

WISCONSIN STUDENT DATA PRIVACY AGREEMENT

School District/Local Education Agency:

Nicolet Union High School District

AND

Provider:

Apptegy, Inc.

Date:

May 18, 2022

This Wisconsin Student Data Privacy Agreement (“DPA”) is entered into by and between the Nicolet Union High School District (hereinafter referred to as “LEA”) and Aptegy, Inc. (hereinafter referred to as “Provider”) on March 31, 2022. The Parties agree to the terms as stated herein.

## **RECITALS**

**WHEREAS**, the Provider has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) pursuant to a contract dated [Insert Date] (“Service Agreement”); and

**WHEREAS**, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

**WHEREAS**, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to Wisconsin state student privacy laws, including pupil records law under Wis. Stat. § 118.125 and notice requirements for the unauthorized acquisition of personal information under Wis. Stat. § 134.98; and

**WHEREAS**, for the purposes of this DPA, Provider is a school district official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

**WHEREAS**, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

**WHEREAS**, the Provider may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other LEAs in Wisconsin the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

## **ARTICLE I: PURPOSE AND SCOPE**

**1. Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and applicable Wisconsin law, all as may be amended from time to time. In performing these services, the Provider shall be considered a School District Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

**2. Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below or as may be further outlined in Exhibit “A” hereto:

Website and mobile app development for the LEA and access to Provider's software-as-a-service platform for distributing communication across outlets including websites, mobile apps, and social media.

**3. Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit “B”. The data elements indicated in Exhibit “B”'s Schedule of Data represent the data elements the LEA intends to initially send to Provider. The LEA may, from time to time, supplement its selection with additional data elements in order for Provider to perform the Services. To the extent a parent, legal guardian, or eligible student wishes to review which Exhibit “B” data elements are sent to Provider, such individual should contact the LEA as provided for in this DPA.

**4. DPA Definitions.** The definition of terms used in this DPA is found in Exhibit “C”. In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

## **ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS**

**1. Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School District Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

**2. Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a timely manner (and no later than 30 days from the date of the request) to the LEA's request for Student Data in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

**3. Separate Account.** If pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit “A”, Provider shall, at the request of the LEA, transfer or provide a mechanism for the LEA to transfer said pupil generated content to a separate student account upon

termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.

**4. Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA as soon as possible in advance of a compelled disclosure to a Third Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.

**5. Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA, as well as state and federal law.

**6. Posted Terms of Use and Privacy Policy.** Apptegy's Terms of Use, available at <https://www.apptegy.com/terms-and-conditions/>, and Privacy Policy, available at <https://www.apptegy.com/privacy-policy/>, as may be amended from time to time, further demonstrate how Provider will comply with its obligations under this DPA and are incorporated into this DPA in their entirety.

### ARTICLE III: DUTIES OF LEA

**1. Privacy Compliance.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, and applicable Wisconsin law.

**2. Annual Notification of Rights.** The LEA shall include a specification of criteria under FERPA for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.

**3. Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

**4. Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF PROVIDER

**1. Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and applicable Wisconsin law.

**Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement, as directed or permitted by the LEA or this DPA, and/or as otherwise authorized under the statutes referred to in subsection (1), above.

**2. Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

**3. No Disclosure.** Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement. Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of de-identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to Subprocessors performing services on behalf of Provider pursuant to this DPA.

**4. Disposition of Data.** Upon receipt of written request from the LEA and in accordance with the applicable terms in subsection a or b, below, Provider shall dispose or delete all or any portion of Student Data obtained under the Service Agreement. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA will employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D".

**a. Partial Disposal During Term of Service Agreement.** Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA's request to transfer data to a separate account, pursuant to Article II, section 3, above.

**b. Complete Disposal Upon Termination of Service Agreement.** Upon Termination of the Service Agreement, LEA may employ a "Request for Return or Deletion of Student Data" attached hereto as Exhibit "D" to Provider, and upon receipt and within a commercially reasonable time, Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall to the extent applicable notify LEA in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above.

