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 H a r d i n   School District

(hereinafter "District") and University of Oregon hereinafter "Contractor").

II. PURPOSE:

This DPA supplements the "Agreement to License the Career Information System Master Services Agreement" ("Service Agreement") between the Contractor and the Montana Career Resource Network, a unit of the research and Analysis Bureau, Workforce Services Division, Montana Department of Labor and Industry ("State") for Contractor provide Services to school districts through the State. Where there is a conflict between this Agreement and the Service Agreement, the Service Agreement will govern.

District may have access to Contractor's Career Information System (CIS) ("Services") through the State's Service Agreement.. 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 in effect so long as District is receiving Services from Contractor through the State's Service Agreement.

This Agreement shall not be construed as any guarantee of work or assignments to Contractor. Contractor shall be contacted on an "as-needed" basis by District, with no obligation by District to use Contractor for any specified number of projects. Contractor shall have no expectation of renewal of this Agreement and shall not be entitled to continue to contract with or perform Services for the District beyond the expiration of this Agreement. This Agreement is non-exclusive, meaning that both Contractor and District may contract with any other party for the procurement or provision of investigative Services without interference.

IV. DEFINITIONS:

"Data" include all Personally Identifiable Information ("PII") and other non-public information including protected information as defined by Montana law. Data include, but are not limited to, student data, metadata, and user content.

Protected information may be created or provided by a pupil, , to Contractor in the course of the pupil's, use of the Contractor's K-12 online application or created or provided by an employee or agent of a school district to Contractor in the course of the employee's or agent's use of the Contractors K-12 online application; or gathered by Contractor through the Contractor's K-12 online application. The term "protected information" includes but is not limited to:

(i) information in the pupil's educational record;

(ii) first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact;

(iii) test results, special education data, grades, or evaluations;

(iv) socioeconomic information; or

(v) pupil identifiers.

V. WORK PRODUCT – OWNERSHIP:

Nothing contained in this Agreement or inferable from this Agreement 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 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 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 or Service Agreement. Contactor 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 only be retained or available upon completion of the terms of the Agreement or so long as the Service Agreement is active with the State. School District may request confirmation that PII received by Contractor from School District was deleted when it is no longer needed for the purpose for which it was obtained or authorized as stated in the Service Agreement.

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. 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 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.

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.

Upon request, Contractor will provide the name and contact information of Contractor's current employees responsible to ensure the security and confidentiality of pupil records. By signing this agreement, Contractor certifies that employees with access to pupil information have completed training in 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 as soon as reasonably possible provide written notification to the School District of any unauthorized disclosure of pupil information.

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 this Agreement the purposes as stated in the Service Agreement, and for improving Services under 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 or as stated in the Service Agreement.

Contractor may use de-identified Data for product development, research, or other internal purposes or as authorized by the Service Agreement. 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 K-12 school purposes. Operators shall not sell a pupil's information to unauthorized third parties.

Contractor will not change how School District Data are used, or shared under the terms of this Agreement in any way without advance notice to the School District. This Agreement, and your agreement to avail yourselves of the Services through the State's Service Agreement are the sole agreements between the School District (including all District end users) and the Contractor. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.

Contractor will not share PII 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 or parent as the case may require, except as required or allowed by law or as authorized by the Service Agreement. Contractor will not post School District or specific student data to any searchable or publicly viewable website. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the PII 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.

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 Agreement or the Service Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement or Service Agreement, including any right to sell or trade Data.

Except as otherwise expressly prohibited by law, the Contractor will as soon as reasonably possible 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 permitted by law. If the School District receives a similar request, the Contractor will promptly supply the School District with copies of records or information required by the School District to respond.

Contractor will store and process School District Data in accordance with best practices for a university providing similar services. This includes appropriate administrative, physical, and technical safeguards to: 1) ensure the security and confidentiality of PII; 2) protect against any anticipated threats or hazards to the security or integrity of PII; 3) protect against unauthorized access to or use of PII that could result in substantial harm to any School District employee and/or student; and 4) dispose of PII in a secure manner.

VIII. DATA BREACHES:

Contractor shall notify the School District in writing as soon as reasonably practicable after Contractor has either actual or constructive 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 or constructive knowledge of an Incident if Contractor actually knows there has been an Incident or if Contractor has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as 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 .

