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Program Agreement

Summit Learning Platform Program Agreement

This **SUMMIT LEARNING PROGRAM AGREEMENT** (the “Program Agreement”), is effective as of June 15, 2021 (the “Effective Date”), and is by and between Gradient Learning (formerly T.L.P. Education), a California nonprofit public benefit corporation (“Gradient Learning”), having an address at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017 and **[PARTNER SCHOOL NAME]** (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 Gradient Learning and the Partner School, a “Party” and together the “Parties”), and governs Gradient 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.

PLEASE BE ADVISED THAT THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION IN THE TERMS OF SERVICE. EXCEPT FOR CERTAIN TYPES OF DISPUTES MENTIONED IN THAT PROVISION, YOU AND GRADIENT LEARNING AGREE THAT (1) DISPUTES BETWEEN US RELATED TO THE SERVICES WILL BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION, AND (2) YOU AND GRADIENT LEARNING WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT, CLASS-WIDE ARBITRATION, OR ANY OTHER REPRESENTATIVE ACTION.

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, Gradient 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

Gradient Learning (formerly T.L.P. Education) is a California nonprofit public benefit corporation founded in 2018. Gradient Learning 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, Gradient Learning 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

Gradient 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 Gradient 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, legal guardians, or caregivers (“**Caregivers**”) 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 Gradient 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, Gradient 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, Gradient 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 Gradient 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 Gradient 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

Gradient 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, Gradient 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, Gradient 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 the Program; and (iii) the ability to submit resources for Gradient Learning to review and consider for addition to the Base Curriculum.

2.2 Ongoing Support

Gradient 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, Gradient 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, Gradient 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. Gradient 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 Gradient Learning approves the participation of additional schools within such school district in the Program, then Gradient 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 Gradient 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 Caregivers 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 Gradient Learning and shall cooperate with Gradient Learning in taking reasonable steps to remediate such violations. In the event that the Partner School fails to correct the violation after notice from Gradient Learning, Gradient 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, Gradient Learning shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions. Notwithstanding the foregoing, Gradient Learning reserves the right to immediately suspend any User or the Partner School, in Gradient 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 Gradient 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 Gradient 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

This Agreement shall commence on the Effective Date, and terminate four (4) years after the Effective Date, unless terminated sooner as provided in 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 Gradient Learning determines that Partner School is not substantially in compliance with the Program Requirements, Gradient 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 Gradient 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

Gradient 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, Gradient Learning shall use commercially reasonable efforts to ensure that the Program and the Services shall be provided in compliance with Gradient Learning's then-most current documentation for the Program or written specifications for the corresponding other Services, as the case may be. Gradient 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 Gradient 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, Gradient 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. Gradient 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.** Gradient 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, Gradient 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

Gradient 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 GRADIENT LEARNING, ADDITIONALLY WITH RESPECT TO ALL PARTICIPATING SCHOOLS COLLECTIVELY, FOR (A) CONSEQUENTIAL, INDIRECT, INCIDENTAL, 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. GRADIENT 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 GRADIENT 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 GRADIENT 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

GRADIENT 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 Gradient Learning and the Partner School, including any participating school therein, if any, and addressed to Gradient 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 Gradient Learning:

Gradient Learning, c/o Procopio Law Firm,
1117 California Ave #200, Palo Alto, CA 94304;
or legal@summitlearning.org

All notices, communications, or consents required by or relating to this Agreement may also be communicated by electronic mail to Gradient Learning at 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 Gradient 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 Gradient Learning arising out of related to this Agreement, the Services, or the LEA's (or a Participating School's) relationship with Gradient 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 Gradient 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 Gradient Learning arising out of or relating to this Agreement, the Services, or the LEA's (or a Participating School's) relationship with Gradient 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 Gradient 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 Gradient 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 Gradient 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 Gradient 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, Gradient 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 Gradient 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 Gradient 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 Gradient 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 Gradient 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.

Gradient Learning

By (Signature):

Name (Printed):

Title:

[PARTNER SCHOOL NAME] ("PARTNER SCHOOL")

By (Signature):

Name (Printed):

Title:

Dated: [EFFECTIVE DATE] ("Effective Date")

SCHEDULE I PARTNER SCHOOL/PARTICIPATING SCHOOLS

Name of School Cohort Number Principal Contact Person

[Address] [City], [State] [Zip Code] Attn: _____

Phone: Fax: Email:

EXHIBIT A PARTNER SCHOOL TERMS OF SERVICE

EXHIBIT B DATA PRIVACY ADDENDUM

Summit Learning is a personalized approach to teaching and learning inspired by our mission to help every student lead a fulfilled life.

