for Personally Identifiable Information contained in a student's Pupil Records held by Summit Learning to view or correct as necessary. In the event that a parent/legal guardian of a student or other individual contacts Summit Learning to review any of the Pupil Records or Student Data accessed pursuant to the Services, Summit Learning shall refer the parent or individual to the Partner School. In such event, Partner School shall follow the necessary and proper procedures regarding the requested information.

**2.3 Third Party Request.** Should a Third Party that is not, a Service Provider, contact Summit Learning with a request for Student Data held by Summit Learning pursuant to the Services, Summit Learning shall redirect the Third Party (including law enforcement and government entities) to request the Student Data directly from the Partner School. Summit Learning shall notify the Partner School in advance of such-compelled disclosure to a Third Party, unless legally prohibited.

**2.4 No Unauthorized Use.** Summit Learning shall not use Personally Identifiable Information from Student Data, or in a Pupil Record for any purpose other than as explicitly specified in the Agreement.

**2.5 Service Providers.** Summit Learning may use Service Providers in order to perform its duties under the Agreement. Summit Learning shall enter into written agreements with all Service Providers and shall be responsible for any actions of Service Providers that would be a breach of this Data Privacy Addendum.

## 3. DUTIES OF PARTNER SCHOOL

**3.1 Provide Data In Compliance With FERPA.** Partner School shall provide Student Data for the purposes of the Agreement in compliance with any applicable state or federal laws and regulations (including FERPA) pertaining to data privacy and security applicable to Partner School. If Partner School provides Education Records to Summit Learning, Partner School represents, warrants and covenants to Summit Learning, as applicable, that Partner School has:

- a. complied with all applicable provisions of FERPA relating to disclosures to school officials with a legitimate educational interest, including, without limitation, informing parents in their annual notification of FERPA rights that the Partner School defines “school official” to include service providers and defines “legitimate educational interest” to include services such as the type provided by Summit Learning; or
- b. obtained all necessary parental or eligible student written consent to share the Student Data with Summit Learning, in each case, solely to enable Summit Learning’s operation of the Services.

Partner School represents, warrants, and covenants to Summit Learning that it shall not provide information to Summit Learning from any student or parent/legal guardian that has opted out of the disclosure of Directory Information. Summit Learning depends on Partner School to ensure that the Partner School is complying with the FERPA provisions regarding the disclosure of any student information that will be shared with Summit Learning.

**3.2 Reasonable Precautions.** Partner School shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services and Student Data in accordance with the Agreement and applicable law.

**3.3 Unauthorized Access Notification.** Partner School shall notify Summit Learning immediately of any known or suspected unauthorized use or access of the Platform or Student Data. Partner School will assist Summit Learning in any efforts by Summit Learning to investigate and respond to any unauthorized use or access.

**3.4 Partner School Representative.** The Principal Contact Person designated in the Program Agreement shall serve as the representative of the Partner School for the coordination and fulfillment of the duties of this Data Privacy Addendum.

## **4. DUTIES OF SUMMIT LEARNING**

**4.1 Privacy Compliance.** Summit Learning shall comply with all state and federal laws and regulations related to privacy and security and applicable to Partner Schools and/or Summit Learning in providing the Services to Partner School.

**4.2 Authorized Use.** Student Data shared pursuant to the Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services and for the uses set forth in the Agreement and/or as otherwise legally permissible. The foregoing limitation does not apply to any De-Identified Data.

**4.3 Staff Obligation.** Summit Learning shall require all employees, staff, agents, and Service Providers who have access to Student Data to comply with all applicable laws with respect to the Student Data shared under the Agreement. Summit Learning agrees to require and maintain written confidentiality obligations from each of its employees, staff, agents, or Service Providers with access to Student Data pursuant to the Agreement.

