

UTAH STUDENT DATA PRIVACY AGREEMENT

Version 2.0

Carbon School District

and

BusRight

Date

7/25/2023

This Utah Student Data Privacy Agreement (“DPA”) is entered into by and between the Carbon School District (hereinafter referred to as “LEA”) and [Name of Company] (hereinafter referred to as “Contractor”) on [Insert Date]. The Parties agree to the terms as stated herein.

RECITALS

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

WHEREAS, in order to provide the Services described in the Service Agreement, the Contractor 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 (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 Contractor’s Services are also subject to Utah state student privacy laws, including the Utah Student Data Protection Act UCA Section 53E-9; and

WHEREAS, for the purposes of this DPA, Contractor is a school official with legitimate educational interests in accessing Education Records pursuant to the Service Agreement for the limited purposes of this DPA; 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 Contractor may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other LEAs in Utah 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 Contractor from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, COPPA, PPRA and other applicable Utah State laws, all as may be amended from time to time. In performing these services, the Contractor shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Contractor shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided**. The Contractor has agreed to provide digital educational products and services outlined in Exhibit “A”.
3. **Student Data to Be Provided**. The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached as Exhibit “B”.
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 Contractor pursuant to the Service Agreement is and will continue to be the property of the student.
2. **Parent Access**. The LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may request the opportunity to inspect and review Student Data in the student's records, and seek to amend Student Data that are inaccurate, misleading or in violation of the student's right of privacy. Contractor shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA’s request for Student Data in a student's records held by the Contractor to view or correct as necessary. In the event that a parent of a student or other individual contacts the Contractor to review any of the Student Data accessed pursuant to the Services, the Contractor 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, request data held by the Contractor pursuant to the Services Agreement, the Contractor shall redirect the Third Party to request the data directly from the LEA. Contractor shall notify the LEA in advance of a compelled disclosure to a Third Party. Contractor shall share Student Data with law enforcement if required by law or court order.
4. **Subprocessors**. Contractor shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA. Contractor shall provide the LEA with a description of the subprocessors or types of subprocessors who have access to the LEA's student data and shall update the list as new subprocessors are added.

ARTICLE III: DUTIES OF CONTRACTOR

1. **Privacy Compliance**. The Contractor shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRa and all other Utah privacy statutes as they relate to the collection, use, storage, or

sharing of student data.

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 referenced in the prior subsection. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Student Data.

3. Employee Obligation. Contractor shall require all employees and subprocessors 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.

4. Use of De-identified information. De-identified information may be used by the Contractor 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 data pursuant to 34 CFR 99.31(b). Contractor agrees not to attempt to re-identify de-identified Student Data.

5. Disposition of Data. Upon written request Contractor 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. The duty to dispose of Student Data shall not extend to data that has been de-identified. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Contractor will immediately provide the LEA with any specified portion of the Student Data within 10 calendar days of receipt of said request.

6. Additional Acceptable Uses of Student Data. Contractor is prohibited from using Student Data for any secondary use not described in this agreement except:

- a. for adaptive learning or customized student learning purposes;
- b. to market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product;
- c. to use a recommendation engine to recommend to a student
 - i. content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or
 - ii. services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;
- d. to respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.; and
- e. to use Data to allow or improve operability and functionality of the third-party contractor's internal application.

ARTICLE IV: DATA PROVISIONS

1. Data Security. The Contractor agrees to abide by and maintain adequate data security measures, consistent with standards and best practices within the educational technology industry, and to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. These measures shall include, but are not limited to:

- a. Passwords and Employee Access.** Contractor shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. Contractor shall only provide access to Student Data to employees or contractors that are performing the Services.
- b. 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. Contractor 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.
- c. Security Technology.** Contractor shall employ internet industry standard measures to protect data from unauthorized access while the data is in transit or at rest. The service security measures shall include server authentication and data encryption. Contractor shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- d. Audit Rights.** Upon reasonable notice, and at the request of the LEA, the LEA or the LEA's designee may audit the Contractor to verify compliance with this DPA, as required by the Utah Student Data Protection Act.

2. Data Breach. In the event that Contractor discovers that Student Data has been accessed or obtained by an unauthorized individual, Contractor shall provide notification to LEA within a reasonable amount of time of the incident, not to exceed 72 hours.

ARTICLE V: MISCELLANEOUS

1. **Term**. The Contractor shall be bound by this DPA for the duration of the Service Agreement or so long as the Contractor 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 Contractor shall destroy all of LEA’s data pursuant to Article III, section 5 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 below:

a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: Tyson Bryner

Title: Technology Coordinator

Contact Information:
_tyson@carbonschools.org
_(435)-613-3124

The designated representative for the Contractor for this Agreement is:

Name: Keith Corso

Title: CEO

Contact Information:
keith@busright.com
914-960-0358

6. Entire Agreement. This DPA constitutes the entire agreement of the parties relating to the subject matter hereof 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.

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 UTAH, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF UTAH FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. Authority. Contractor represents that it is authorized to bind to the terms of this DPA, 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. Contractor agrees that any purchaser of the Contractor shall also be bound to this DPA.

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. LEA hereby waives and releases any and all claims against the Utah State Board of Education and/or its members, departments, office, and staff (collectively, "USBE"), for USBE's efforts and conduct related to the negotiations and/or formation of this DPA. The parties agree that USBE is not an agent nor a representative of LEA in the formation or execution of this DPA, and that LEA negotiated with Contractor at arm's length in the creation of this DPA. USBE is thus not responsible or liable to either party under this DPA, and owes no duty to either party under this DPA.

11. Successors Bound. This DPA is and shall be binding upon the respective successors in interest to Contractor 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 Utah Student Data Privacy Agreement as of the last day noted below.

Contractor:

BY: Keith Corso Date: July 26, 2023

Printed Name: Keith Corso Title/Position: CEO

Local Education Agency:

BY: _____ Date: _____

Printed Name: _____ Title/Position: _____