Hudl Student Data Protection Agreement

This Hudl Student Data Protection Agreement (this "**DPA**") is entered into by and between East Helena Public Schools, with an address at 226 E Clinton St, East Helena, MT 59635 (the "**Organization**") and Agile Sports Technologies, Inc. dba Hudl, a Delaware corporation, with an address at 600 P Street, Suite 400, Lincoln, NE 68508 ("**Hudl**", and together with the Organization, the "**Parties**" and each a "**Party**"), effective as of the latest date beneath the signatures in the first Order Form signed by the parties (the "**Effective Date**").

WHEREAS, Hudl will provide Services to Organization pursuant to the Service Agreement entered into between the Parties;

WHEREAS, the Parties recognize the need to protect Student Data exchanged between them as a result of the Services, as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99); the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 CFR Part 312); and applicable state student privacy laws and regulations; and

WHEREAS, Hudl and Organization wish to enter into this DPA to establish their respective obligations and duties regarding Student Data.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions and Interpretation.**

    1.1. In addition to other terms defined in this DPA, the following definitions apply in this DPA:

    1.1.1. "**Affiliate**" means, in the case of a Party, any other person or entity (a) controlling, (b) controlled by, or (c) under common control with such Party.

    1.1.2. "**Agreement**" means this DPA and the Service Agreement.

    1.1.3. "**Breach"** means the unauthorized release, disclosure, or acquisition of Student Data that compromises the security, confidentiality, or integrity of the Student Data maintained by Hudl.

    1.1.4. "**De-Identified Data**" means all Personally Identifiable Information has been removed or obscured from records and information, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student.

    1.1.5. "**Educational Records**" are records, files, documents, and other materials directly related to a student and maintained by the Organization, or by a person acting for such Organization, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

    1.1.6. "**Metadata**" refers to contextual information associated with collected data, including, but not limited to: timestamps, authorship, and purpose of data generation. Metadata that has been stripped of all direct and indirect identifiers is not considered Personally Identifiable Information.

    1.1.7. "**Personally Identifiable Information**" has the definition given to it in 34 C.F.R. § 99.3 and any applicable state law, except as otherwise provided in this DPA.

    1.1.8. "**School Official**" means, for the purposes of this DPA, a contractor that: (1) performs an institutional service or function for which the Organization would otherwise use employees; (2) is under the direct control of the Organization with respect to the use and maintenance of Student Data, including Educational Records; and (3) is subject to 34 C.F.R. § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Educational Records.

    1.1.9. "**Service Agreement**" means, collectively, the Order(s) executed between Organization and Hudl, Hudl's Organization Terms of Service found at www.hudl.com/eula ("**Organization Terms**") and any additional terms agreed to through the Services by an admin in Organization's Hudl account, as set in the account on the Services.

1.1.10. "**Services**" include Hudl products and services, including software and hardware, for use by sports teams for coaching, performance analysis, sport analysis, public game livestreaming, public game event ticketing, recruiting facilitation, and athlete promotion, as described in the Service Agreement. The Services do not include any Hudl products and services used by fans of sports teams and fans, viewers, and attendees of athletic and other events.

1.1.11. "**Student Data**" includes any data, whether gathered by Hudl or provided by Organization or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or 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, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Metadata. Student Data further includes Personally Identifiable Information. Student Data shall constitute Educational Records for the purposes of this DPA, and for the purposes of applicable federal, state, and local laws and regulations. Student Data shall not include that information that has been anonymized or is De-Identified Data or anonymous usage data regarding a student's use of Hudl's services.

1.1.12. "**Student-Generated Content**" means materials or content created by a student in the Services and may include, but is not limited to, posts, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

1.1.13. "**Subprocessor**" means a party other than Organization or Hudl that Hudl uses for data collection, analytics, storage, or other service to operate or improve its Services and that has access to Student Data with respect to such services being provided to Hudl.

1.1.14. "**Targeted Advertising**" means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet website, online service, or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet website based on the content of the web page or in response to a student's response or request for information or feedback or any advertising to a student when not logged into the Services.