**5. Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning purposes (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

## ARTICLE V: DATA PROVISIONS

**1. Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:

- a. Passwords and Employee Access.** Provider shall to the extent within its own control secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data.
- b. Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to provide the Services under and/or perform other functions identified in the Service Agreement, perform under this DPA including fulfilling the purpose of data requests by LEA, and/or as otherwise directed or permitted by the LEA or this DPA.
- c. Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to Student Data. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- d. Security Technology.** When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- e. Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall upon request provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement, or the name and contact information for Provider's employee with the most analogous position/title.
- f. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

**2. Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident, and not exceeding seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

- a. The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
- b. The security breach notification described above in section 2(a) shall include, at a minimum and to the extent known by Provider, the following information:
  - i. The name and contact information of the reporting LEA subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed because of a law enforcement investigation, if that information is possible to determine and can lawfully be disclosed at the time the notice is provided.
  - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. Provider agrees to adhere to all requirements in applicable state and federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- d. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.
- e. LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
- f. In the event of a breach originating from LEA’s use of the Service, Provider shall

cooperate with LEA to the extent necessary to expeditiously secure Student Data.

## ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

## ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data.

2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.

3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall delete all of LEA's data pursuant to Article V, section 1(b), Article IV, section 5, and Article II, section 3, above.

4. **Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

**a. Designated Representatives**

The designated representative for the LEA for this Agreement is:

Name: Nicole Nelson

Title: Director of Technology

Contact Information:

6701 N. Jean Nicolet Rd  
Glendale WI 53227  
414-351-7580

The designated representative for the Provider for this Agreement is:



Name: Jamie Fugitt

Title: Chief Legal Officer

Contact Information:

2201 Brookwood Dr., STE 115, Little Rock AR 72202

jamie.fugitt@apptegy.com

501-613-0370

- b. **Notification of Acceptance of General Offer of Privacy Terms.** Upon execution of Exhibit "E", General Offer of Privacy Terms, Subscribing LEA shall provide notice of such acceptance and send the signed Exhibit "E" to Provider by e-mail transmission, sent to the following e-mail address: privacy@apptegy.com

**6. Entire Agreement.** This DPA 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 relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

**7. Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall 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 intent of the parties, it shall, 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.

**8. Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**9. Authority.** Each Party represents that it is authorized to bind to the terms of this Agreement, including confidentiality and disposition or deletion of Student Data and any portion thereof

contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof.


**10. Waiver.** No delay or omission of the either Party to exercise any right hereunder shall be construed as a waiver of any such right and both Parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

**11. Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

*[Signature Page Follows]*


**IN WITNESS WHEREOF**, the parties have executed this Wisconsin Student Data Privacy Agreement as of the last day noted below.

Provider:

BY:  Date: May 18, 2022

Printed Name: Jamie Fugitt Title/Position: Chief Legal Officer

Local Education Agency:

BY:  Date: 5/18/2022

Printed Name: Nicole L. Nelson Title/Position: Director of Technology

**Note: Electronic signature not permitted.**

**EXHIBIT "A"**

**DESCRIPTION OF SERVICES**

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

**EXHIBIT "B"**

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.			Gender	X
	Other application technology meta data-Please specify:			Ethnicity or race	
Application Use Statistics	Meta data on user interaction with application			Language information (native, preferred or primary language spoken by student)	X
				Other demographic information-Please specify:	
Assessment	Standardized test scores		Enrollment	Student school enrollment	X
	Observation data			Student grade level	X
	Other assessment data-Please specify:			Homeroom	X
Attendance	Student school (daily) attendance data	X		Guidance counselor	
	Student class attendance data	X		Specific curriculum programs	X
Communications	Online communications that are captured (emails, blog entries)			Year of graduation	X
			Other enrollment information-Please specify:		
Conduct	Conduct or behavioral data		Parent/Guardian Contact Information	Address	
				Email	X
Demographics	Date of Birth			Phone	X
	Place of Birth		Parent/Guardian ID	Parent ID number (created to link parents to students)	X

