

Colorado State University Digital Tool FERPA, Data Ownership, and Data Privacy Agreement

THIS DIGITAL TOOL FERPA, DATA OWNERSHIP, AND DATA PRIVACY AGREEMENT (“Agreement”) **IS HEREBY INCORPORATED AND SUPERCEDES ALL OTHER AGREEMENTS BY AND BETWEEN THE SUPPLIER AND THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM (“UNIVERSITY” OR “University”), AS OF THE DATE BOTH PARTIES SIGNED THE AGREEMENT**

Background:

Supplier provides certain services and/or licenses certain applications to the University, often under a separate contract(s), end user license agreement, privacy policy, etc. pursuant to which Supplier may have access to “education records” from the University, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, et seq. and the regulations promulgated thereunder (“Education Records”). To the extent there is a conflict between the terms of this Agreement and any other agreement or terms (including any terms of service or other click through terms necessary to access any Supplier services) services) the terms of this acknowledgement shall prevail.

Definitions

University – Colorado State University (CSU).

Supplier – digital tool supplier.

FERPA – Federal Education Rights and Privacy Act.

GDPR – European Union’s General Data Protection Regulation.

Learning Management System (LMS) – the University uses the Canvas LMS.

Learning Tool Interoperability (LTI) – IMS Global Learning Consortium standard for integrating a digital tool with an LMS. Supplier LTI’s should be IMS certified.

Application Programming Interface (API): Tool data access done on behalf of a user in the LMS.

Canvas Developer Key: Developer keys can be used to create custom integrations with Canvas and allow third-party apps to use Canvas authentication. It is rare for CSU to issue a developer key.

“University Data” means all records and information created, received, maintained, or transmitted by the University which is accessed, created, used, stored, copied, or distributed by Supplier, in connection with the Work under the Contract.

“Data Breach” means, for the purposes of this Contract, any adverse event where there is harm to University Data, individuals, host(s), or network(s). This includes, but not by way of exclusion, events indicating that University Data may have been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement or the Contract.

Supplier and CSU hereby agree as follows:

1. **School Official:** To the extent that Supplier has access to University Data (Education Records) from the University, Supplier is deemed a “school official,” as that term is defined under FERPA. Supplier agrees that it shall not use Education Records for any purpose other than in the performance of the services under contract. Except as required by law, Supplier shall not sell, disclose, distribute nor otherwise share Education Records with any third party unless permitted by the terms of the contract or to subcontractors who have agreed to maintain the confidentiality of the Education Records to the same extent required of Supplier hereunder. In the event any person(s) seek to access Education Records, whether in accordance with FERPA or other federal or relevant state law or regulations, the Supplier will immediately inform University of such request in writing (email is acceptable).
2. **Data Ownership:** Supplier acknowledges that, as between the University and Supplier, all Education Records are and shall remain the property of the University; this includes any and all information or data that are collected, processed, viewed, stored, or transmitted either individually or in aggregate from CSU faculty, staff, and students.
3. **Data Use:** Supplier acknowledges that it shall use Education Records only as necessary to provide the applicable services or as otherwise permitted in writing by the University.
4. **Data Privacy:** Supplier shall not share any information obtained from University Users under this agreement with third parties, without obtaining explicit permission from the University or from the End User in question.
5. **Data Security:** Supplier shall maintain an approved and documented information security program to protect and safeguard Education Records, which shall include administrative, technical and physical safeguards that utilize commercially available industry best practices and comply with the requirements of FERPA.
6. **Data Access:** Where feasible, University asks that Supplier data adhere to the IMS Caliper Analytics standards to make it easier to incorporate into University’s data analytics process.
7. **Breach Notification:** If Supplier believes that any Education Records have been subject to unauthorized access, Supplier will promptly (and in any event within 48 hours) notify the University by sending e-mail to canvashelp@colostate.edu, detailing the nature, range, and possible scope of the unauthorized access. Any breach may be grounds for immediate termination of the Agreement by the University. Supplier shall work with the University, at the University’s request, jointly to isolate, identify and scope the nature and range of the breach, and discover the extent of the data exposure, data transmission, date receipt, etc.
8. **Data Retention and Disposal:** Supplier shall, on all of its systems, retain no (i.e. dispose of securely) information collected from University Users within two years past the end of the time it was used in a course, section or otherwise delivered service. Upon one year (360 days) after expiration of the Contract, Supplier shall consult with University to identify any and all information to be returned to the University, and subsequently delete all such information within one year past the expiration date of the contract/agreement.

