

**California Student Data Privacy Agreement\***

**Pomona Unified School District**

**AND**

**Illuminate Education Inc.**

**Date: February 27, 2020**

**\*Agreement modified from the California Student Data Privacy Template**

This California Student Data Privacy Agreement (“DPA”) is entered into by and between the Pomona Unified School District (hereinafter referred to as “LEA”) and Illuminate Education Inc. (hereinafter referred to as “Provider”) on February 4, 2020. The Parties agree to the terms as stated herein.

## RECITALS

**WHEREAS**, the Provider has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) pursuant to a contract dated of 2019 (“Service Agreement”); and

**WHEREAS**, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

**WHEREAS**, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to California state student privacy laws; and

**WHEREAS**, for the purposes of this DPA, Provider is a school district official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

**WHEREAS**, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

**WHEREAS**, the Provider may, by signing the “General Offer of Privacy Terms” (“Exhibit E”), agree to allow other LEAs in California the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

## ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and applicable California law, all as may be amended from time to time. In performing these services, the Provider shall be considered a School District Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in "Exhibit A" hereto:

Assessment & Data Visualization Platform and professional services (that do not involve any contact with students) related thereto

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as "Exhibit B". The LEA share provide the categories of data described in "Exhibit B", which LEA shall be solely responsible for adhering thereto.

4. **DPA Definitions.** The definition of terms used in this DPA is found in "Exhibit C". In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School District Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review or view Student Data in the pupil's records, request an amendment to information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Throughout the term of the contract and 30 days after, the LEA will be able to gain access and download all student data. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA as soon as possible in advance of a compelled disclosure to a Third Party unless prohibited by a legal authority if reasonable and permissible under the circumstances.

4. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA, as well as state and federal law.

### ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, and applicable California law.
2. **Annual Notification of Rights.** The LEA shall include a specification of criteria under FERPA for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and applicable California law.
2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.
3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement, unless it fits into the de-identified and/or aggregate information exception discussed herein, or there is a court order or lawfully issued subpoena for the information. De-identified and/or aggregate information, as defined in "Exhibit C", may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified and/or aggregate data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt

to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless that party agrees in writing not to attempt re-identification (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer.

4. **No Disclosure.** Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data.** Upon written request or upon termination of the Service Agreement, Provider shall dispose or delete all Student Data obtained under the Service Agreement and in accordance with the applicable terms below. Provider shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any student data; (2) erasing; or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall dispose of all data 30 days after the termination of the Service Agreement. The duty to dispose of Student Data shall not extend to data that has been de-identified pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as "Exhibit D".

6. **Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or for targeted advertising to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

## ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology standard practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in "Exhibit F" hereto. These measures shall include, but are not limited to:

- a. **Passwords and Employee Access.** Provider shall secure Provider issued usernames and passwords, employee usernames and passwords, and any other means of gaining access to the Services or to Student Data. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said

**Student Data.** All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

- b. Destruction of Data.** Provider shall destroy or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.
- c. Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.
- d. Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- e. Security Technology.** When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication, data backups, and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- f. Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.
- g. Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V.
- h. Risk Assessments.** Provider further acknowledges to remediate any identified material security and privacy vulnerabilities in a timely manner that are identified through internal risk assessments (digital and physical).
- i. Audits.** Upon receipt of a request from the LEA, the Provider will allow the LEA to audit non-confidential documentation pertaining to security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof to the extent available to Provider. The provider will also acknowledge and work with any state or federal organization or agency who has authority over student data or the LEA

has contracted with to review said non-confidential documentation pertaining to security and privacy measures.

2. **Data Breach.** In the event that Student Data is accessed, Provider shall provide prompt notification to LEA within ten (10) calendar days of confirmation of a data breach. Provider shall provide the following at the time of notification:

- a. The security breach notification shall include, at a minimum, the following information:
  - i. The name and contact information of the reporting LEA subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - v. Whether the notification was delayed because of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
  - vi. Provider agrees to adhere to all requirements in applicable state law and federal law with respect to a data breach related to the Student Data, including, when appropriate or required.
- b. Provider further acknowledges and agrees to, upon request at reasonable times, to answer questions on non-confidential information regarding security protocols and/or safeguards.
- c. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information. Provider agrees to answer non-confidential questions about said incident response plan.
- d. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA.
- e. In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

## **ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS**

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as "Exhibit E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on said Exhibit. The Form is limited by the terms and conditions described therein.

#### ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data.
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.
4. **Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

##### a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact Information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The designated representative for the Provider for this Agreement is:

Name: Jeffrey Dress



Title: Vice President of Legal

Contact Information:

contracts@illuminateed.net

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- b. **Notification of Acceptance of General Offer of Privacy Terms.** Upon execution of "Exhibit E", General Offer of Privacy Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.