**4.4 No Disclosure.** Summit Learning shall not disclose any Student Data obtained under the Agreement in a manner that directly identifies an individual student to any other entity except as authorized by the Agreement. Summit Learning will not Sell Student Data. Additionally, Summit Learning will not trade or transfer Student Data to any third parties, except with the prior written consent of the Partner School. The prohibition on disclosing, trading, or

transferring Student Data does not apply to the access to or disclosure of Student Data to (a) Partner School, (b) to authorized Licensed Users, including parents or legal guardians, (c) as permitted by law or (d) to Service Providers, in connection with operating or improving the Services. The list of Summit Learning's current Service Providers can be accessed through the Privacy Policy (which may be updated from time to time).

**4.5 De-Identified Data.** De-Identified Data may be used for any lawful purpose including, but not limited to, operating and improving the Services. Summit Learning's use of such De-Identified Data shall survive termination of this Data Privacy Addendum or any request by Partner School to return or destroy Student Data. Summit Learning agrees not to attempt or have any third party attempt to re-identify De-Identified Data except for the sole purpose of validating Summit Learning's de-identification processes.

**4.6 Disposition of Student Data.** Summit Learning shall, at Partner School's request, dispose of or delete all Personally Identifiable Information contained in Student Data within a reasonable time period following a written request. If a written request is received from a Partner School, Summit Learning shall transfer said Personally Identifiable Information contained in Student Data to Partner School or Partner School's designee within sixty (60) days of the date of such written request by Partner School, or as required by law, and according to a schedule and procedure as Summit Learning and the Partner School may reasonably agree. If no written request is received, Summit Learning shall dispose of or delete all Personally Identifiable Information contained in Student Data at the earliest of (a) when it is no longer needed for the purpose for which it was obtained or (b) as required by applicable law. Disposition shall include (1) the shredding of any hard copies of any Personally Identifiable Information contained in Student Data; (2) erasing any Personally Identifiable Information contained in Student Data; or (3) otherwise modifying the Personally Identifiable Information contained in Student Data to make it unreadable or indecipherable or de-identified. Summit Learning shall provide written notification to the Partner School when the Personally Identifiable Information contained in the Student Data has been disposed. The duty to dispose of Student Data shall not extend to De-Identified Data.

**4.7 Advertising Prohibition.** Summit Learning shall not use Personally Identifiable Information contained in Student Data to (a) serve Behaviorally Targeted Advertising to students or families/guardians or any other user; or (b) develop a profile of a student or any other user for any commercial purpose other than providing the Services to Partner School or as set forth in the Agreement. Summit Learning shall not use or disclose Personally Identifiable Information contained in Student Data for Third-Party Advertising.

## **5. DATA PROVISIONS**

Summit Learning's core security commitments are set forth below and we commit to maintaining this baseline. (For more information regarding Summit Learning's current security practices, see the Security Whitepaper.)

**5.1 Data Security.** Summit Learning agrees to store and process data by employing administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, and use or acquisition by an unauthorized person, including when transmitting and storing such information. Currently, Summit Learning implements security practices identified in the Security Whitepaper. These measures shall include, but are not limited to:

- Summit Learning shall implement effective identification and authentication methods using multi-factor authentication (MFA) with strong password complexity. These methods meet or exceed Article 4.3 of NIST 800-63-3.
- Summit Learning shall limit access to Student Data to employees, agents, staff, and Service Providers who need access in order for Summit Learning to provide the Services. To the extent permissible by law, Summit Learning shall 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.
- Summit Learning shall destroy or delete all Personally Identifiable Information contained in Student Data obtained under the Agreement as set forth in Section 4.6 hereof.
- Summit Learning shall employ a strong modern encryption technology designed to securely transmit (encryption in transit) and store all Student Data (encryption at rest). Summit Learning shall maintain all Student Data obtained or generated pursuant to the Agreement in a secure computing environment and shall not copy, reproduce, or transmit data obtained pursuant to the Agreement, except as necessary to fulfill the purpose of data requests by Partner School or as otherwise set forth in the Agreement.
- Summit Learning shall create a secured data backup and recovery capability that is designed to ensure an effective, timely and accurate restoration of all Student Data. The capability will be designed to minimize the amount of Student Data loss in the event of some form of catastrophic failure. For further protection, those backups will be encrypted and are stored in a different region.
- Summit Learning shall adopt and maintain a secure software development lifecycle ("Secure SDLC") which will incorporate security practices such as penetration testing, code reviews and architecture analysis as essential functions of the development effort. Any identified security vulnerability will be remediated in a timely manner.
- Summit Learning shall provide periodic security training to those of its employees and staff who have access to Student Data.
- Summit Learning shall enter into written agreements whereby Service Providers agree to prevent unauthorized access and use of Student Data in a manner consistent with the terms of this Section 5.1. Summit Learning shall periodically conduct or review such compliance of Service Providers.

