

Montana Data Privacy Agreement

I. PARTIES:

The parties to this Montana Data Privacy Agreement (the "Agreement") are the West Valley School District (hereinafter "District") and Apptegy, Inc (hereinafter "Contractor") (collectively the "Parties").

II. PURPOSE:

District has retained Contractor to provide one or more of the following services (the "Services") on behalf of the District pursuant to one (1) or more underlying services agreements (hereinafter "Services Agreement(s)"): 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. 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.

For clarity and notwithstanding anything herein to the contrary, the Parties acknowledge and agree that as to data provided by District to Contractor, the Contractor is a data processor while the District is the data controller. District shall provide instruction regarding the data's use for purposes of providing the Services and shall retain ultimate control and responsibility for such data.

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

This Agreement shall begin on the date of signature and shall continue until all Services Agreements or applicable renewals between Contractor and District have expired or terminated, or unless terminated earlier by mutual agreement of the Parties. Notwithstanding the foregoing, 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 any underlying Services Agreements and/or 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 including protected information as defined by Montana law. Data include, but are not limited to, student data, and metadata.

Protected information may be 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” 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 District or to a third party for whom the Contractor or the 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 District. Confidential Information includes all information which Contractor or the District acquires or becomes acquainted with during the period of this Agreement, whether developed by Contractor, the District or others, which Contractor or the 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 District to Contractor; (ii) all information provided by Contractor to the 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. 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.

Except for the purposes of providing and/or improving the Services or as further set out in any applicable Services Agreement, Contractor shall not use the image or likeness of the District's buildings or the District's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of the District, without the District's prior written consent. Contractor shall not have any authority to advertise or claim that the District endorses Contractor's or OPERATOR's services, without the 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 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, upon receipt of written instruction from the District, pupil records will not be retained or will be made available upon completion of the terms of the Agreement. Additionally, as applicable Contractor will provide written certification to the District when pupil records are no longer held, possessed or otherwise available to Contractor or its employees, agents, or subcontractors. This requirement does not apply to pupil-generated content if applicable to the Services and a pupil chooses to establish or maintain an account with the third party for the purpose of storing that content.

To the extent required by law, the District shall implement and follow reasonable procedures for responding to a parent/guardian or eligible pupil's request to inspect, amend or transfer possession of personal information or, if applicable, transfer pupil-generated content to a pupil's personal account. If a parent/guardian or eligible pupil contacts the Contractor with such a request about Data provided by District to the Contractor, the Contractor shall refer the requesting parent/guardian or eligible pupil to the District, who will follow the aforementioned procedures. Contractor will to the extent permitted by law and commercially reasonable cooperate with the District to accommodate such requests.

Contractor certifies that it has designated a primary employee responsible to ensure the security and confidentiality of pupil records. By signing this agreement, Contractor further certifies that its employees who may have access to protected Data 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 District upon request. 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 provide written notification to the District in the most expedient way possible and without unreasonable delay, but no more than 72 hours after the confirmation of any unauthorized disclosure of pupil information, that compromises the security, confidentiality, or integrity of the pupil information, unless notification within this time limit would disrupt investigation of the incident by law enforcement. Contract will coordinate with the District to notify the parent, legal guardian, or pupil affected by an unauthorized disclosure of the pupil's records.

VII. CONFIDENTIALITY SAFEGUARDS:

Contractor will collect and use the District's Data only for the purpose of fulfilling its duties and providing services under this 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. Contractor agrees to indemnify and hold harmless the Board of Trustees of the District for any 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 services under this Agreement, Contractor and the District may be exposed to and will be required to use certain "Confidential Information", as defined above. Contractor and the District along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.

Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party or as needed by the Contractor for the purposes of providing and/or improving the Services. Confidential Information received under 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 this Agreement and to make no copies except as

needed to carry out their respective obligations and to disclose Confidential Information only to those employees, agents, consultants, and subcontractors who have a need to know

and who are bound by a confidentiality agreement or other appropriate measures. The Parties shall be jointly and severally liable for any breach of this obligation.

