

STANDARD STUDENT DATA PRIVACY AGREEMENT

**MASSACHUSETTS, MAINE, MISSOURI, NEW HAMPSHIRE, NEW YORK,
OHIO, RHODE ISLAND, AND VERMONT**

MA-ME-MO-NH-NY-OH-RI-VT-DPA, Modified Version 1.0

MANCHESTER SCHOOL DISTRICT

and

AMPLIFY EDUCATION, INC.

This Student Data Privacy Agreement (“**DPA**”) is entered into on the date of full execution (the “**Effective Date**”) and is entered into by and between: Manchester School District, located at 20 Hecker St, Manchester, NH 03102 (the “**Local Education Agency**” or “**LEA**”) and Amplify Education, Inc., located at 55 Washington Street, #800, Brooklyn, NY 11201 (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to LEA.

WHEREAS, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. **Special Provisions. Check if Required**
 - If checked, the Supplemental State Terms and attached hereto as **Exhibit “G”** are hereby incorporated by reference into this DPA in their entirety.
 - If Checked, the Provider, has signed **Exhibit “E”** to the Standard Clauses, otherwise known as General Offer of Privacy Terms
3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”).
6. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the Provider for this DPA is:

Name: Aaron Harnly _____ Title: CTO _____

Address: 55 Washington Street, Suite 800, Brooklyn, NY 11201 _____

Phone: (800) 823-1969 _____

Email: privacy@amplify.com _____

The designated representative for the LEA for this DPA is:

Stephen P. Cross, CIO
20 Hecker St., Manchester NH 03064
603-624-6300 x162
scross@mansd.org

IN WITNESS WHEREOF, LEA and Provider execute this DPA as of the Effective Date.

MANCHESTER SCHOOL DISTRICT

By:  _____
STEPHEN P. CROSS (Aug 23, 2024 09:41 EDT)

Date: 08/23/24

Printed Name: Stephen Cross

Title/Position: _____

AMPLIFY EDUCATION, INC.

By: Catherine Mackay

Date: 08 / 09 / 2024

Printed Name: Catherine Mackay

Title/Position: President & COO

STANDARD CLAUSES

Version 1.0

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 including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
2. **Student Data to Be Provided.** In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
3. **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 terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

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 DPA 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 Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student 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 Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student- Generated Content to a separate account created by the student.

4. **Law Enforcement Requests**. Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting 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 for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws**. LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights**. If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria 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 Student Data.
4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known 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 federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use**. The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation**. Provider shall require all of Provider’s employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.
4. **No Disclosure**. 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 the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data:** Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes:
 - (1) assisting the LEA or other governmental agencies in conducting research and other studies; and
 - (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and
 - (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented. LEA consents to the Provider's sharing De-Identified Data with research partners for product improvement and development purposes, including research, develop and improve educational sites, services and applications and to demonstrate the effectiveness of Provider's products.
6. **Disposition of Data.** Provider shall delete Student Data at any time within ninety (90) days of receipt of request by the LEA. LEA is responsible for maintaining current class rosters and notifying Provider to destroy Student Data which the LEA no longer needed for the purposes of this DPA. Upon termination of this DPA, if no such notification is received, Provider shall destroy Student Data after a period of at least one year of inactivity, in accordance with Provider's standard data retention policies and procedures. If requested, Provider will transfer Student Data to LEA in a mutually agreeable format. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to Article II, Section 3.
7. **Advertising Limitations.** Provider is prohibited from using, disclosing, 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 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 (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 Storage.** Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.

2. **Audits**. No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.
3. **Data Security**. The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
4. **Data Breach**. In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within 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:
 - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - 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 as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
 - (2) Provider agrees to adhere to all federal and state requirements 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.

- (3) 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.
- (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
- (5) 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 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 **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **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 may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.
2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between the SDPC Standard Clauses and the Supplemental State Terms, the Supplemental State Terms will control. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
4. **Entire Agreement.** This DPA and the Service Agreement constitute 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.