1.2. The definitions of "**Educational Records**", "**Personally Identifiable Information**", and "**Student Data**" as used in this DPA (1) do not include (a) video of or statistics or data related to publicly performed sporting events, or (b) public profile data; (2) relate only to data or information gathered or provided through or with respect to the Services; and (3) do not include any data or information provided to, gathered by or received by Hudl with respect to an individual's direct relationship with Hudl including where the individual is interacting with Hudl's fan experience.

1.3. In the case of conflict or ambiguity between:

1.3.1. any provision contained in the body of this DPA and any provision contained in the Exhibits, the provision in the Exhibits of this DPA will prevail; and

1.3.2. any of the provisions of this DPA and the provisions of the Service Agreement, the provisions of this DPA will prevail.

1.4. This DPA is subject to the terms of the Service Agreement, made part of, and is incorporated into the Service Agreement by this reference. Interpretations and defined terms set forth in the Service Agreement apply to the interpretation of this DPA, except as otherwise provided herein.

1.5. Exhibit "A" attached hereto contains supplemental terms from applicable state law, if any. Exhibit "A" forms part of this DPA and will have the same effect as if set out in full in the body of this DPA. Any reference to this DPA includes Exhibit "A".

2. **Term and Termination.** This DPA shall remain in effect for three (3) years from the Effective Date. In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent. One party may terminate this DPA upon a material breach of this DPA by the other party by providing written notice to the breaching party. If the Service Agreement terminates, Hudl shall destroy all of Organization's Student Data pursuant to Section 5.6 below.

3. **Access to Student Data.**

   3.1. **FERPA.** For the purposes of FERPA, Hudl will act as a School Official, under the control and direction of the Organization as it pertains to the use of Student Data.

   3.2. **Hudl's Access.** Hudl will receive access to Student Data to provide the Services, as described in the Service Agreement. Hudl agrees that all copies of Student Data accessed for the Services, including any modifications or additions to the Student Data, are subject to the provisions of this DPA, and such modifications or additions will be treated in the same manner as the original Student Data. The Student Data shared pursuant to the Service Agreement shall be used for no purpose other than the Services, as stated in the Service Agreement, or as otherwise authorized under the laws and regulations referred to herein this DPA.

   3.3. **Subprocessor Access.** Subprocessors may access Student Data for the Services when performing services for Hudl with respect to the Services, provided that Hudl shall enter into written agreements with all such Subprocessors pursuant to which such Subprocessors agree to protect Student Data in a manner no less stringent than the requirements of this DPA.

   3.4. **Parent and Student Access.**

      3.4.1. To the extent required by applicable law, Organization shall allow a parent, legal guardian, or Eligible Student (as defined under FERPA) to do any of the following, with respect to the Educational Records or Student Data of their student:

         3.4.1.1.   Review Personally Identifiable Information collected about their student;

         3.4.1.2.   Correct erroneous information within the collected Personally Identifiable Information of their student; and

         3.4.1.3.   Transfer Student-Generated Content to a personal account.

      3.4.2. The rights set forth in Section 3.4.1. above shall be consistent with the functionality of the Services. When Organization is not able to fulfill such parent, legal guardian, or Eligible Student requests described in Section 3.4.1 on its own through the Services, Hudl agrees to assist with such requests. For such assistance, Organization shall make a written request to Hudl, describing the requested action. Hudl shall use reasonable efforts to respond within 45 days to any such reasonable request by Organization. If a parent or other individual contacts Hudl to review any of the Student Data accessed pursuant to the Services, Hudl shall refer the parent or individual to the Organization, which will direct such individual to follow the necessary and proper procedures regarding the Student Data.

   3.5. **Compelled Disclosures.** In the event law enforcement or another government entity requests that Hudl provide such party with Student Data held by Hudl pursuant to the Services, Hudl agrees to notify Organization prior to such compelled disclosure; provided that Hudl shall not be required to provide such notification to Organization in the event Hudl is lawfully directed by such party not to inform Organization of the request or unless Hudl is otherwise legally prohibited from doing so.

