

**Montana Data Privacy Agreement** For use with vendors providing student record management services and online applications utilized to deliver services to students.

I. PARTIES:

The parties to this Agreement are the Anderson School District (hereinafter "District") and Heartland Payment Systems, LLC (d/b/a Heartland School Solutions),(hereinafter "Contractor" or "Contractor").

II. PURPOSE:

As more specifically detailed in the underlying services agreement between the parties, District retained Contractor to provide the following services on behalf of the District: Provide technology services, including cloud-based services, for the digital storage, management, and retrieval of pupil records; provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the provisions of this contract. Contractor shall be free from control and direction over the performance of the services, both under this Agreement and in fact. Except as limited herein, Contractor shall have and exercise full professional discretion as to the details of performance.

III. TERM OF AGREEMENT, NO GUARANTEE OF WORK, NON-

EXCLUSIVITY: This Agreement shall begin on the date of signature and shall be co-terminus with the term of the underlying services agreement between the parties, unless terminated earlier by mutual agreement of the parties. Contractor shall have no expectation of renewal of the underlying services agreement or this Agreement and shall not be entitled to continue to contract with or perform services for the District beyond the expiration of the underlying services agreement or this Agreement.

#### IV. DEFINITIONS:

“Data” include all Personally Identifiable Information (“PII”) and other non-public information including protected information as defined by Montana law and the Montana Pupil Online Personal Information Protection Act.

Protected information may be created or provided by a pupil, or the pupil's parent or legal guardian, to an operator in the course of the pupil's, parent's, or legal guardian's use of the operator's K-12 online application or created or provided by an employee or agent of a school district to an operator in the course of the employee's or agent's use of the operator's K-12 online application; or gathered by an operator through the operator's K-12 online application. The term “protected information” shall be as defined in the Montana Pupil Online Personal Information Protection Act and means personally identifiable information that describes or identifies a pupil and that includes but is not limited to:

- (i) information in the pupil's educational record or e-mail messages;
- (ii) first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact;
- (iii) discipline records, test results, special education data, juvenile dependency records, grades, or evaluations;
- (iv) criminal, medical, or health records;
- (v) social security number;
- (vi) biometric information;
- (vii) disability;
- (viii) socioeconomic information;
- (ix) food purchases;
- (x) political affiliation;
- (xi) religious information; or

(xii) text messages, documents, pupil identifiers, search activity, photos, voice recordings, or geolocation information.

“Confidential Information” means information, not generally known, and proprietary to the Contractor or the School District or to a third party for whom the Contractor or the School District is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the Contractor or the School District. Confidential Information is as defined in the underlying services agreement.

#### V. WORK PRODUCT – OWNERSHIP:

As more specifically described in the underlying services agreement, all work product completed in whole or in part under the underlying services agreement or this Agreement, including but not limited to records, reports, documents, pleadings, exhibits and other materials related to the underlying services agreement or this Agreement and/or obtained or prepared by, or supplied to Contractor in connection with the performance of the services contracted for shall remain the exclusive property of Contractor. With the exception of any information that Contractor is required to retain for legal, regulatory, or audit purposes, upon termination of the underlying services agreement and this Agreement, and following District’s request, Contractor agrees to supply a mutually agreeable electronic copy of the District’s data in Contractor’s possession.

Nothing contained in the underlying services agreement or this Agreement or inferable from either document shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the School District; or 2) create any partnership, joint venture, or other association between the School District and Contractor. Any direction or instruction by the School District or any of its authorized representatives in respect of the work shall relate to the results the School District desires to obtain from the work, and shall in no way affect Contractor's or OPERATOR's independent status.

Contractor shall not use the image or likeness of the School District's buildings or the School District's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of the School District, without the School District's prior written consent. Contractor shall not have any authority to advertise or claim that the School District endorses Contractor's or OPERATOR's services, without the School District's prior written consent.

## VI. MONTANA PUPIL ONLINE PERSONAL INFORMATION PROTECTION ACT

In accordance with the Montana Pupil Online Personal Information Protection Act, pupil records continue to be the property of the school district. Contractor is prohibited from using any information in pupil records for any purpose other than those required or specifically permitted by the underlying services agreement and/or this Agreement in order to perform the services. Contractor is specifically prohibited from using personally identifiable information in pupil records to engage in targeted advertising.