5. **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.
6. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, 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 OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
7. **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. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority**. Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction 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.
9. **Waiver**. No delay or omission by 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.

EXHIBIT “A”

DESCRIPTION OF SERVICES

Amplify Education Inc. (“Amplify”) provides core curriculum and supplemental programs and services in ELA, math, and science, and formative assessment products in early reading and math.

The selected items in Exhibit B list all categories of data which may be collected from Amplify's products. If you have questions about which data elements are collected for your LEA's selected products, please contact privacy@amplify.com.

Amplify uses or accesses Student Data collected from, or on behalf of, an LEA to support the learning experience, to provide Amplify products to the LEA and to ensure secure and effective operation of our products, including: for purposes requested or authorized by the LEA; for adaptive or personalized learning purposes, provided that Student Data is not disclosed; for customer support purposes, to respond to the inquiries and fulfill the requests of LEAs and their authorized users; to enforce product access and security controls;. Amplify may use de-identified or aggregate data for purposes allowed under FERPA and other applicable laws, to research, develop and improve educational sites, services and applications and to demonstrate the effectiveness of the Amplify Products.

EXHIBIT "B"
SCHEDULE OF DATA

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	x
	Other application technology meta data-Please specify: <ul style="list-style-type: none"> • Browser User Agent • Operating system brand and version • Browser brand and version 	x
Application Use Statistics	Meta data on user interaction with application	x
Assessment	Standardized test scores	
	Observation data	x
	Other assessment data-Please specify: <ul style="list-style-type: none"> • Formative observational and online assessment; • Formative observational assessment 	x
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	x
	Place of Birth	
	Gender	x *optional
	Ethnicity or race	x *optional
	Language information (native, or primary language spoken by student)	x *optional
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	x
	Student grade level	x
	Homeroom	x *optional
	Guidance counselor	
	Specific curriculum programs	x
	Year of graduation	

	Other enrollment information-Please specify:	
	Address	

Parent/Guardian Contact Information	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	x
	Teacher names	x
Special Indicator	English language learner information	x *optional
	Low income status	x *optional
	Medical alerts/ health data	
	Student disability information	x *optional
	Specialized education services (IEP or 504)	x *optional
	Living situations (homeless/foster care)	
	Other indicator information-Please specify: <ul style="list-style-type: none"> • School food service eligibility • Limited english proficiency 	x *optional
Student Contact Information	Address	
	Email	x
	Phone	
Student Identifiers	Local (School district) ID number	x
	State ID number	
	Provider/App assigned student ID number	
	Student app username	x *optional
	Student app passwords	x *optional
Student Name	First and/or Last	x
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	x
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	

Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures, etc.	X
	Other student work data -Please specify:	
Transcript	Student course grades	
	Student course data	

	Student course grades/ performance scores	
	Other transcript data - Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data – Please specify:	

Other	Please list each additional data element used, stored, or collected by your application:	
None	No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable.	

EXHIBIT "C" DEFINITIONS

De-Identified Data and De-Identification: Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such 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.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

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 for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section.

Originating LEA: An LEA who originally executes the DPA in its entirety with the Provider.

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

Student Generated Content: The term "student-generated content" means materials or content created by a student in the services 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 student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School 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 Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re- disclosure of personally identifiable information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

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, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or 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, individual purchasing behavior or preferences, food

purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local 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.

Subprocessor: For the purposes of this DPA, 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 service, and who has access to Student Data.

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

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 operator's Internet web site, 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 Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, 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

[Insert Name of District or LEA] 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:

1. Extent of Disposition

_____ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

_____ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

_____ Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

_____ As soon as commercially practicable.

_____ By **[Insert Date]**

4. Signature

Authorized Representative of LEA

Date

5. Verification of Disposition of Data

Authorized Representative of Company

Date

EXHIBIT “F”
DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks
2/24/2020

The Education Security and Privacy Exchange (“Edspex”) works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles* (“Cybersecurity Frameworks”) that may be utilized by Provider .

