

FIRST AMENDMENT TO UTAH STUDENT PRIVACY DATA AGREEMENT

This First Amendment (“**Amendment**”) to Version 2 to the Utah Student Data Privacy Agreement (“**DPA**”), by and between, Liminex, Inc. doing business as GoGuardian (“**Contractor**” or “**GoGuardian**”) and Local Education Agency provided in the signature block below (“**LEA**”), is effective as of the effective date of the DPA (“**Effective Date**”). The Parties (defined herein) are subject to a Service Agreement, which is GoGuardian’s Terms of Service and End User License Agreement (available at www.goguardian.com/eula.html) that may be updated from time to time in accordance with the terms therein). To the extent that the terms of this Amendment conflict with the DPA or the Service Agreement, the terms of this Amendment shall control. Unless otherwise explicitly defined in this Amendment, all capitalized terms shall have the meaning ascribed to them in the following order of priority (1) DPA; (2) the Service Agreement. The terms of such DPA and the Service Agreement shall remain in full force and effect except as expressly modified by this Amendment. The DPA shall be amended between the Parties as follows:

ARTICLE II. DATA OWNERSHIP AND AUTHORIZED ACCESS

3. Third Party Request. The first and second sentences of Section 3 (Third Party Request) of Article II (Data Ownership and Authorized) of this DPA are hereby modified by inserting the following language: “except to the extent prohibited by law enforcement or applicable government entity” at the end of each such sentence.

4. Subprocessors. The second sentence of Section 4 (Subprocessors) of Article II (Data Ownership and Authorized) of the DPA is hereby amended to insert the following language “By written LEA request” before the second sentence.

ARTICLE III: DUTIES OF CONTRACTOR

1. Privacy Compliance. Section 1 (Privacy Compliance) of Article III (Duties of Contractor) is hereby deleted in its entirety and replaced with the following: “Contractor shall comply with all applicable state and federal laws pertaining to data privacy and security, including, as applicable, FERPA, COPPA, PPRA, and all other applicable Utah privacy statutes as they relate to the collection, use, storage, or sharing of Student Data.”

2. Authorized Use. Section 2 (Authorized Use) of Article III (Duties of Contractor) is hereby modified as follows:

- In the first sentence, the word “data” in the first sentence is hereby deleted and replaced with “Student Data”.

- The second sentence of Section 2 (Authorized Use) of Article III (Duties of Contractor) is hereby deleted in its entirety and replaced with the following:
“Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Student Data other than as permitted by the DPA.”

4. Use of De-Identified Information. In the first sentence of Section 4 (De-identified information) of Article III (Duties of Contractor), “De-identified information” is hereby replaced with the defined term from the DPA “De-Identified Information”.

5. Disposition of Data. Section 5 (Disposition of Data) of Article III (Duties of Contractor) (Duties of Provider) is hereby amended as follows:

- “use commercially reasonable efforts within a commercially reasonable amount of time” is inserted in the first sentence after “Upon written request Contractor shall”
- The following sentence is hereby inserted as the second sentence of Section 5: “LEA agrees to provide written instructions to Contractor about such disposal or deletion within a reasonable amount of time following the end of a non-renewed Service Agreement with Contractor.”
- “ten (10) calendar days” in the third sentence is hereby deleted and replaced with “a commercially reasonable amount of time not to exceed thirty (30) calendar days”

6. Additional Acceptable Uses of Student Data. Section 6 (Additional Acceptable Uses of Student Data) of Article III (Duties of Contractor) of the DPA is hereby amended as follows:

- b. “Data” is replaced with “Student Data” and “Contract” is replaced with “DPA” Subsection III(6)(b).
- c. “the third-party contractor” is replaced in both instances with “Contractor” in Subsection III(6)(c).
- e. “Data” is replaced with “Student Data” and “the third-party contractor” is replaced with “Contractor” in Subsection III(6)(e).
- f. The following language is hereby inserted into this DPA as Subsection III(6)(f): “to identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria: (i) regardless of whether the identified nonprofit institutions of higher education or scholarship providers provide payment or other consideration to the Contractor; and (ii) only if the Contractor obtains authorization in writing from: (A) a student's parent through the student's school or LEA; or (B) for an adult student, the student.”

ARTICLE IV: DATA PROVISIONS

1. **Data Security.** Section 1 (Data Security) of Article IV (Data Provisions) of the DPA is hereby amended as follows:

- The first sentence is hereby deleted in its entirety and replaced with the following: “The Contractor agrees to abide by and maintain adequate data security measures, consistent with customary standards within the educational technology industry.”

- a. **Passwords and Employee Access.** The following language “or related to the acceptable uses set forth in Article III, Section 6 above” is hereby inserted at the end of the second sentence.

- c. **Security Technology.** The word “internet” is hereby deleted and replaced with “customary”.

- d. **Audit Rights.**

- “And the sole expense of LEA” shall be inserted after “and at the request of the LEA”
- “LEA agrees to accept an independent audit by a reputable third party attesting to Contractor’s security practices to verify compliance with the security provisions of this DPA” shall be inserted as the second sentence of this Subsection.
- “All information exchanged in such audit shall be the Confidential Information of Contractor” shall be inserted as the third sentence of this Subsection.

2. **Data Breach.** Section 2 (Data Breach) shall hereby be deleted and replaced with the following: “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 after Provider confirms or reasonably believes that a Data Breach has occurred, not to exceed 72 hours.”

ARTICLE VI: MISCELLANEOUS

2. **Termination.** The following shall be added as the third sentence: “For the avoidance of doubt, this DPA shall terminate upon the later of: (1) the termination or expiration of the Service Agreement or (2) Contractor’s destruction or return of any Student Data in its possession.”

4. Priority of Agreements. Section 4 (Priority of Agreements) of Article VI (Miscellaneous) is hereby amended by inserting the following after the second sentence:

“In the event the terms of the DPA are silent as to any term or condition that is expressly provided for in the Service Agreement, the term or condition of the Service Agreement shall apply.”

8. Governing Law; Venue and Jurisdiction. Section 8 (Governing Law; Venue and Jurisdiction) of Article VI (Miscellaneous) is hereby deleted in its entirety and replaced with the following:

THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF UTAH, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THIS DPA IS SUBJECT TO THE DISPUTE RESOLUTION PROVISION OF THE SERVICE AGREEMENT.

10. Waiver. The first sentence of Section 10 (Waiver) of Article VI (Miscellaneous) is hereby deleted in its entirety and replaced with the following: “No delay or omission of either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties each reserves the right to exercise any such right from time to time, as often as may be deemed expedient”.

Signed and Agreed:

For and on behalf of LEA:

LEA Name: Ogden Preparatory Academy

Signature: 

Signatory Name: Andrew Smith

Title: IT Security Manager

Name: Andrew Smith

Dated: 9-23-2020

For and on behalf of Provider:

Provider Name: Liminex, Inc. DBA

GoGuardian DocuSigned by:
Signature: 

Signature: 536B03D773CA4B9...

Signatory Name: Brian Kobashigawa

Title: Corporate Counsel

Dated: 9/24/2020