9. **Termination:** Notification via email if otherwise verified or by FAX by University or Supplier of discontinuance of use or provision of this product shall be necessary and sufficient to effect termination of this agreement.
10. **Indemnification:** In accordance with State and University fiscal rules, the University is not allowed to indemnify and/or hold harmless any Supplier whatsoever for whatever purpose.
11. **Choice of Venue, Choice of Law:** In accordance with State and University fiscal rules, the University is not allowed to agree to a venue or choice of law, except for Colorado.
12. **Arbitration:** In accordance with State and University fiscal rules, the University is not allowed to agree to arbitration to settle any disputes.
13. **EU GDPR:** Supplier agrees to comply with the provisions of the GDPR at the University's request, if practicable, including but not limited to: collecting the minimum amount of information necessary to perform its duties, limiting retention of personal data as specified therein, deleting information specific to individuals upon request – except as necessary to perform its job function, and responding to requests from the instructor for the status of individuals' data. Supplier shall assume responsibility for interacting with any and all individual inquiries to Supplier constituting a request under the GDPR.
14. **Accessibility:** Supplier will provide CSU with a copy of or a reference (e.g. URL) to their Voluntary Product Accessibility Template (VPAT) which describes how their product conforms to section 508 of the Rehabilitation Act standards for IT accessibility.
15. **Disputes:** Any dispute arising from the services covered hereunder may be elevated for resolution to the Office of General Counsel, CSU, whose decision shall be final.

Digital Tool Integration with Canvas

Upon formal review, the University may choose to integrate a Supplier's digital tool with its LMS, Canvas.

- **LTI:** The tool must be IMS LTI Compliant at version 1.0 or higher and working towards version 1.3 / LTI Advantage compliance.
- **Instructure Partner:** Though not required, CSU prefers to work with Suppliers who partner with Instructure to insure their product adheres to standards and interoperability with Canvas.
- **API Access:** If required, supplier will list what portion of the LMS is and which data are to be accessed via which specific API access points.
- **Grade Sync** – If the digital tool is authorized by CSU to push student assignment and grade information into Canvas, grade sync integration must meet CSU's IT Security Policy (<http://policylibrary.colostate.edu/policy.aspx?id=492>) and Acceptable Use Policy (<http://policylibrary.colostate.edu/policy.aspx?id=704>).

Developer Key – Where applicable, in rare instances, the University will authorize and issue a Canvas Developer Key to facilitate deeper product integration between the Supplier and Canvas. A developer key authorizes the tool to make API requests on behalf of a Canvas user. If required for tool integration, Supplier must complete and return the CSU Canvas Developer Request Form for a key request to be evaluated.

If approved, supplier agrees:

- To use the developer key only for the expressed purpose identified on the CSU Canvas Developer Key Request Form.
- Identify any specific API endpoints that are needed.
- To diligently and securely store the key and strictly limit access to the key’s configuration information only to those with an immediate “need to know.”

If use of the developer key results in unintended changes or damage to CSU’s Canvas, CSU reserves the right to do any or all of the following:

- Work with the CSU to analyze, isolate, and repair any damage.
- Remove the supplier’s developer key from CSU’s Canvas.
- Remove the supplier’s LTI from CSU’s Canvas.
- Seek damages in proportion to the damage, downtime, lack of availability, etc. for all those involved in the breach.

In witness whereof, the legal extent and sufficiency of which is hereby acknowledged

SUPPLIER: _____

FOR COLORADO STATE UNIVERSITY

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date of Signature: _____

Date of Signature: _____