

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 (the "Agreement") are the Monforton School District (hereinafter "District" or "School District") and Curriculum Associates, LLC (hereinafter "Contractor").

II. PURPOSE:

District retained Contractor to provide the services per Price Quote ID 177322.13 attached hereto as Exhibit A (the "Services") on behalf of the District.

III. TERM OF AGREEMENT:

This Agreement shall begin on the date of the last signature and shall expire on June 30, 2024, unless terminated earlier by mutual agreement of the parties.

IV. DEFINITIONS:

"Data" includes all personally identifiable information ("PII") and other non-public information including protected information as defined by Montana law. Data includes, but is not limited to, student data, metadata, and user content. For the avoidance of doubt, Data does not include de-identified data.

Protected information (as defined below) may be created by a pupil, in the course of the pupil's use of the Contractor's online application or provided by School District to Contractor; or gathered by Contractor through Contractor's online application. The term "Protected Information" 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 includes all information which Contractor or the School District acquires or becomes acquainted with during the period of this Agreement, whether developed by Contractor, the School District or others, which Contractor or the School District has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual student and information within the definition of “Education Record.” The parties agree that the following will be treated as “Confidential Information”: (i) all database information (“Data”) provided by or on behalf of the School District to Contractor; (ii) all information provided by Contractor to the School District pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as “Confidential,” “Proprietary” or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential.

V. 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 and under the control 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 this Agreement. Contractor is specifically prohibited from using personally identifiable information in pupil records to engage in targeted advertising.

By executing this Agreement, Contractor certifies that pupil records will be returned or destroyed upon completion of the Services and written request from the School District, except for backups, which are automatically destroyed over time in accordance with Contractor’s data retention and destruction policies. Contractor will provide written certification to the School District upon the return or destruction that pupil records are no longer held, possessed or otherwise available to Contractor or its employees, agents, or subcontractors, except for backups as noted above.

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 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.

Parents/guardians or eligible pupils may ask the School District to amend 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 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 the School District to accommodate any transfer request including providing options by which a pupil may transfer pupil-generated content, if applicable, to a pupil's personal account.

Contractor designates Dow Hardy, Chief Information and Security Officer, as the primary employees responsible to ensure the security and confidentiality of pupil records. By signing this Agreement, Contractor certifies that designated employees have completed training in pupil information security and confidentiality. Documentation of this training including its scope, duration, and date of completion will be provided to the School District upon request. Compliance with this requirement does not, in itself, absolve Contractor of liability in the event of an unauthorized disclosure of pupil records.

Contractor will provide written notification as soon as commercially practicable to the School District of any unauthorized disclosure of Pupil Information. Contract will coordinate with the School District so that the School District can notify the parent, legal guardian, or pupil affected by an unauthorized disclosure of the pupil's records. Contractor will reimburse the School District for the costs associated with making such notifications.

VI. CONFIDENTIALITY SAFEGUARDS:

Contractor will collect and use the School District's Data only for the purpose of fulfilling its duties and providing Services and for improving Services.

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 in performing the Services. Contractor agrees to indemnify and hold harmless the Board of Trustees of the School District for any third party damages or costs, including reasonable attorney's fees, which arise out of any gross negligence or willful misconduct by Contractor, its agents and employees concerning its FERPA obligations under this section.

In performing the Services, Contractor and the School District may be exposed to and will be required to use certain Confidential Information. 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 as necessary for the performance of the Services.

Any Confidential Information acquired or received by either party (the "Recipient") in the performance of the Services will not be disclosed or transferred to any person or entity other than to employees of a party and, as to Contractor, for the purpose of performing the Services. Confidential Information received in performance of the Services 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 and to make no copies except as necessary for performance of the Services. Any such Confidential Information and copies thereof made by a party, or any representative of a party, shall be completely and promptly destroyed at the conclusion of the performance of the Services and written request from the provider of the Confidential Information.

Upon termination or completion of the Services, upon written request of the School District, Contractor will delete the School District's Confidential Information as housed in the Contractor production database(s), provided that Contractor may maintain archival copies for audit purposes and dispute resolution purposes and Contractor may retain copies of Confidential Information on back-up media. Contractor shall remain under its contractual obligation of confidentiality and security to the School District and such obligations shall survive termination of the Services. This Section shall survive the termination of this Agreement.

Contractor may use de-identified Data for product development, research, and product functionality. 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. 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, or District Employees 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 performance of the Services. Contractor shall not sell a pupil's information to unauthorized third parties.

Contractor will not materially change how School District Data is collected, used, or shared under the terms of this Agreement in any way without advance notice to the School District via a conspicuous posting on Contractor's website.

Contractor will not share School District Data, with or disclose it to any third party, except to affiliated subcontractors, agents, or third-party service providers of the Contractor, without prior specific and informed written consent of the School District, except as required by law. Contractor will not post School District or specific student Data to any searchable or publicly viewable website. Contractor shall not disclose Protected Information unless the disclosure is made in accordance with state or federal law. 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 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.

Except as otherwise expressly prohibited by law, the Contractor will 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 required for the School District to respond.

Contractor will store and process School District Data in accordance with industry best practices. 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; 3) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to School District and/or students; and 4) dispose of PII and Confidential Information in a secure manner.

VII. DATA BREACHES:

Contractor shall notify the School District in writing as soon as commercially practicable after Contractor has actual knowledge of a breach which affects the School District's Data (an "Incident"), unless it is determined by law enforcement 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. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. Contractor shall cooperate with law enforcement 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 at Contractor's expense. In the event of an Incident, Contractor shall, at its sole cost and expense, restore the Confidential Information to as close its original state as practical, including, without limitation, any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.

Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan to include prompt notification in the event of a security or privacy incident, as well as best practices for responding to a breach of PII.

VIII. LEGAL COMPLIANCE:

All Services provided by Contractor will be completed in accordance with state and federal law. The parties specifically agree to collaborate in the enforcement and compliance with the Family Educational Rights and Privacy Act.

IX. TERMINATION PRIOR TO EXPIRATION OF SERVICES:

This Agreement may be terminated at any time prior to expiration of the Services term by mutual agreement of the parties in writing. This Agreement may be terminated unilaterally by either party for cause or 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 this Agreement, and shall entitle the non-breaching party to immediately terminate this Agreement. Contractor shall return all pupil records in their possession to the School District upon written request of the School District upon termination of this Agreement under this section.

X. SAVINGS CLAUSE:

In the event any one or more of the provisions contained in 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 this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XI. NOTICES:

All notices, consents, requests, instructions, approvals or other communications provided for herein 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.

XII. 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 this 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 this Agreement may be subject to mediation at the request of either party. 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 this Agreement, 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 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 this Agreement, 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.

Signature Page to Follow.

I have read this Agreement, understand its terms, and agree to be bound thereby. DATED this 20th day of December, 2019 .

 ^{Year} Date: 12/20/19

Robert Waldron, Contractor

Title/Position: Chief Executive Officer Company Name: Curriculum Associates, LLC

Company Address: 153 Rangeway Road

North Billerica, MA 01862

Company Phone Number: 800-225-0248

Company Website: <https://www.curriculumassociates.com>

 Date: 2/5/20

, Board Chair Monforton School District School District

ATTEST:

 Date: 2/5/20

, District Clerk Monforton School District School District