



In Class Today, Inc.
303 Twin Dolphin Drive, Suite 600
Redwood City, CA 94065

DATA USE AGREEMENT

This **DATA USE AGREEMENT** (this “Agreement”) is between Ravenswood City School District, hereinafter referred to as “Data Provider,” and In Class Today, Inc., hereinafter referred to as “InClassToday.” Data Provider and InClassToday may hereinafter be referred to individually as a “Party,” and collectively as the “Parties.” The effective date of this Agreement shall be August 1, 2019 (the “Effective Date”).

In addition to the terms and conditions contained herein, the following documents are attached hereto and made a part of this Agreement:

Attachment A – Description of the Service
Attachment B – Description of Data/Data Transfer
Attachment C – Contact Information

WHEREAS, InClassToday has partnered with the Silicon Valley Community Foundation in order to implement a program that benefits a number of the Big Lift school districts in San Mateo County; and

WHEREAS, Data Provider desires to make Data (as defined below) available to InClassToday for the limited purpose of enabling InClassToday to provide the Service (as described in Exhibit A) on behalf of Data Provider; and

WHEREAS, InClassToday is willing to provide the Service for the benefit of Data Provider to help improve student attendance and performance in Ravenswood City School District.

NOW, THEREFORE, the Parties hereto agree as follows:

- 1. PURPOSE.** Data Provider shall provide the Data to InClassToday to use solely to provide the Service.
- 2. DATA.** “Data” means the confidential and proprietary information that is described in Attachment B, to be disclosed by Data Provider to permit InClassToday to provide the Service. InClassToday acknowledges and agrees that the Data may include personally identifiable information (“PII”) as defined in the Family Education Rights and Privacy Act of 1974 (“FERPA”) and related regulations. InClassToday warrants that it will comply with the requirements of FERPA with respect to the use and disclosure of such PII. “Data” excludes De-Identified Aggregated Data. “De-Identified Aggregated Data” means data submitted to, collected by, or generated by InClassToday in connection with District’s use (and InClassToday’s provision) of the Services, but only in aggregate, anonymized form which does not (and cannot be used to) specifically identify any of District’s students or any other individual.

3. **TERM.** The Term commences on the Effective Date. The expiration of the Term is the earlier of: (i) August 31, 2021 (TERMINATION DATE) or (ii) termination under Section 9.
4. **LIMITED RIGHT OF INCLASSTODAY TO USE DATA.** Subject to the terms and conditions of this Agreement, Data Provider hereby grants to InClassToday, at no cost, the non-exclusive right to use the Data solely to provide the Service for the benefit of Data Provider. Data Provider shall retain ownership of any rights it may have in the Data. InClassToday will not disclose any Data except to an "InClassToday Person." For purposes of this Agreement, an "InClassToday Person" is (i) a director, employee, contractor, agent or affiliate of InClassToday, (ii) who needs to access the Data in connection with InClassToday's provision of the Service, and (iii) is subject to confidentiality obligations that are no less protective of the Data than the terms of this Agreement. InClassToday reserves the right to utilize independent contractors (e.g., third-party mailing vendors, third-party data integration vendors) to provide the Service. Prior to providing Student Records to such contractors, InClassToday will enter into a separate agreement restricting the use and disclosure of Student Records in accordance with this Agreement, including confidentiality, data transfer, and all applicable regulations.
- At no time will InClassToday share any Data with any non-InClassToday Person without the written permission of Data Provider.**

This Agreement does not give InClassToday any rights, implied or otherwise, to the Data except as expressly stated in this Agreement. InClassToday has no rights to, and agrees not to, sell or trade the Data.

EACH AGREEMENT BETWEEN ICT AND AN INDEPENDENT CONTRACTOR OR THIRD PARTY VENDOR SHALL CONTAIN REQUIREMENTS THAT ENSURE THAT SAID CONTRACTOR OR VENDOR WILL MEET THE CONFIDENTIALITY REQUIREMENTS OF THIS AGREEMENT REGARDING THE DATA AND PII.