The designated representative for notice of acceptance of the General Offer of Privacy Terms is:

Name: Jeffrey Dress

Title: Vice President of Legal

Contact Information:

contracts@illuminateed.net

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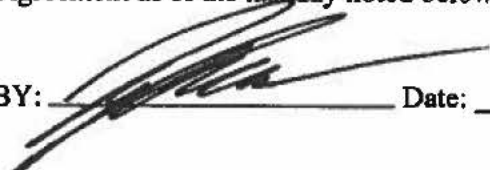
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6. **Entire Agreement.** This DPA constitutes the entire agreement of the parties relating to the handling of Student Data and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. 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.
7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND

CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR WASHINGTON COUNTY, CALIFORNIA AND/OR THE STATE OF CALIFORNIA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

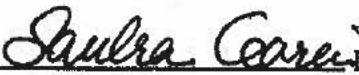
9. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.
10. **Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
11. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

IN WITNESS WHEREOF, the parties have executed this California Student Data Privacy Agreement as of the last day noted below. Provider:

BY:  Date: 3/9/20

Printed Name: Jeff Dress Title/Position: VP of Legal

Local Education Agency:

BY:  Date: 5-26-2020

Printed Name: Sandra Garcia Title/Position: Assist. Superintendent, CBO

**“EXHIBIT A”**

**DESCRIPTION OF SERVICES**

**Assessment & Data Visualization Product and professional services**

**“EXHIBIT B”**

**SCHEDULE OF DATA**

| <b>Category of Data</b>          | <b>Elements</b>                                         | <b>Check if used by your system</b>                                                                                        | <b>Category of Data</b> | <b>Elements</b>                                                                | <b>Check if used by your system</b> |
|----------------------------------|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------|-------------------------------------|
| Application Technology Meta Data | IP Addresses of users, Use of cookies etc.              |                                                                                                                            |                         | Gender                                                                         | x                                   |
|                                  | Other application technology meta data- Please specify: | Account ID<br>First Visit<br>Last Visit<br>Number of Days Active<br>Number of Events<br>Number of Visitors<br>Time on Site |                         | Ethnicity or race                                                              | x                                   |
|                                  |                                                         |                                                                                                                            |                         | Language information (native, preferred or primary language spoken by student) | x                                   |
| Application Use Statistics       | Meta data on user interaction with application          | Limited via Pendo                                                                                                          |                         | Other demographic information- Please specify:                                 |                                     |
| Assessment                       | Standardized test scores                                | x                                                                                                                          | Enrollment              | Student school enrollment                                                      | x                                   |
|                                  | Observation data                                        | x                                                                                                                          |                         | Student grade level                                                            | x                                   |
|                                  | Other assessment data Please specify:                   | Local Assessments                                                                                                          |                         | Homeroom                                                                       | x                                   |
|                                  |                                                         | Guidance counselor                                                                                                         |                         | x                                                                              |                                     |
| Attendance                       | Student school (daily) attendance data                  | x                                                                                                                          |                         | Specific curriculum programs                                                   | x                                   |
|                                  | Student class attendance data                           | x                                                                                                                          |                         | Year of graduation                                                             | x                                   |
|                                  |                                                         |                                                                                                                            |                         | Other                                                                          | Local                               |

|                |                                                                |   |  |                                     |                                                        |                             |
|----------------|----------------------------------------------------------------|---|--|-------------------------------------|--------------------------------------------------------|-----------------------------|
|                |                                                                |   |  |                                     | enrollment information- Please specify:                | School District Information |
| Communications | Online communications that are captured (emails, blog entries) | x |  | Parent/Guardian Contact Information | Address                                                | x                           |
|                |                                                                |   |  |                                     | Email                                                  | x                           |
|                |                                                                |   |  |                                     | Phone                                                  | x                           |
| Conduct        | Conduct or behavioral data                                     | x |  | Parent/Guardian ID                  | Parent ID number (created to link parents to students) |                             |
|                |                                                                |   |  |                                     |                                                        |                             |
| Demographics   | Date of Birth                                                  | x |  |                                     |                                                        |                             |
|                | Place of Birth                                                 |   |  |                                     |                                                        |                             |

| Category of Data     | Elements                             | Check if used by your system | Category of Data           | Elements                                                                                                        | Check if used by your system |
|----------------------|--------------------------------------|------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------|------------------------------|
| Parent/Guardian Name | First and/or Last                    | x                            |                            | Vendor/App assigned student ID number                                                                           | x                            |
| Schedule             | Student scheduled courses            | x                            |                            | Student app username                                                                                            | x                            |
|                      | Teacher names                        | x                            |                            | Student app passwords                                                                                           |                              |
| Special Indicator    | English language learner information | x                            | Student Name               | First and/or Last                                                                                               | x                            |
|                      | Low income status                    | x                            |                            |                                                                                                                 |                              |
|                      | Medical alerts /health data          | x                            | Student In App Performance | Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade |                              |
|                      | Student disability information       | x                            |                            |                                                                                                                 |                              |
|                      | Specialized                          | x                            |                            |                                                                                                                 |                              |