Cybersecurity Frameworks

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
x	National Institute of Standards and Technology	NIST Cybersecurity Framework Version 1.1
x	National Institute of Standards and Technology	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
	International Standards Organization	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security	CIS Critical Security Controls (CSC, CIS Top 20)
	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

Please visit <http://www.edspex.org> for further details about the noted frameworks.

*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

EXHIBIT "G"
Massachusetts

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to several state laws in Massachusetts. Specifically, those laws are 603 C.M.R. 23.00, Massachusetts General Law, Chapter 71, Sections 34D to 34H and 603 CMR 28.00; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Massachusetts;

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

1. In Article IV, Section 2, replace "otherwise authorized," with "otherwise required" and delete "or stated in the Service Agreement."
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Massachusetts does not require data to be stored within the United States.

EXHIBIT "G"

Maine

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to several state laws in Maine. Specifically, those laws are 20-A M.R.S. §6001-6005.; 20-A M.R.S. §951 et. seq., Maine Unified Special Education Regulations, Maine Dep't of Edu. Rule Ch. 101; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Maine;

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

1. In Article IV, Section 2, replace "otherwise authorized," with "otherwise required" and delete "or stated in the Service Agreement."
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Maine does not require data to be stored within the United States.
4. The Provider may not publish on the Internet or provide for publication on the Internet any Student Data.
5. If the Provider collects student social security numbers, the Provider shall notify the LEA of the purpose the social security number will be used and provide an opportunity not to provide a social security number if the parent and/or student elects.
6. The parties agree that the definition of Student Data in Exhibit "C" includes the name of the student's family members, the student's place of birth, the student's mother's maiden name, results of assessments administered by the State, LEA or teacher, including participating information, course transcript information, including, but not limited to, courses taken and completed, course grades and grade point average, credits earned and degree, diploma, credential attainment or other school exit information, attendance and mobility information between and within LEAs within Maine, student's gender, race and ethnicity, educational program participation information required by state or federal law and email.
7. The parties agree that the definition of Student Data in Exhibit "C" includes information that:
 - a. Is created by a student or the student's parent or provided to an employee or agent of the LEA or a Provider in the course of the student's or parent's use of the Provider's website, service or application for kindergarten to grade 12 school purposes;
 - b. Is created or provided by an employee or agent of the LEA, including information provided to the Provider in the course of the employee's or agent's use of the Provider's website, service or application for kindergarten to grade 12 school purposes; or
 - c. Is gathered by the Provider through the operation of the Provider's website, service or application for kindergarten to grade 12 school purposes.

EXHIBIT “G”
Missouri

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to several state laws in Missouri. Specifically, those laws are Sections 162.1475 and 407.1500 RSMo; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Missouri;

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

1. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Missouri does not require data to be stored within the United States.
4. Replace Article V, Section 4 with the following:
 - a. In the event of a breach of data maintained in an electronic form that includes personal information of a student or a student’s family member, Provider shall notify LEA within seventy-two (72) hours. The notice shall include:
 - i. Details of the incident, including when it occurred and when it was discovered;
 - ii. The type of personal information that was obtained as a result of the breach; and
 - iii. The contact person for Provider who has more information about the incident.
 - b. “*Breach*” shall mean the unauthorized access to or unauthorized acquisition of personal information that compromises the security, confidentiality, or integrity of the personal information. Good faith acquisition of personal information by a person employed by or contracted with, or an agent of, Provider is not a breach provided that the personal information is not used in violation of applicable Federal or Missouri law, or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of the personal information.
 - c. “*Personal information*” is the first name or initial and last name of a student or a family member of a student in combination with any one or more of the following data items that relate to the student or a family member of the student if any of the data elements are not encrypted, redacted, or otherwise altered by any method or technology such that the name or data elements are unreadable or unusable:
 - i. Social Security Number;

- ii. Driver's license number or other unique identification number created or collected by a government body;
- iii. Financial account information, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- iv. Unique electronic identifier or routing code in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- v. Medical information; or
- vi. Health insurance information.