5. **INTELLECTUAL PROPERTY AND ADVERTISEMENT.** As between the parties, InClassToday alone will retain all intellectual property rights relating to the Service, including without limitation (i) any processes designed, used or implemented or works authored by InClassToday, and (ii) the Absence Reports other than information specific to the District.

InClassToday shall not use Data Provider's name in conjunction with any advertisement unless InClassToday obtains prior written consent from Data Provider. Such advertisements include online advertisements (without limitation) and advertisements in print form, including, but not limited to, pamphlets, flyers, or other print distributions. District and InClassToday may identify District as an InClassToday customer, provided that such identification shall not state or imply an endorsement by District.

6. **CONFIDENTIALITY.** ICT will (i) use utmost care to protect the security of Data at all stages of providing the Service, (ii) limit access to Data to authorized recipients as provided in Section 4, (iii) follow the procedures for the treatment of the Data provided in Attachment B, and (iv) not at any time during or after the term of this Agreement disclose Data to any non-InClassToday person without first obtaining Data Provider's prior written consent (except as otherwise required by law in which case InClassToday shall, unless otherwise prohibited by law, notify Data Provider prior to such disclosure). InClassToday will report promptly to Data Provider any disclosure of Data not provided for by this Agreement of which it becomes aware.

Notwithstanding the foregoing, the confidentiality obligations of this Section 6 do not apply to any information that (a) was lawfully in the possession of InClassToday before receipt from Data Provider; (b) is or becomes publicly available through no fault of InClassToday; (c) is received by

InClassToday, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information to InClassToday; or (d) is independently developed by InClassToday without use of the Data.

Data Provider may be identified as the source of the Data. Furthermore, each Party may disclose both the relationship with the other and this Agreement.

The Data shall be provided to InClassToday by means of electronic files, access to which shall be encrypted, or otherwise transmitted securely by Data Provider (e.g., secure file sharing system or an encrypted flash drive.) If Data Provider transmits PII through a non-secure means, Data Provider will be liable for any resulting breach of confidentiality and will be responsible for mitigating the consequences of such a breach.

7. **REPRESENTATIONS AND WARRANTIES.** Data Provider warrants that it has the right to disclose the Data to InClassToday in order to perform the Purpose. ALL DATA ARE PROVIDED "AS IS." EXCEPT AS PROVIDED IN THE FIRST SENTENCE OF THIS SECTION 7, DATA PROVIDER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE DATA'S ACCURACY, COMPLETENESS OR USE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, INCLASSTODAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE SERVICE AND SERVICE RESULTS AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

8. **USE OF NAME.** Except as expressly provided in this Agreement, neither Party shall use or register the other Party's name (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify the other party, including any school, unit, division or affiliate ("Names") for any purpose in connection with this Agreement or the Purpose except with the prior written approval of, and in accordance with restrictions required by, the Party whose name who is to be used. The foregoing notwithstanding, the Parties agree that each Party may respond to legitimate business inquiries with factual information regarding the existence and purpose of the relationship that is the subject of this Agreement, without written permission from the other Party. Without limiting the foregoing, each Party shall cease all use of Names of the other Party permitted under this Agreement on the termination or expiration of this Agreement except as otherwise approved by the other Party.
9. **TERMINATION.** This Agreement shall expire as of the date described in Section 3, unless extended by agreement of the Parties or terminated earlier under this Section 9. Data Provider may terminate this Agreement immediately if InClassToday is determined to be in material breach of this Agreement.

Upon the earliest to occur of completion of the Service, or termination or expiration of this Agreement, InClassToday will destroy within a reasonable time limit, but not more than thirty (30) days.