   3.6. **Data Ownership.** Student Data shared with Hudl pursuant to the Service Agreement is and shall continue to be the property of Organization and Organization shall have control over such Student Data. As between the Parties, all rights in and to such Student Data, including all intellectual property rights therein, shall belong to Organization, subject to the terms of the Service Agreement.

4. **Organization's Responsibilities.** Organization shall comply with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time, when providing Student Data to Hudl for the Services. If the Organization has a policy of disclosing Educational Records or Student Data under FERPA, Organization shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights. Organization shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services and hosted Student Data. Organization shall notify Hudl promptly of any known unauthorized access. Organization will assist Hudl in any efforts by Hudl to

investigate and respond to any unauthorized access.

5. **Hudl's Responsibilities.**

5.1. **Privacy Compliance.** Hudl shall comply with all applicable federal, state, and local laws, rules, and regulations, all as may be amended from time to time, pertaining to Student Data privacy and security.

5.2. **Employee Obligations.** Hudl shall require its employees and agents with access to Student Data to comply with the applicable provisions of this DPA. Hudl agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.

5.3. **No Disclosure.** Hudl will not disclose or share any Student Data except:

5.3.1. As directed or permitted by Organization, this DPA, or the Service Agreement;

5.3.2. As required or permitted by applicable law;

5.3.3. Pursuant to a court order, lawfully issued subpoenas, or other legal process;

5.3.4. When the disclosure consists solely of De-Identified Data;

5.3.5. As necessary to provide the Services; or

5.3.6. To Subprocessors in order for such Subprocessors to perform services on behalf of Hudl with respect to the Services. Nothing in this DPA shall be interpreted to prohibit the disclosure or provision of video of or statistics or data related to publicly performed sporting events or public profile data as described in the Provider's Terms of Service, or disclosure or provision of an athlete's profile data to verified recruiters, provided such disclosure or provision of profile data is consistent with the athlete's privacy settings.

5.4. **Transferring Student-Generated Content.** If Hudl stores or maintains Student-Generated Content, upon request of the Organization, Hudl shall facilitate the transfer of such content to a separate account created by the student, or provide a mechanism for the Organization to transfer said Student-Generated Content.

5.5. **De-Identified Data.** Hudl will not attempt to re-identify De-Identified Data or use De-Identified Data for any purpose other than as described in Section 6.5. Hudl will not transfer De-Identified Data to any third parties, except for its Subprocessors and Affiliates, unless (1)(a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the Organization, who has provided written consent for such transfer, or (2) such De-Identified Data has been sufficiently aggregated that it cannot be re-identified.

5.6. **Disposition of Data.** Upon written request from Organization, Hudl shall delete or provide a mechanism for Organization to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. The duty to delete Student Data shall not extend to De-Identified Data or Student Data placed in a separate student account pursuant as allowed herein.

5.7. **Advertising Limitations.** Hudl will not use, disclose, or sell Student Data for any Targeted Advertising or to develop a profile of a student or family member/guardian for any commercial purpose other than providing the Services or as permitted by the Service Agreement. This section does not prohibit Hudl from using Student Data (1) for adaptive learning or customized student learning (including generating personalized learning recommendations); (2) to make product recommendations to teachers or Organization employees; or (3) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits, if any.

6. **Data.**

6.1. **Data Storage.** Hudl will provide a list of the locations where Student Data is stored upon written request of the Organization. Hudl will store all Student Data in the United States where required by applicable law.

6.2. **Audits.** No more than once each year of the term of this DPA, and upon written request from the Organization, Hudl will provide its security due diligence artifacts, including an updated security posture overview and HECVAT. Hudl will cooperate reasonably with the Organization and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of Hudl or delivery of Services to students or Organization as required by applicable law.