With the exception of any information that Contractor is required to retain for legal, regulatory, or audit purposes, upon termination of the underlying services agreement and this Agreement, and following District's request, Contractor will return the District's data in a mutually agreeable electronic format. This requirement does not apply to pupil-generated content if a pupil chooses to establish or maintain an account with the third party for the purpose of storing that content.

Parents, guardians and eligible pupils have the right to inspect the personal information held by the Contractor. Parents, guardians, or pupils should

submit to the school principal written request identifying the information they wish to inspect. The principal will make arrangements for access and notify the requesting party of the time and place the information may be inspected. Contractor will cooperate with a reasonable request of the School District to accommodate any inspection request. The rights contained in this section are denied to any person against whom an order of protection has been entered concerning a student and District, if such is applicable with any inspection request, shall notify Contractor so that the request is not completed.

Parents/guardians or eligible pupils may ask the School District to amend a personal information held by the Contractor they believe is inaccurate, misleading, irrelevant, or improper. They should write the school principal clearly identifying the part of the record they want changed and specify the reason. Contractor will cooperate with a reasonable request of the School District to accommodate any amendment request.

If the District decides not to amend the record as requested by the parent(s)/guardian(s) or eligible student, the District will notify the parent(s)/guardian(s) or eligible pupil of the decision and advise him or her of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent(s)/guardian(s) or eligible student when notified of the right to a hearing.

Parents/guardians or eligible pupils may ask the School District to transfer possession of personal information held by the Contractor to the pupil. Parents, guardians, or pupils should submit to the school principal written request identifying the information they wish to transfer. Contractor will cooperate with a reasonable request of the School District to accommodate any transfer request including providing options by which a pupil may transfer pupil-generated content to a pupil's personal account.

Contractor's employees receive training pertaining security and confidentiality of personally identifying information and pupil records. By signing this agreement, Contractor certifies that designated employees have completed training in personally identifying information and pupil information security and confidentiality. Compliance with this requirement does not, in itself, absolve the third party of liability in the event of an unauthorized disclosure of pupil records.

Contractor will promptly provide written notification to the School District of any confirmed, unauthorized disclosure of personally identifying information or pupil information within Contractor's possession. District's customer notification to notify the parent, legal guardian, or pupil affected by the confirmed unauthorized disclosure of personally identifying information or pupil information, will be delivered by the District in conformance with the PCI DSS requirements, and all applicable state and federal laws, and in good faith cooperation with Contractor.

## VII. CONFIDENTIALITY SAFEGUARDS:

Contractor will collect and use the School District's Data only for the purpose of fulfilling its duties and providing services under the underlying services agreement, this Agreement, and for improving services under the underlying services agreement and this Agreement.

If Contractor will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the Contractor acknowledges that for the purpose of this Agreement it will be designated as a 'school official' with 'legitimate educational interests' and will use the data only for the purpose of fulfilling its duties under this Agreement, and for purposes of performing the services as provided in the underlying services agreement. Contractor agrees to indemnify and hold harmless the Board of Trustees of the School District for any damages or costs, including reasonable attorney's fees, which the Board of Trustees of the School Districts sustain as a result of any third party claims for damages that directly result from any gross negligence or willful misconduct by Contractor, its agents and employees concerning its FERPA obligations under this section.

In performing services under the underlying services agreement and this Agreement, Contractor and the School District may be exposed to and will be required to use certain "Confidential Information", as defined below. Contractor and the School District along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes necessary to perform the services described in the underlying services agreement and other than those outlined in this Agreement.

Any Confidential Information acquired or received by either party (the "Recipient") in the course of the underlying services agreement and this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to Contractor, except for the purpose of performing its obligations under the underlying services agreement and this Agreement. Confidential Information received under the underlying services agreement or this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of the services as described in the underlying services agreement, and in this Agreement, and agree to make no copies except as necessary for performance of the services in the underlying services agreement or this Agreement. With the exception of any Confidential Information that Contractor is required to retain for legal, regulatory, or audit purposes, upon termination of the underlying services agreement and this Agreement, and following District's request, Contractor will return the District's Confidential Information in a mutually agreeable electronic format.