|                             |                                              |                                                                   |
|-----------------------------|----------------------------------------------|-------------------------------------------------------------------|
|                             | education services (IEP or 504)              |                                                                   |
|                             | Living situations (homeless/foster care)     | x                                                                 |
|                             | Other indicator information- Please specify: | Local identifiers from the school district, such as interventions |
|                             |                                              |                                                                   |
| Student Contact Information | Address                                      | x                                                                 |
|                             | Email                                        | x                                                                 |
|                             | Phone                                        | x                                                                 |
|                             |                                              |                                                                   |
| Student Identifiers         | Local (School district) ID number            | x                                                                 |
|                             | State ID number                              | x                                                                 |

|                            |                                                                                  |                                              |
|----------------------------|----------------------------------------------------------------------------------|----------------------------------------------|
|                            | level)                                                                           |                                              |
|                            |                                                                                  |                                              |
| Student Program Membership | Academic or extracurricular activities a student may belong to or participate in | x                                            |
|                            |                                                                                  |                                              |
| Student Survey Responses   | Student responses to surveys or questionnaires                                   |                                              |
|                            |                                                                                  |                                              |
| Student work               | Student generated content; writing, pictures etc.                                |                                              |
|                            | Other student work data Please specify:                                          | Student evidence of learning and assessments |
|                            |                                                                                  |                                              |

| Category of Data | Elements              | Check if used by your system |
|------------------|-----------------------|------------------------------|
| 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          | Please list each additional data element used, stored or collected by your application | Local school data and notes of staff/teachers/admin |

**OTHER:** Use this box, if more space needed

## **“EXHIBIT C”**

### **DEFINITIONS**

**De-Identifiable Information (DII):** De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

**Educational Records:** See definition of Pupil Records herein.

**NIST:** Draft National Institute of Standards and Technology (“NIST”) Special Publication Digital Authentication Guideline.

**Operator:** The term “Operator” means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes. For the purpose of the Service Agreement, the term “Operator” is replaced by the term “Provider.” This term shall encompass the term “Third Party,” as it is found in applicable state statutes.

**Personally Identifiable Information (PII):** The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**Provider:** For purposes of the Service Agreement, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**Pupil Generated Content:** The term “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 all of the following: (1) Any information that directly relates to a pupil that is maintained by LEA; 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 LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational



Records including Personally Identifiable Information(PII), all of which are deemed Student Data for the purposes of this Agreement.

**Service Agreement:** Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

**School District Official:** For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School District Official is 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 student records.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, including personally identifiable information that is descriptive of the 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 identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of State of California and federal laws and regulations. Student Data as specified in "Exhibit B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or deidentified, or anonymous usage data regarding a student's use of Provider's services.

**Student Personal Information:** "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student. For purposes of this DPA, Student Personal Information is referred to as Student Data.

**Subscribing LEA:** An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

**Subprocessor:** For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

**Targeted Advertising:** Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

**"EXHIBIT D"**

**DIRECTIVE FOR DISPOSITION OF DATA**

Pomona Unified School District directs [Name of Provider] to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

|                                                                                  |                                                                                                                        |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <b>Extent of Disposition</b><br>Disposition shall be:                            | Complete. Disposition extends to all categories of data.                                                               |
| <b>Nature of Disposition</b><br>Disposition shall be by:                         | Destruction or deletion of data.                                                                                       |
| <b>Timing of Disposition</b><br>Data shall be disposed of by the following date: | _____ As soon as commercially practicable<br><br>By (Insert Date) _____<br><br>[Insert or attach special instructions] |

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Verification of Disposition of Data  
by Authorized Representative of Provide

\_\_\_\_\_  
Date

**"EXHIBIT E"**

**GENERAL OFFER OF PRIVACY TERMS POMONA UNIFIED SCHOOL DISTRICT**

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and Pomona Unified School District and which is dated to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form.

Provider:

BY:   
Printed Name: Jeffrey Dress

Date: 3/9/2020  
Title/Position: Vice President of Legal

**2. Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Title/Position: \_\_\_\_\_

**TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW**

Name: Jeffrey Dress  
Title: Vice President of Legal  
Email: contracts@illuminateed.net

**“EXHIBIT F”**

**DATA SECURITY REQUIREMENTS**