6.3. **Data Security.** Hudl shall adhere to any applicable law relating to data security. Hudl agrees to use reasonable and appropriate administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. Upon reasonable written request, Hudl shall provide contact information of a Hudl employee who Organization may contact if there are any data security concerns or questions.

6.4. **Data Breach.**

6.4.1. In the event of a Breach, Hudl shall provide notification to Organization within seven (7) days of confirmation of the Breach, unless notification within this time limit would disrupt investigation of the Breach by law enforcement. The Breach notification shall include, at a minimum, the following information, to the extent known by Hudl and as it becomes available:

6.4.1.1.   A list of the types of Student Data that were or are reasonably believed to have been the subject of a Breach;

6.4.1.2.   The date, estimated date, or date range within which the Breach occurred;

6.4.1.3.   Whether the notification was delayed because of a law enforcement investigation; and

6.4.1.4.   A general description of the Breach, if that information is possible to determine at the time the notice is provided.

6.4.2. Hudl agrees to adhere to all applicable federal and state requirements with respect to a Breach, including, any required notification or mitigation.

6.4.3. Hudl agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and applicable federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data, and Hudl agrees to provide Organization with a summary of its written incident response plan upon written request.

6.4.4. Organization shall provide notice of the Breach to affected students, parents, or guardians.

6.5. **Using De-Identified Data.** De-Identified Data may be used by Hudl and its Subprocessors for the following: (1) any purposes allowed under FERPA; (2) improvement, research, and development of Hudl's sites, services, and applications, and to demonstrate the effectiveness of the Services; and (3) adaptive learning and customized student learning. Hudl's use of De-Identified Data shall survive termination of this DPA, and Hudl shall not be required to return or destroy De-Identified Data.

7. **Miscellaneous.**

7.1. **Entire Agreement.** This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersede 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.

7.2. **Waiver.** No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

7.3. **Severability.** If any term or provision of this DPA is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this DPA or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this DPA to reflect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7.4. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF THE MONTANA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES OF SUCH STATE. IF ORGANIZATION IS A STATE OR LOCAL GOVERNMENT ENTITY (SUCH AS A PUBLIC SCHOOL OR PUBLIC SCHOOL DISTRICT), THE PROVISION IN THIS DPA ADDRESSING GOVERNING LAW WILL NOT APPLY TO ORGANIZATION TO THE EXTENT ORGANIZATION'S JURISDICTION'S LAWS PROHIBIT ORGANIZATION FROM ACCEPTING THAT PROVISION. ANY PROVISION IN THE SERVICE AGREEMENT REQUIRING VENUE IN A SPECIFIC STATE SHALL NOT APPLY.

7.5. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Hudl 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.

7.6. **Authority.** Each party represents that it has the right, power, and authority to enter into this DPA, become a Party hereto, and perform its obligations hereunder, including confidentiality and destruction of Student Data.

7.7. **Notices.** Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this DPA (each, a "**Notice**") in writing. Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). All communications to Organization, including those related to Organization's account, shall be sent to the applicable Team Admin on file. Organization shall send notices or communications intended for Hudl to the address set forth for Hudl above. Organization shall also provide a copy to the attention of Hudl Legal at legal@hudl.com. Except as otherwise provided in this Agreement, a Notice is effective only upon receipt by the receiving party. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

7.8. **Counterparts.** This DPA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this DPA delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Organization and Hudl have executed this DPA as of the Effective Date.

East Helena Public Schools, Organization

By: *Dan Rispens*
Dan Rispens (Sep 6, 2024 15:06 MDT) _____ **Date:** Sep 6, 2024 _____

Printed Name: Dan Rispens _____ **Title/Position:** Superintendent _____

Agile Sports Technologies, Inc., dba Hudl

By: Grant Jeffres (Sep 6, 2024 16:12 CDT) _____ **Date:** Sep 6, 2024 _____

Printed Name: Grant Jeffres _____ **Title/Position:** Sales Manager _____

EXHIBIT "A"

Supplemental State Terms

Please complete this section with additional state requirements (if any) and return to Hudl. Otherwise leave this section blank.