10. **LIMITATION OF LIABILITY.** InClassToday shall, to the extent of its liabilities under the laws of the State of California, indemnify the Data Provider (including but not limited to, its directors,

trustees, officers, and employees) from any and all loss, damage, claims, actions and suits including all costs, expenses and attorney fees arising solely and directly from InClassToday's or InClassToday's subcontractors' breach of the confidentiality requirements outlined in this Agreement. The Data Provider agrees to give InClassToday immediate notice of any claim, action or suit in any way connected with activities under this Agreement and to cooperate in the defense thereof.

EXCEPT IN RELATION TO INCLASSTODAY'S INDEMNIFICATION OBLIGATIONS, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST REVENUES OR PROFITS, ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR ANY OTHER CAUSE.

11. **INSURANCE.** InClassToday shall procure and maintain the types and minimum limits of insurance as required by Data Provider, covering the performance of the Service. InClassToday shall procure all insurance solely from insurers authorized to do business on an admitted basis in the State of California, or otherwise acceptable to Data Provider and their Office of Risk Management, or the equivalent office thereof.
12. **GOVERNING LAW & LANGUAGE.** This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of California, without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted. Any action, suit or other proceeding arising under or relating to this Agreement (a "Suit") shall be brought in a court of competent jurisdiction in the State of California, and the parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the State of California. Each Party agrees not to raise any objection at any time to the venue of any Suit in any of the specified courts, irrevocably waives any claim that Suit has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to any Suit, that such court does not have any jurisdiction over such party.

The English language version of this Agreement shall be the official version. The Agreement may be translated, if necessary, but the English language version shall govern in the event of any inconsistencies between the two.

13. **DISCLOSURE.** InClassToday shall notify Data Provider promptly should any InClassToday Person(s) discover a suspected breach of security or actual disclosure of Data to any unauthorized individuals. Such notification shall include a description of the corrective actions that will be undertaken by InClassToday.
14. **COMPLIANCE WITH LAW.** Data Provider and InClassToday will perform under this Agreement in compliance with all requirements of all applicable laws, rules and regulations, as well as all professional standards applicable to such service. The Parties shall cooperate with each other to facilitate compliance with these laws, regulations and standards.
15. **NOTICES.** Any notice under this Agreement, excluding the actual provision of Data, may be delivered in person, or sent by fax (with the original sent promptly by ordinary mail), by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, to the appropriate addresses listed in Attachment C, or to the most recent other contact information provided by the recipient (by means of notice complying with this paragraph), and such notice shall be deemed to have been given when so delivered, sent by fax or electronic mail, or mailed.

16. **INDEPENDENT CONTRACTOR.** The Parties are independent contractors and neither Party shall be deemed to be an agent or employee of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to take any action which shall be binding on the other Party.
17. **ASSIGNMENT.** This Agreement and all rights and obligations hereunder shall not be assigned (whether through merger or consolidation, by operation of law, or otherwise), without the written consent of the other Party and any attempt to assign without such consent shall be void.
18. **MODIFICATION.** No modification or waiver of any provision of this Agreement or any Attachment shall be valid unless in writing and executed by duly-authorized representatives of both Parties. A failure by one of the Parties to this Agreement to assert its rights hereunder shall not be deemed a waiver of such rights. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon.
19. **SEVERABILITY.** If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected.
20. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, and by facsimile or electronic transmission, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.
21. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and its Attachments embody the entire understanding between Data Provider and InClassToday with respect to the Data and the Service, and any prior or contemporaneous representations, either oral or written, are hereby superseded.

IN WITNESS WHEREOF, Data Provider and InClassToday have executed this Agreement as of the Effective Date.

DATA PROVIDER

Signature: _____

Name: : _____

Title: _____

Date: _____

IN CLASS TODAY, INC.

By: Emily Bailard

Title: CEO

Date: _____

ATTACHMENT A

DESCRIPTION OF THE SERVICE

Chronic absenteeism is a serious issue affecting students and families. Our ability to identify and support chronically absent students and their families has the potential to close the achievement gap and increase students' readiness for college and careers. Chronic absence is one of the earliest indications we have that students are not on course to succeed in school. InClassToday partners with school districts in order to implement research-based, tier 1, treatments that have been proven to reduce chronic absenteeism.