Contractor will conduct periodic risk assessments and remediate any identified

security vulnerabilities in a timely manner. Contractor has a written incident response plan, to include prompt notification of the District in the event of a security or privacy incident, as well as best practices for a public university responding to a breach of PII.

IX. LEGAL COMPLIANCE AND NON-DISCRIMINATION:

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

X. EMPLOYEE MISCONDUCT:

All employees of Contractor (including Contractor) shall perform services under this Agreement in a professional manner.

XI. TERMINATION PRIOR TO EXPIRATION OF CONTRACT TERM:

This Agreement may be terminated at any time prior to expiration of the Service Agreement by mutual agreement of the parties in writing or when District is receiving Services from Contractor through the State's Service Agreement. 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. All parties subject to the Service Agreement voided under this subdivision shall delete a student's PII, unless a student or his or her parent consents to Contractor maintaining the student's account for the duration for the Service Agreement.

XII. ENTIRE AGREEMENT, MODIFICATION, AND WAIVER:

This Agreement and the Service Agreement embodies the complete agreements of the parties hereto, superseding all oral and written previous and contemporary agreements between the parties. No alteration or modification of this Agreement shall be valid unless evidenced by a writing signed by the

parties to this Agreement. A waiver of any term or condition of this Agreement or breach of this agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of this Agreement. Any waiver must be in writing each time a waiver occurs.

XIII. 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.

XIV. NOTICES:

All notices, consents, request, 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.

XV. ENFORCEMENT AND INTERPRETATION:

Any civil claim arising out of or related to the Agreement, or Services provided under the 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 may be subject to litigation. Notwithstanding anything to the contrary in the 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. Parties stipulate that each other is a political subdivision of their respective States, and, as such, enjoy immunities from suit and liability provided by the Constitution and laws of their respective States. By entering into this Agreement, the Parties do not waive any of their immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law. The parties acknowledge that, as a public entities in their respective States, the Parties and entities contracting with the Parties must comply with the open records laws of their States.

I have read this Agreement, understand its terms, and agree to be bound thereby. DATED this 24ᵗʰ day of January, 2023.

Year

University of Oregon

By: *Orca Merwin*   Date: January 24, 2023

Printed Name: Orca Merwin

Title/Position: Associate Director, Innovation Partners

Company Name: University of Oregon

Company Address: 1238 University of Oregon
Eugene, OR 97403

Company Phone Number: 541-346-3176

Company Website: www.uoregon.edu

LEA

_____ Date: ___1/25/2023___

, Board Chair Hardin   School District

ATTEST:

_____ Date: ___1/25/2023___

, District Clerk Hardin   School District

OPTIONAL EXHIBIT "A" GENERAL
OFFER OF PRIVACY TERMS

1. Offer of Terms Contractor offers the same privacy protections found in this Agreement between it and the District to any other school district ("Subscribing LEA") who accepts this General Offer though its signature below. The Contractor's agrees that the information on the next page will be replaced throughout the Agreement with the information specific to the Subscribing LEA filled on the next page for the Subscribing LEA. This General Offer shall extend only to privacy protections and Contractor's signature shall not necessarily bind Contractor to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Contractor and the Subscribing LEA may also agree to change the data provide by District to the Contractor to suit the unique needs of the Subscribing LEA. The Contractor may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statues; (2) a material change in the services and products subject listed in the Service Agreement; or three (3) years after the date of Provider's signature to this Form. Contractor shall notify the District in the event of any withdrawal so that this information may be transmitted to the Subscribing LEAs. Subscribing LEAs should send the signed **Exhibit "A"** at the following email address: techtran@uoregon.edu; annfwatt@uoregon.edu; and fountain@uoregon.edu

Contractor's Name: University of Oregon

By: _Orca Merwin_ Date: January 24, 2023

Printed Name: Orca Merwin

Title/Position: Associate Director, Innovation Partners

2. Subscribing LEA (Local Education Agency)

A Subscribing LEA, by signing a separate Service Agreement with Contractor, 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 University of Oregon will be bound by the same terms of this Agreement.

Subscribing LEA

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

SCHOOL DISTRICT NAME: _____

DESIGNATED REPRESENTATIVE OF SUBSCRIBING LEA:

   Name _____

   Title _____

   Address _____

   Telephone Number _____

   Email _____

COUNTY OF SUBSCRIBING LEA:

_____