In the event Partner Schools have questions regarding Data Privacy or Security, they may contact our team at [privacy@summitlearning.org](mailto:privacy@summitlearning.org). Vulnerabilities can be responsibly disclosed by contacting [security@summitlearning.org](mailto:security@summitlearning.org).

## **5.2 Incident Response and Security Governance.**

In addition to those security measures described in Section 5.1, Summit Learning also implements an incident response and security governance program, which:

- Maintains platform availability through event monitoring and response procedures for all site outages or any observable occurrences, automated site outage notifications, handling and reporting by On-Call personnel.
- Implements incident response policies, plans and procedures focused on timely and effective incident response. These procedures shall be made available to Partner School upon request.
- Restricts network and physical access to Summit Learning Platform infrastructure. We also leverage services to monitor for suspicious activity and employ professionals with training in security incident detection and response. More information about our infrastructure can be found in the Security Whitepaper.
- Implements oversight and governance procedures for security risks and vulnerabilities, including a Vulnerability Disclosure Program and mandatory reviews of any incidents affecting the Summit Learning Platform.

### **5.3 Data Breach.**

In the event that Summit Learning becomes aware of an unauthorized disclosure of or access to Student Data (a “Security Incident”), Summit Learning shall provide notice to the Partner School without undue delay or as required by the applicable state law (each, a “Security Incident Notification”).

- (a) Unless otherwise required by the applicable law, the Security Incident Notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
- (b) The Security Incident Notification described above in Section 5.2(a) shall include such information required by the applicable state law and the following information:
  - (i) The name and contact information of the reporting Partner School subject to this section.
  - (ii) A list of the types of Personally Identifiable Information that were or are reasonably believed to have been the subject of the Security Incident.
  - (iii) If the information is known at the time the Security Incident Notification is provided, then either (1) the date of the Security Incident, (2) the estimated date of the Security Incident, or (3) the date range within which the Security Incident occurred. The Security Incident Notification shall also include the date of the notice.
  - (iv) Whether, to the knowledge of Summit Learning at the time notice is provided, the notification was delayed as a result of a law enforcement investigation or request.
  - (v) A general description of the Security Incident, if that information is possible to determine at the time the notice is provided.
- (c) At Summit Learning’s discretion, the Security Incident Notification may also include any of the following:

- (i) Information about what Summit Learning has done to protect individuals whose Personally Identifiable Information has been breached by the Security Incident.
  - (ii) Advice on steps that the person whose Personally Identifiable Information has been breached may take to protect himself or herself.
- (d) To the extent required by the applicable state law, Summit Learning shall seek to notify the affected parent, legal guardian or eligible pupil of the Security Incident, which shall include as applicable the information listed in subsections (c) and (d), above.

## **6. MISCELLANEOUS**

**6.1 Term.** Except as otherwise stated herein, Summit Learning shall be bound by this Data Privacy Addendum for the duration of the Program Agreement or a longer period as required by law.

**6.2 Termination.** In the event that either Party seeks to terminate this Data Privacy Addendum, they may do so by terminating the Program Agreement as set forth therein.

**6.3 Effect of Termination Survival.** If the Agreement is terminated, Summit Learning shall dispose of all of Partner School's Personally Identifiable Information contained in Student Data pursuant to Section 4.6.