Contractor may also retain copies of Confidential Information on back-up media in which such Confidential Information is co-resident with other confidential information or personally identifying information. Contractor shall remain under its contractual obligation of confidentiality and security to the School District for so long as that Confidential Information remains in Contractor's possession and such obligations shall survive termination of the underlying services agreement and this Agreement. This Section shall survive the termination of this Agreement and the underlying services agreement.

Contractor may use de-identified Data for product development, research, or other internal purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify de-identified Data.

Contractor is prohibited from mining the School District's Data for any purposes other than those agreed to by the parties and for purposes of performing the underlying services. Data mining or scanning of user content

for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement, directed towards children, parents, guardians will be strictly prohibited unless allowed with express written consent of the District. Contractor shall not use information to amass a profile about a pupil, except in furtherance of K-12 school purposes. Operators shall not sell a pupil's information to unauthorized third parties.

Contractor will not materially change how personally identifying information of the School District is collected, used, or shared under the terms of the underlying services agreement or this Agreement without notice to the School District. The underlying services agreement and this Agreement is the entire agreement between the School District and the Contractor. All other agreements or understandings concerning the subject matter contained within either the underlying services agreement or this Agreement, whether electronic, click-through, verbal or in writing, with District shall be null and void.

Contractor will not share School District data, with or disclose it to any third party, without prior specific and informed written consent of the District, (i) except to perform the services in the underlying agreement, and (ii) except to affiliated subcontractors, agents, or third-party service providers of the Contractor, and (iii) except as otherwise required by applicable law. Contractor will not post any District Confidential Information or specific student personally identifying information to any searchable or publicly viewable website. Except as required to perform the services, Contractor shall not disclose protected information unless the disclosure is made in accordance with School District policy, state or federal law, or with parent consent. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the protected information and safeguard that information from unauthorized access, destruction, use, modification, or disclosure in accordance with the terms of the underlying services agreement and this Agreement.

School District Data will not be stored outside of the United States without prior, specific and informed written consent from the School District.

All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the District or its End Users remains the property of the District and/or its End User. Contractor shall maintain ownership of all of its Confidential Information, intellectual property, software and data



created in the course of performing the services and as more particularly described in the underlying services agreement. All student-produced work remains the property of the school system or that eligible student. The Contractor has a limited, nonexclusive license to the data described herein solely for the purpose of performing its obligations as outlined in the underlying services agreement and this Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to District's Data, content, or District's intellectual property, except as expressly stated in the underlying services agreement and this Agreement, including any right to sell or trade Data.

Except as otherwise expressly prohibited by applicable legal, regulatory or governing authority, the Contractor will promptly notify the School District of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the Contractor seeking School District Data. If the School District receives a similar request, the Contractor will promptly supply the School District with copies of records or information that is in its possession that is reasonably required by the School District to respond.

Contractor will store and process School District Data in a professional and workmanlike manner and in accordance with industry standards. This includes appropriate administrative, physical, and technical safeguards to: 1) ensure the security and confidentiality of PII and Confidential Information; 2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information and PII; 3) protect against unauthorized access to or use of Confidential Information and PII that could result in substantial harm or inconvenience to any District customer or to any School District employee and/or District student; and 4) dispose of PII and Confidential Information in a secure manner.

## VIII. DATA BREACHES:

Contractor shall promptly the School District in writing after Contractor has confirmed knowledge of a breach which affects the School District's Data (an "Incident") unless it is determined by law enforcement, regulatory or governing authorities that such notification would impede or delay their investigation. Contractor shall have actual knowledge of an Incident if Contractor actually knows there has been an Incident and that knowledge has been internally confirmed by Contractor. The notification required by this section shall be made promptly after the law enforcement agency, regulatory or governing authorities determine that notification will not impede or compromise the investigation. Contractor shall cooperate with applicable legal, regulatory and governing authorities in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. Contractor shall promptly take appropriate action to mitigate such risk or potential problem. In the event of an Incident, Contractor shall restore the Confidential Information, to as close its original state as practical, including, without limitation reasonable measures to prevent any recurrence of the problem as soon as is commercially and reasonably practicable.

Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner and in accordance with industry standards. Contractor will also have a written incident response plan, to include prompt notification of the District in the event of a Incident, as well as a plan for responding to a breach of PII in its possession.

## IX. LEGAL COMPLIANCE AND NON-DISCRIMINATION:

All services provided by Contractor under the underlying services agreement and this Agreement will be completed in accordance with state and federal law. The parties specifically agree to reasonably collaborate in the enforcement and compliance with the Family Educational Rights and Privacy Act.

All employees hired by Contractor to perform services under the underlying services agreement and this Agreement shall be hired by Contractor on the basis of merit and qualifications. Such qualifications are those abilities of an applicant for employment genuinely related to competent and workmanlike performance that is in accordance with industry standards pertaining to Contractor's obligations under the underlying services agreement and this Agreement. Contractor's hiring practices related to employees performing services under the underlying services agreement and this Agreement, as well as Contractor's practices related to promotion, retention, compensation, and other terms, conditions or privileges of employment, shall be nondiscriminatory, and such hiring, promotion, retention, and general employment practices shall not be based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

## X. EMPLOYEE REQUIREMENTS:

Contractor performs background checks on all employees. Contractor is a remote services provider, and therefore, should not have access to District's students, supervised or otherwise. All employees of Contractor performing labor under this Agreement that have unsupervised access to students, including Contractor in the event that Contractor personally performs labor under this Agreement, shall be subjected to a name-based and fingerprint criminal background investigation conducted by an appropriate law enforcement agency, and Contractor shall provide to the District the results of such investigation for each employee (including Contractor) prior to any such employee performing any services under this Agreement. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any such employee to perform services under this Agreement on the basis of information set forth in the results of a criminal background investigation.

## XI. EMPLOYEE MISCONDUCT:

All employees of Contractor (including Contractor) shall perform services under the underlying services agreement and this Agreement in a professional and workmanlike manner, and shall, at all times while present on District property, behave in a manner appropriate to a school setting. Contractor shall discipline or terminate the employment of any of Contractor's employees performing services under this Agreement for engaging in any conduct inappropriate to a school setting, including, but not limited to, being under the influence or in possession of alcohol or any controlled substance while on District property; use of foul language; bullying or harassment of District students or staff; or such other conduct deemed inappropriate by the District. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any employee to perform services under this Agreement based upon one or more instances of employee misconduct as described herein.

## XII. TERMINATION PRIOR TO EXPIRATION OF CONTRACT TERM:

The underlying services agreement and this Agreement may be terminated at any time prior to expiration of the contract term by mutual agreement of the parties in writing. The underlying services agreement and this Agreement may be terminated unilaterally by either party for material cause or material noncompliance with the terms, conditions, and requirements set forth herein, provided, however, that the noncompliant party shall first be entitled to a written demand for compliance and a reasonable opportunity to cure any noncompliance therein identified. Failure to cure any identified noncompliance within 20 days of receipt of written demand shall constitute a material breach of the underlying services agreement and this Agreement, and shall entitle the non-breaching party to immediately terminate the underlying services agreement and this Agreement. All parties subject to a contract voided under this subdivision shall return all pupil records in their possession to the school district, as more particularly provided herein or in the underlying services agreement.

### XIII. ENTIRE AGREEMENT, MODIFICATION, AND WAIVER:

The underlying services agreement and this Agreement embodies the complete agreement of the parties regarding the subject matter hereto, superseding all oral and written previous and contemporary agreements between the parties. No alteration or modification of either the underlying services agreement or this Agreement shall be valid unless evidenced by a writing signed by the parties to the underlying services agreement and this Agreement. A waiver of any term or condition of either the underlying services agreement or this Agreement or breach of either the underlying services agreement or this Agreement shall not be deemed a waiver of any other term or condition of either agreement or any part hereof or of any later breach of either agreement. Any waiver must be in writing each time a waiver occurs.