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necessary for performance of this Agreement. Any such Confidential Information and copies thereof made by a party, or any representative of a party, shall, upon receipt of written instruction from the other party, be completely and promptly deleted or destroyed at the conclusion of contract performance subject to this Agreement.

Upon termination or completion of the Services hereunder and receipt of written instruction from the District, Contractor will delete the 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 in which such Data is co-resident with other employment and income data. Contractor shall remain under its contractual obligation of confidentiality and security to the District and such obligations shall survive termination of the Agreement. This Section shall survive the termination of this 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 District's Data for any purposes other than those agreed to by the Parties or as needed for the purposes of providing and/or improving the Services. Data mining or scanning of user content for the purpose of targeted advertising or marketing to students or their parents is prohibited. Any and all forms of targeted 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.

Except to subcontractors, agents, third-party service providers, or other third parties for the purposes of providing and/or improving the Services or as otherwise required by law, Contractor will not share or disclose District Data to any third party without prior specific and informed written consent of the District. Contractor will not post and/or disclose protected Data as defined herein unless done in accordance with 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 this Agreement.

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

If applicable, all student-produced work remains the property of the school system or that eligible student. The Contractor has a limited, nonexclusive, revocable, worldwide, fully-paid, royalty-free license to use, copy, and modify the Data described herein solely for providing and improving the Services. This Agreement does not give Contractor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement and otherwise in any underlying Services Agreements, including any right to sell or trade Data.

Except as otherwise expressly prohibited by law, the Contractor will in the most expedient way possible and without unreasonable delay notify the District of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the Contractor seeking District Data. If the District receives a similar request, the Contractor will promptly supply the District with copies of records or information required by the School District to respond.

Contractor will store and process District Data in accordance with industry-standard 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 any customer or to any School District employee and/or student; and 4) dispose of PII and Confidential Information in a secure manner.

VIII. DATA BREACHES:

Contractor shall notify the District in writing in the most expedient way possible and without unreasonable delay, but no more than 72 hours after the confirmation of an unauthorized release, disclosure, or acquisition of the District's Data (an "Incident"), that compromises the security, confidentiality, or integrity of the District's Data, unless it is determined by law enforcement that such notification would impede or delay their investigation. 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, and shall, to the extent permitted by law, not allow such cooperation to 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 or OPERATOR'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 of the District in the event of a security or privacy incident, as well as industry-standard practices for responding to a breach of PII.

IX. LEGAL COMPLIANCE AND NON-DISCRIMINATION:

All Services provided by Contractor under any Services Agreements will be completed in accordance with the data privacy and security requirements contained herein in addition to state and federal law. The Parties specifically agree to collaborate in the enforcement and compliance with the Family Educational Rights and Privacy Act.

Contractor agrees and warrants that Contractor's hiring practices as well as 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 illegally based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

X. EMPLOYEE MISCONDUCT:

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

XI. TERMINATION PRIOR TO EXPIRATION OF CONTRACT TERM:

This Agreement may be terminated at any time prior to expiration of the contract term by mutual agreement of the Parties in writing. This Agreement may also be terminated unilaterally by either party for cause for material noncompliance with the terms, conditions, and requirements set forth herein or set forth in any underlying Services Agreement, 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.

XII. ENTIRE AGREEMENT, MODIFICATION, AND WAIVER:

This Agreement and any underlying Services Agreement embody the complete agreement 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:

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 the Agreement, or services provided under the Agreement, may be subject to mediation at the request of either party. 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 District is located.

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. Contractor stipulates that the 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 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 District and entities contracting with the 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 24th day of May, 2024.

RE > [Signature] Date: 05/24/2024

Apptegy, Inc. _____, Contractor

Title/Position: Chief Executive Officer _____

Company Name: Apptegy, Inc.

Company Address: 2201 Brookwood Dr., Ste. 115, Little Rock, AR 72202

Company Phone Number: 501-613-0370 _____

Company Website: https://www.apptegy.com/

Marilyn Hodstrom Date: 6/3/2024

_____, Board Chair West Valley School District

ATTEST:

Mark I [Signature] Date: 6/3/2024
_____, District Clerk West Valley School District