**6.4 Priority of Agreements.** This Data Privacy Addendum shall govern the treatment of Student Data. With respect to the treatment of Student Data, in the event there is conflict between the terms of this Data Privacy Addendum and the Program Agreement, the Terms of Service, or any other agreement between the Partner School and Summit Learning, the terms of this Data Privacy Addendum shall apply and take precedence. Except as described in this paragraph, all other provisions of the Program Agreement shall remain in effect.

**6.5 Notice.** All notices or other communication required or permitted to be given hereunder must be sent to Partner School or Summit Learning, as applicable, as provided in the Program Agreement.

**EXHIBIT A****SCHEDULE OF DATA**

In order to use the Services, Partner School and its Users may provide the categories of Student Data described in this Schedule of Data.

<b>Category of Data</b>	<b>Elements</b>	<b>“X” Indicates Category is Used by Summit Learning</b>
Application Technology Meta Data	IP addresses of users, use of cookies etc.	X
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test data (NWEA MAP, SBAC, AP, IB, etc)	X
	Observation data	X
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	X
	Student class attendance data	X
	Other attendance: <ul style="list-style-type: none"> <li>• Suspensions/expulsions</li> </ul>	
Communications	Online communications that are captured (emails, blog entries)	



Conduct	Conduct or behavioral data	
Demographics	Date of birth	X
	Gender	X
	Ethnicity or race	X
	Language information (native, preferred or primary language spoken by student)	X
	Other demographic information-Please specify: <ul style="list-style-type: none"> <li>Socioeconomic status</li> </ul>	
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	X
	Guidance counselor	X
	Specific curriculum programs	X
	Year of graduation	X
	Other enrollment information-Please specify: <ul style="list-style-type: none"> <li>Clever ID#</li> <li>SIS ID#</li> </ul>	X
Parent/Guardian Contact Information	Address	
	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	X
Parent/Guardian Name	First and/or last	X

Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	X
	Medical alerts	
	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	X
	Vendor/app assigned student ID number	X
	Student app username	
	Student app passwords	
Student Name	First and/or last	X
Student In App Performance	Program/application performance (reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	X

Student Survey Responses	Anonymous student responses to surveys or questionnaires	X
Student work	Student generated content; writing, pictures etc.	X
	Other student work data -Please specify:	
Student Outcome Information	Student outcome information (grade level promotion and matriculation, AP and IB test information, college admission test scores, college eligibility and acceptance, and employment)	X
Transcript	Student course grades	X
	Student course data	X
	Student course grades/performance scores	X
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data -Please specify:	

Other	<p>Please list each additional data element used, stored or collected by your application:</p> <ul style="list-style-type: none"><li>• teacher feedback on coursework</li><li>• teacher curricula and notes and feedback to or about students</li><li>• Teacher and parent answers to surveys about the Services or curricula; and feedback, suggestions, questions, and ideas submitted to Summit Learning from parents/legal guardians, teachers or school administrators or officials</li><li>• mentor observations</li></ul>	X
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## EXHIBIT B

### DEFINITIONS

**“Agreement”** means, collectively, this Data Privacy Addendum, the Partner School Terms of Service and the Program Agreement.

**“Behaviorally Targeted Advertising”** means presenting an advertisement to a User where the selection of the advertisement is based on Student Data or Pupil Generated Content or inferred over time from the usage of Summit Learning’s website, online service or mobile application by such student or the retention of such student’s online activities or requests over time and across non-affiliate website for the purpose of targeting subsequent advertising.

**“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. This includes, but is not limited to, persistent unique identifiers, name, ID numbers, date of birth, and school ID.

**“Directory Information”** shall have the meaning given under FERPA cited as 20 U.S.C. § 1232g(a)(5)(A).

**“Education Records”** shall have the meaning given under FERPA cited as 20 U.S.C. § 1232g(a)(4).

**“Indirect Identifiers”** means any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. When anonymous or non-personal information is directly or indirectly linked with personal information, this anonymous or non-personal information is also treated as personal information. Persistent identifiers that are not anonymized, de-identified or aggregated are personal information.