### XIV. SAVINGS CLAUSE:

In the event any one or more of the provisions contained in the underlying services agreement and this Agreement shall, for any reason, be held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and the underlying services agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### XV. NOTICES:

All legal notices pertaining to breach of contract, termination, or an Incident shall be in writing and delivered by both email and personal delivery or regular U.S. mail, return receipt requested, to the last known address of the party being provided such notice. Otherwise, notice shall be as provided in the underlying services agreement.

### XVI. ENFORCEMENT AND INTERPRETATION:

This Agreement shall be enforced and interpreted pursuant to the laws of the State of Montana. Jurisdiction over any claim or action for interpretation or enforcement of, or otherwise arising from the terms and conditions of this Agreement, shall be with the appropriate Montana District Court.

This agreement is subject to the laws of Montana. Contractor is expressly notified that the agreement is subject to the Montana Pupil Online Personal

Information Protection Act and violation of the act may be considered a crime a conviction of such may result in a fine not less than \$200 or more than \$500.

Any civil claim arising out of or related to underlying services agreement or this Agreement, may be subject to mediation at the request of either party if both parties agree. School District and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to this Section. Any claim not resolved in mediation shall be subject to litigation in accordance with the laws of the State of Montana. Any litigation shall be conducted in Montana district court. Mandatory and exclusive venue for any disputes shall be in the county in which the School District is located.

Notwithstanding anything to the contrary in the underlying services agreement and this Agreement or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder. The parties may mutually agree in writing to submit a dispute to arbitration but the default dispute resolution shall be litigation. Contractor stipulates that the School District is a political subdivision of the State of Montana, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Montana. By entering into the underlying services agreement and this Agreement, the School District does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law. In any adjudication under the underlying services agreement and this Agreement between the parties hereto, reasonable and necessary attorneys' fees may be awarded to the prevailing party. The parties acknowledge that, as a public entity in the State of Montana, the School District and entities contracting with the School District must comply with the open records laws of the State.

I have read this Agreement, understand its terms, and agree to be bound thereby. DATED this 18 day of June, 2020.

Jeremy Loch Year Date: 6/18/2020

\_\_\_\_\_, Contractor

Title/Position: SVP & General Manager, School Solutions

Company Name: Heartland Payment Systems, LLC dba Heartland School Solutions

Company Address: 765 Jefferson Road, Suite 400

Rochester, NY 14623

Company Phone Number: 602-459-9880

Company Website: www.heartlandpaymentsystem.com

Wa Bah Date: 06/23/2020

\_\_\_\_\_, Board Chair Anderson School District

ATTEST:

[Signature] Date: 6/23/2020

\_\_\_\_\_, District Clerk Anderson School District

**OPTIONAL EXHIBIT "A" GENERAL  
OFFER OF PRIVACY TERMS**

**1. Offer of Terms** Provider offers the same privacy protections found in this DPA between it and the LEA to any other school district ("Subscribing LEA") who accepts this General Offer through its signature below and also signs a services agreement direct with Provider. his General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA, as Provider will require a separate services agreement direct with the LEA. The Provider and the Subscribing LEA may also agree to change the data provide by LEA to the Provider to suit the unique needs of the Subscribing LEA, but such an agreement must be in an executed written document between the LEA and Provider. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify the LEA in the event of any withdrawal so that this information may be transmitted to the Subscribing LEAs.

Provider's Name: Heartland Payments Systems, LLC dba Heartland School Solutions

BY: *Jeremy Loch* Date: 6/18/2020

Printed Name:  
Jeremy Loch

Title/Position  
SVP & General Manager, School Solutions



## 2. Subscribing LEA (Local Education Agency)

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA's individual information is contained on the next page.

The Subscribing LEA and the Provider \_\_\_\_\_ shall therefore be bound by the same terms of this DPA.

BY: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

SCHOOL DISTRICT NAME: \_\_\_\_\_

DESIGNATED REPRESENTATIVE OF LEA:

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email \_\_\_\_\_

COUNTY OF LEA:

\_\_\_\_\_