



DATA PRIVACY AGREEMENT

This Data Privacy Agreement ("DPA") is made by and between Flashlight Learning, Inc. ("Flashlight Learning") and ("School District"). Flashlight Learning and School District may be referred to herein individually as a "Party" or collectively as the "Parties." This DPA supplements the definitive agreement between the Parties ("Agreement") under which School District may provide confidential student and staff data to Flashlight Learning for processing pursuant to the Agreement in Flashlight Learning's provision of the Services. Any capitalized terms not otherwise defined herein have the meaning given them in the Agreement or under applicable law. This DPA takes effect as of and remains in force for the duration of the Agreement, including any renewals or extensions thereof ("Term"), unless terminated earlier pursuant to the termination provisions of the Agreement.

In consideration of the mutual covenants, promises, releases, and agreements as set for herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Certain Definitions.
 - A. "COPPA" means the Children's Online Privacy and Protection Act of 1998, 5 U.S.C. 6501 – 6505.
 - B. "District Data" means information provided to Flashlight Learning through the Services. District Data may include "Personally Identifiable Information" and "Education Records" as defined by 20 U.S.C. § 1232g and 34 C.F.R. § 99.3.
 - C. "De-Identified Data" means data, including but not limited to District Data, converted by Flashlight Learning so that such data no longer contains Personally Identifiable Information so that a student's identity is not reasonably identifiable.
 - D. "FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations found in 34 C.F.R. Part 99.
2. The Parties acknowledge that each Party is subject to the provisions of FERPA. Pursuant to FERPA, the School District hereby: (a) appoints Flashlight Learning as a "school official" as that term is used under FERPA, as interpreted by the Family Policy Compliance Office, and, (b) determines that Flashlight Learning has a "legitimate educational interest" for the purpose of carrying out its responsibilities under the Agreement.
3. Between the Parties, School District owns all right, title, and interest in District Data. School District hereby grants to Flashlight Learning a limited, non-exclusive, irrevocable (during the Term), royalty-free, fully paid-up, non-sublicensable and non-transferable license to process District Data in connection with the Services to: (a) to provide the Services including to enable the School District and its end users to access and use the Services; (b) for diagnostic purposes; (c) to make any changes or improvements to the Services, whether requested by School District or not; (d) to develop other Services; and (e) to convert District Data to De-Identified Data. Flashlight Learning shall not



create derivative works from the District Data except to the extent necessary to provide such Services and only upon the School District's prior written consent.

4. Flashlight Learning may process De-Identified Data solely for internal research and product improvement purposes; provided, that such processing generally benefits K-12 education. Flashlight Learning shall not sell, disclose, or share De-Identified Data to third parties or process De-Identified Data for commercial marketing. Flashlight Learning shall not, and shall use commercially reasonable efforts to ensure Subprocessors do not, attempt to re-identify De-Identified Data.
5. School District represents and warrants that it has established procedures compliant with FERPA for parents and students to review and amend Education Records. Flashlight Learning shall respond within forty-five (45) days to School District's written request to view or amend such information.
6. Flashlight Learning shall not disclose to a third party any District Data in violation of FERPA. Flashlight Learning may disclose District Data to employees, agents, contractors, or Subprocessors necessary to perform its obligations under the Agreement.
7. School District authorizes Flashlight Learning to engage carefully vetted third-party service providers to deliver certain features of the Services, including but not limited to third parties supporting curriculum resource management ("Subprocessors"). Flashlight Learning shall enter into agreements with all such Subprocessors containing obligations and restrictions no less stringent than those required under this DPA and FERPA. Flashlight Learning shall provide thirty (30) days written notice to the School District before onboarding a new Subprocessor. The School District may, within ten (10) days of receiving such notice, object to any new Subprocessor only on reasonable data privacy or security grounds. Upon any such objection, the Parties shall work in good faith for ten (10) days to resolve the School District's objection. If the Parties are unable to resolve the objection, either Party may immediately terminate the Agreement. Upon reasonable prior written request, Flashlight Learning shall provide a list of all Subprocessors and reasonable documentation showing compliance with this DPA.
8. Flashlight Learning shall abide by and maintain adequate data security measures, consistent with standards within the educational technology industry and to protect District Data from unauthorized disclosure or acquisition by an unauthorized person. If Flashlight Learning discovers that District Data has been accessed or obtained by an unauthorized individual, Flashlight Learning shall provide notification to School District within a reasonable amount of time of the incident, not to exceed seventy-two (72) hours. Such notice must, to the extent possible, include the nature of the breach, the data affected, steps taken to mitigate the breach, and proposed measures to prevent future breaches.
9. If District's use of the Services includes processing of personal information (as defined in COPPA) from children under thirteen (13) years of age, District warrants, represents, and covenants that it has obtained all necessary consents from parents to permit



Flashlight Learning to process such information. Flashlight Learning shall only process information subject to COPPA for the use and benefit of the District and for no other commercial purpose.

10. Flashlight Learning shall dispose or delete all District Data obtained under the Agreement within thirty (30) days of termination of the Agreement and this DPA. Upon School District's reasonable written request, Flashlight Learning will certify in writing that it has complied with this provision. This obligation does not extend to De-Identified Data.
11. If there is any conflict between the terms of this DPA and the terms of the Agreement, the terms of this DPA control.
12. This DPA, combined with the Agreement, 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. The Parties may only amend or waive any provision of this DPA with the signed written consent of both Parties. No delay or omission of either Party to exercise any right hereunder is a waiver of any such right and the Parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.
13. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction is, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability does not invalidate the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction does 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 Parties' intent, it must, 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.
14. Utah law governs the interpretation and construction of this DPA without regard to conflicts of law principles.

Flashlight Learning, Inc.

Name: Josh Maltbey

Title: Director of Technical Operations

Signature: _____

Date: _____

School District

Name:

Title:

Signature: _____

Date: _____