**“Licensed User”** means a teacher, employee, official, agent of a Partner School or the parent or legal guardian of a Student User.

**“On-Call”** means the Summit Learning personnel tasked with monitoring system alerts and responding to incidents. Summit Learning will use reasonable efforts to have an engineer on-call at any given moment.

**“Personally Identifiable Information”** or **“PII”** means data that can be used to identify or contact a particular individual, such as the individual’s name, email address or billing information, or other data which can be reasonably linked to that data or to that individual’s specific computer or device. PII includes, without limitation, at least the following: first and last name, home address, telephone number, email address, discipline records, test results, special education data, juvenile dependency records grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, and videos.

**“Pupil Generated Content”** means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative

writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

**“Pupil Records”** means both of the following: (1) any information that directly relates to a pupil that is maintained by Partner School and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other employee of the Partner School.

**“School Official”** means, for the purposes of this Data Privacy Addendum and pursuant to 34 CFR § 99.31 (B), a contractor that: (1) performs an institutional service or function for which the agency or institution would otherwise use employees; (2) is under the direct control of the agency or institution with respect to the use and maintenance of Education Records; and (3) is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**“Self”** consistent with the Student Online Privacy Protection Act (SOPIPA) and the Student Privacy Pledge, does not include or apply to the purchase, merger or other type of acquisition of a company by another entity, provided that the company or successor entity continues to treat the personal information in a manner consistent with the Education Privacy Principles with respect to the previously acquired personal information.

**“Service Provider”** means, for the purposes of the Data Privacy Addendum, a party other than Partner School or Summit Learning or Users, who Summit Learning uses for data collection, analytics, storage, or other service to operate and/or improve the Platform, and who has access to PII, including Student Data.

**“Student Data”** means any data, whether gathered by Summit Learning or provided by Partner School or its users, students, or students’ parents/guardians, that is directly related to a Partner School student including, but not limited to, information in the student’s Educational Record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings or geolocation information. Student Data shall include student login credentials, passwords, student user authentication tokens or security devices used for student Platform or infrastructure access. Student Data shall also constitute Pupil Records for the purposes of this Data Privacy Addendum. Student Data as specified in Exhibit A is confirmed to be collected or processed by Summit Learning pursuant to the Services. Student Data shall not constitute that information that has been anonymized, De-Identified Data, or anonymous usage data regarding a student’s use of the Services.

**“Student User”** means a student enrolled at the Partner School with an account on the Platform.

**“Summit Learning Website”** means the website for the Program presently located at [www.summitlearning.org](http://www.summitlearning.org), which URL is subject to change from time to time.

**“Terms of Service”** means the Summit Learning Platform Partner School Terms of Service between Summit Learning and the authorized representative of each Partner School and

Summit Learning, located on the Summit Learning website [available at, <https://www.summitlearning.org/privacy-center>].

**“Third Party”** means, for purposes of this Data Privacy Addendum, any person other than Summit Learning, Partner School, a User, or a Service Provider.

**“Third-Party Advertising”** means direct advertising of third-parties and their products or services on our Services (e.g., such as when an advertiser would bid to place an advertisement directly on a platform). Summit Learning does not allow third parties to advertise directly on its Services in user logged in areas of the Services, nor does Summit Learning sell advertising space in logged in areas on the Platform. Summit Learning also does not use third-party ad servers (such as Google AdWords or AdSense) in user logged in areas of the Platform.

**“Users”** means, collectively, Student Users and Licensed Users.

**SCHEDULE I**  
**PARTNER SCHOOL/PARTICIPATING SCHOOLS**

School Name	Cohort	School Contact Person	School Leader Email	Address
Ockerman Middle School	C2	Darla Payne	darla.payne@boone.kyschools.us	8300 US Highway 42,Florence, KY, United States, 41042