Get in Touch

About Us

Careers

Privacy Center

User Agreement





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Partner Schools Terms of Service

Summit Learning Platform Partner Schools Terms of Service

Effective June 15, 2021

Please be advised that this agreement contains an arbitration provision in Section 10 below that affects your rights under this agreement. Except for certain types of disputes mentioned in that provision, you and Gradient Learning agree that (1) disputes between us will be resolved by individual binding arbitration, and (2) you and Gradient Learning waive any right to participate in a class-action lawsuit, class-wide arbitration, or any other representative action.

1. AGREEING TO OUR TERMS

Gradient Learning (formerly T.L.P. Education) ("**Gradient 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, and any other products and services that the Program may provide now or in the future (collectively, the "**Service**" or "**Services**"). With support from the Chan Zuckerberg Initiative, LLC ("**CZI**"), Gradient Learning offers the Program and Platform as a free service to schools that sign an agreement with Gradient Learning.

Gradient 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, legal guardians, or caregivers ("**Caregivers**") 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 Gradient 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

Gradient 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.

Gradient 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 Gradient 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 Gradient Learning, all the intellectual property rights in the Services and Summit Technology, which does not include User Content (as defined below), are owned by Gradient Learning or its licensors, and all rights to the Services not expressly granted herein are reserved by Gradient 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 Gradient 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 Gradient Learning's [DMCA Notification Guidelines](#). Gradient Learning may remove any allegedly infringing content without any liability to Partner School. Gradient Learning will promptly terminate without notice any User's access to the Services where the User is a "repeat infringer" of copyrights. Gradient 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, Gradient 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 Gradient 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 Gradient 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 Gradient Learning [Frequently Asked Questions \("FAQs"\)](#) 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.

Gradient Learning reserves the right to refuse registration of or cancel a User Account or Administrator Account in our sole discretion. Gradient 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

Gradient 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 Gradient Learning at 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 Gradient 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. Gradient 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 Gradient 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 Gradient 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:

- use, host, copy, store, distribute, publicly perform and display, publish (in whole or in part), modify, and create derivative works from (such as changes Gradient 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;
- use, modify, prepare derivative works, publish, distribute and sublicense Feedback without any compensation to Partner School or any other party;

- 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);
- use any de-identified User Content for any lawful purpose subject to the Data Privacy Addendum; and
- use for other purposes permitted by the Data Privacy Addendum and the Privacy Policy.

Gradient 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 Gradient 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 Gradient 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 Gradient Learning to any third parties (such as teachers from other schools and districts), and (iii) Gradient 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 the Services. 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 Gradient 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 Gradient 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 Gradient 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, Gradient Learning does not guarantee that Gradient 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 Gradient 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, Caregiver, 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. Gradient 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 Gradient Learning will not be liable for any errors or omissions in any such content. Gradient 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 Gradient 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 Gradient 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. Gradient 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 Gradient 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

Gradient 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 through the Services. Gradient 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, Gradient 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 Gradient Learning, Gradient 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, Gradient Learning shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions. In the event Gradient Learning suspends or terminates a User's use of the Services or account, Gradient 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 Gradient Learning immediately at 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 Gradient Learning; (2) COPPA sets forth guidelines regarding the collection and use of personal information from children under 13 years of age; (3) Gradient 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 Gradient 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.

Although Gradient Learning commits to meet the obligations of an operator under COPPA, the parties agree that Partner School will assist with meeting certain of those obligations as follows:

Partner School will be solely responsible (and hereby agrees that Gradient 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) except as otherwise provided in the Data Privacy Addendum, 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 Gradient 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 Gradient 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, legal guardians, or caregivers ("**Caregivers**") to use the Services and create accounts for the Caregivers who accept the invitation to use the Services ("**Parent**" ("**Parent Account**"). Partner School will provide Gradient Learning with a Caregiver's email address, phone number, and information linking the Caregiver to an individual

Student User. Upon receiving this information, Gradient Learning will automatically send the Caregiver of a Student User an email or SMS text message with details regarding how to activate a Parent Account. Parent Accounts allow Caregivers to track their student's progress in the Services.

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

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 Gradient 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 Gradient 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 GRADIENT LEARNING TECHNOLOGY, USER CONTENT OR CONTENT ARE PROVIDED "AS IS", "WITH ALL FAULTS," AND "AS AVAILABLE."

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRADIENT LEARNING AND OUR AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS (COLLECTIVELY, "GRADIENT 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 GRADIENT LEARNING.

EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, GRADIENT 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, ATTACH, 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. ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

THIS SECTION CONSTITUTES AN ARBITRATION AGREEMENT (“Arbitration Agreement”); IT REQUIRES YOU AND GRADIENT LEARNING TO AGREE TO RESOLVE ALL DISPUTES BETWEEN US THROUGH BINDING INDIVIDUAL ARBITRATION, SO PLEASE READ IT CAREFULLY.