As directed by The Big Lift, InClassToday will send absence reports ("Absence Reports") that use behavioral science to provide parents and guardians with actionable information about their child's attendance. InClassToday will use data from the District to deliver the Absence Reports Program, analyzing the data to determine which students receive Absence Reports, determining appropriate content for each student based on their grade, attendance record, language, and other factors, and generating, printing and mailing the Absence Reports. If there are more eligible students than the number of planned Absence Reports, then InClassToday may apply student selection criteria to select the students most likely to benefit from receiving the intervention, considering factors such as absences to date. Specific students may be excluded by the District, and InClassToday will exclude students whose parents or guardians have elected to opt-out of receiving Absence Reports, as well as those with undeliverable addresses or who don't meet other eligibility criteria.

The Absence Reports Program leverages best practices from research conducted by InClassToday and others in the field, and InClassToday's goal is to provide services that improve over time. As a result, InClassToday may from time to time suggest new approaches and make changes to the Absence Reports Program likely to further program objectives.

InClassToday will provide the following Professional Services:

- Parent Support Team to handle questions from report recipients and direct callers to relevant district resources
- Program Manager to provide periodic updates, answer questions, and lead information webinar trainings for school and district staff
- Program monitoring including information about students receiving Absence Reports and parent/guardian calls to the Parent Support Team, and students who may have out of date addresses
- End of year program impact analysis projecting the days of attendance generated, as well as detailing the number of students receiving reports by school, grade level, and student subgroup (if necessary data is provided)

ATTACHMENT B

DESCRIPTION OF DATA/ DATA TRANSFER

District will provide InClassToday with access to data as specified in the “**InClassToday Data Specification and Transfer Standards**” which contains comprehensive information on data fields and the transfer process.

A summary of key steps are as follows:

- **Data Fields:** District will provide InClassToday with the following data files for all students who are currently enrolled in the district, as well as historical data. A complete list of the fields and transfer protocol can be found in the “InClassToday Data Specifications and Transfer Standards”.
 - **Roster File:** One row per student. Sample fields: student ID, first name, last name, enrollment date, un-enrollment date, school, grade, mailing address(es), contact information, demographic information, home language, exclusion flag
 - **Daily Attendance File:** One row per attendance event. Sample fields: student ID, attendance date, attendance code
 - **Period Attendance File (Optional):** One row per attendance event. Sample fields: student ID, attendance date, attendance code
 - **Exclusion File (Optional):** One row per student who school site or district staff would like to exclude from receiving Absence Reports. Sample fields: student ID, first name, last name, school, grade
- **Executing the Data Transfers:** InClassToday will host a secure, FERPA-compliant data transfer protocol through which the District will transfer all required data files. For direct SIS integration, the protocol uses direct integration and automated data transfer using InClassToday’s third party data integration partner. Additional details can be found in “InClassToday Data Specification and Transfer Standards.”

Note: These data specifications and transfer standards are subject to change.

ATTACHMENT C
CONTACT INFORMATION OF PARTIES

District Information	
District Name: Ravenswood City School District	Main Contact: Gina Sudaria
Address:	
2120 Euclid Avenue, East Palo Alto, CA 94303	Phone:
	Email: 650-329-2800 x60110
Billing Contact: N/A (Silicon Valley Community Foundation)	Data Contact: gsudaria@ravenswoodschools.org
Phone:	Phone: Maria Ochoa
Email:	Email:

InClassToday Contacts	
Program Manager: Emily Cunningham	Invoicing: Ruth Mohanram
Phone: 650-641-9485	Email: ar@inclasstoday.com
Email: emily.cunningham@inclasstoday.com	Contracts: Mark Loveland
	Email: contracts@inclasstoday.com