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Parent/Guardian Name	First and/or Last	X		assigned student ID number	
				Student app username	X
Schedule	Student scheduled courses	X		Student app passwords	
	Teacher names	X			
Special Indicator	English language learner information		Student Name	First and/or Last	X
	Low income status				
	Medical alerts /health data		Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
	Student disability information				
	Specialized education services (IEP or 504)		Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	X
	Living situations (homeless/foster care)				
	Other indicator information- Please specify:		Student Survey Responses	Student responses to surveys or questionnaires	
Student Contact Information	Address	X			
	Email	X		Student generated content; writing, pictures etc.	
	Phone	X	Student work	Other student work data - Please specify:	
Student Identifiers	Local (School district) ID number	X			
	State ID number				
	Vendor/App		Transcript	Student course	

Category of Data	Elements	Check if used by your system
	grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	X
	Student pick up and/or drop off location	X
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time \_\_\_\_\_.  
 \*Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed

## EXHIBIT "C"

### DEFINITIONS

**De-Identifiable Information (DII):** De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

**Educational Records:** Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

**Operator:** The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in applicable state statutes.

**Personally Identifiable Information (PII):** The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**Provider:** For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

**Pupil Generated Content:** The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

**Pupil Records:** Means all of the following: (1) Any information that directly relates to a pupil that is maintained by LEA;(2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee; and any information that meets the definition of a "pupil record" under Wis. Stat. § 118.125(1)(d).



For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

**Service Agreement:** Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

**School Official or School District Official:** For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B) and Wis. Stat. § 118.125(2)(d), a School District Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) and Wis. Stat. § 118.125(2) governing the use and re-disclosure of personally identifiable information from student records.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Wisconsin and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

**SDPC (The Student Data Privacy Consortium):** Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

**Subscribing LEA:** An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

**Subprocessor:** For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

**Targeted Advertising:** Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response

or request for information or feedback.

**Third Party:** The term “Third Party” means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term “Third Party” when used to indicate the provider of digital educational software or services is replaced by the term “Provider.”

**EXHIBIT "D"**

DIRECTIVE FOR DISPOSITION OF DATA

[Name or District or LEA] directs [Name of Provider] to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

<b><u>Extent of Disposition</u></b> Disposition shall be:	<input type="checkbox"/> Partial. The categories of data to be disposed of are as follows:  <input type="checkbox"/> Complete. Disposition extends to all categories of data.
<b><u>Nature of Disposition</u></b> Disposition shall be by:	<input type="checkbox"/> Destruction or deletion of data.  <input type="checkbox"/> Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
<b><u>Timing of Disposition</u></b> Data shall be disposed of by the following date:	<input type="checkbox"/> As soon as commercially practicable <input type="checkbox"/> By (Insert Date) _____ [Insert or attach special instructions]

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Verification of Disposition of Data  
by Authorized Representative of Provider

\_\_\_\_\_  
Date

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS  
[INSERT ORIGINATION LEA NAME]

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and Nicolet Union High School District, and which is dated March 31, 2022, to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This 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. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. 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:

BY:         *Jamie Fugitt*        

Date: May 18, 2022

Printed Name: Jamie Fugitt

Title/Position: Chief Legal Officer

**2. Subscribing LEA**

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 and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

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

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

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

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

**TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW**

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

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

**EXHIBIT "F"**

DATA SECURITY REQUIREMENTS

[INSERT ADDITIONAL DATA SECURITY REQUIREMENTS HERE]

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<b>FILE NAME</b>	WSDPA- Nicolet Un...ol)clean copy.pdf
<b>DOCUMENT ID</b>	6fdbf7f84cc8a633ed79bf03f11b3bf91fb495bd
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	Ⓢ Signed

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Document History



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