10.1 Applicability

Gradient Learning and Partner School (“the parties” or “both parties”) agree that to the extent permitted by Law, all Disputes, including Enforceability Disputes that cannot be resolved through reasonable, good faith efforts to cooperate and achieve a mutually satisfactory resolution will be resolved by binding arbitration on an individual basis, except that Partner School and Gradient Learning are not required to arbitrate IP Disputes. Any court with jurisdiction over the parties may enforce the arbitrator’s award. Notwithstanding the foregoing, either Partner School or Gradient Learning may bring an individual action in small claims court.

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.

- A “**Dispute**” means a dispute, claim or controversy arising out of or relating to the Terms, the Program Agreement, or the Services; or whether that dispute is (1) based on past, present or future events and includes claims and disputes that arose between the parties before the effective date of these Terms; and (2) in tort, contract, warranty, state, regulation, or other legal or equitable basis.
- An “**Enforceability Dispute**” means a Dispute relating to the interpretation, applicability, or enforceability of this Arbitration Agreement, including the formation of the contract, the arbitrability of any Dispute, and any claim that all or any part of this agreement is void or voidable.
- An “**IP Dispute**” means a Dispute relating to the ownership or enforcement of intellectual property rights.

10.2 Federal Arbitration Act

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

10.3 Initial Dispute Resolution

To initiate a Dispute, a party must first give the other party written notice of the Dispute must include a brief written statement containing: (a) the name, address, and contact information of the party giving notice; (b) the facts giving rise to the Dispute; and (c) the relief requested.

Partner School must send any such notice to Gradient Learning by email to legal@summitlearning.org AND by mail to Gradient Learning, c/o Procopio Law Firm, 1117 California Ave #200, Palo Alto, CA 94304. If Gradient Learning has the contact information for Partner School, Gradient 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 Disputes through informal negotiation within thirty (30) days from the date that any notice of a Dispute is sent. The parties shall use reasonable, good faith, efforts to settle any Dispute through consultation and good faith negotiations. After thirty (30) days, Partner School or Gradient Learning may resort to the other alternatives described in this Section 10. Notwithstanding the foregoing, the notice and thirty (30) day negotiation period required by this paragraph shall not apply to IP Disputes, 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.

10.4 Arbitration Rules and Procedure

To the extent permitted by law, Gradient Learning and Partner School agree that all Disputes that cannot be resolved through reasonable, good faith efforts to cooperate and achieve a mutually satisfactory resolution will be resolved through binding arbitration on an individual basis 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. **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 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 10.4 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.

10.5 Waivers

10.5.1 Waiver of Jury Right.

PARTNER SCHOOL AND GRADIENT LEARNING ARE EXPRESSLY GIVING UP ALL RIGHTS TO A JURY TRIAL OR COURT TRIAL BEFORE A JUDGE, EXCEPT AS EXPRESSLY PROVIDED IN THIS ARBITRATION AGREEMENT. The arbitrator's decision will be final and binding on both Partner School and Gradient Learning, subject to review solely on the grounds set forth in the FAA.

10.5.2 Waiver of Class or Consolidated Actions.

PARTNER SCHOOL AND GRADIENT LEARNING AGREE THAT ALL DISPUTES MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE BASIS. The validity of this waiver – and whether an action may proceed as a class, collective, or representative action – must be decided by a court of competent jurisdiction and not by an arbitrator.

If any court of competent jurisdiction determines that the class action waiver set forth in this section 10.5.2 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 Disputes. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

10.6 Opt-out

The Partner School may opt out of this Arbitration Agreement. If it does so, neither the Partner School nor Gradient Learning can force the other to arbitrate. To opt out, the Partner School must notify Gradient Learning in writing no later than 30 days after first becoming subject to this Arbitration

Agreement. The notice must include the name and address of the Partner School, and an unequivocal statement that the Partner School wants to opt out of this Arbitration Agreement. Notices sent to Gradient Learning must be sent to the address provided in section 10.3 of these Terms.

10.7 Confidentiality

All aspects of the arbitration, including without limitation, the record of the proceeding, are confidential and shall not be open to the public, except (a) to the extent both Parties agree otherwise in writing, (b) as may be appropriate in any subsequent proceedings between the Parties, or (c) as may otherwise be appropriate in response to a governmental agency or legal process, provided that the Party upon whom such process is served shall give immediate notice of such process to the other Party and afford the other Party an appropriate opportunity to object to such process.

10.8 Changes to this Section

Gradient Learning will provide 60-days' notice of any changes to Section 10 before the changes become effective. If a court of competent jurisdiction or arbitrator decides that this subsection on "Changes to this Section" is not enforceable or valid, then this subsection 10.8 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, Gradient 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 Gradient 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 Gradient 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 Gradient Learning and any attempted assignment in contravention of this provision is null and void and of no force or effect. Gradient 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.

Summit Learning is a personalized approach to teaching and learning inspired by our mission to help every student lead a fulfilled life.

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