EXHIBIT “G”
Rhode Island

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to several state laws in Rhode Island. Specifically, those laws are R.I.G.L. 16-71-1, et. seq., R.I.G.L. 16-104-1, and R.I.G.L., 11-49.3 et. seq.; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Rhode Island;

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

1. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Rhode Island does not require data to be stored within the United States.
4. The Provider agrees that this DPA serves as its written certification of its compliance with R.I.G.L. 16- 104-1.
5. The Provider agrees to implement and maintain a risk-based information security program that contains reasonable security procedures.
6. In the case of a data breach, as a part of the security breach notification outlined in Article V, Section 4(1), the Provider agrees to provide the following additional information:
 - i. Information about what the Provider has done to protect individuals whose information has been breached, including toll free numbers and websites to contact:
 1. The credit reporting agencies
 2. Remediation service providers
 3. The attorney general
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
 - iii. A clear and concise description of the affected parent, legal guardian, staff member, or eligible student’s ability to file or obtain a police report; how an affected parent, legal guardian, staff member, or eligible student’s requests a security freeze and the necessary information to be provided when requesting the security freeze; and that fees may be required to be paid to the consumer reporting agencies.

EXHIBIT “G”
Vermont

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to several state laws in Vermont. Specifically, those laws are 9 VSA 2443 to 2443f; 16 VSA 1321 to 1324; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Vermont;

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

1. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Vermont does not require data to be stored within the United States.

EXHIBIT "G"
Ohio

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to several state laws in Ohio. Specifically, those laws are R.C. §§ 3319.32-3319.324, R.C. §§ 1349.17-19, Rule 3301-51-04; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for Ohio;

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

1. In Article IV, Section 2, replace "otherwise authorized," with "otherwise required" and delete "or stated in the Service Agreement."
2. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
3. In Article V, Section 1 Data Storage: Ohio does not require data to be stored within the United States.

EXHIBIT “G”
New Hampshire

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to several state laws in New Hampshire. Specifically, those laws are RSA 189:1-e and 189:65-68-a; RSA 186; NH Admin. Code Ed. 300 and NH Admin. Code Ed. 1100; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for New Hampshire;

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

1. All references in the DPA to “Student Data” shall be amended to state “Student Data and Teacher Data.” “Teacher Data” is defined as at least the following:

Social security number.
Date of birth.
Personal street address.
Personal email address.
Personal telephone number
Performance evaluations.

Other information that, alone or in combination, is linked or linkable to a specific teacher, paraprofessional, principal, or administrator that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify any with reasonable certainty.

Information requested by a person who the department reasonably believes or knows the identity of the teacher, paraprofessional, principal, or administrator to whom the education record relates.

“Teacher” means teachers, paraprofessionals, principals, school employees, contractors, and other administrators.

Teacher 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, or information collected or received by Provider outside the provision of Provider services under the Service Agreement.

2. In order to perform the Services described in the DPA, the LEA shall provide the categories of Teacher Data described in the Schedule of Data, attached hereto as **Exhibit “I”**.
3. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
4. In Article IV, Section 7 amend each reference to “students,” to state: “students, teachers,…”
5. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
6. Provider is prohibited from leasing, renting, or trading Student Data or Teacher Data to (a) market or advertise to students, teachers, or families/guardians; (b) inform, influence, or enable

marketing, advertising or other commercial efforts by a Provider; (c) develop a profile of a student, teacher, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data and Teacher Data for the development of commercial products or services, other than as necessary to provide the Service to the LEA. This section does not prohibit Provider from using Student Data and Teacher Data for adaptive learning or customized student learning purposes.

7. The Provider agrees to the following privacy and security standards. Specifically, the Provider agrees to:

- (1) Limit system access to the types of transactions and functions that authorized users, such as students, parents, and LEA are permitted to execute;
- (2) Limit unsuccessful logon attempts;
- (3) Employ cryptographic mechanisms to protect the confidentiality of remote access sessions;
- (4) Authorize wireless access prior to allowing such connections;
- (5) Create and retain system audit logs and records to the extent needed to enable the monitoring, analysis, investigation, and reporting of unlawful or unauthorized system activity;
- (6) Ensure that the actions of individual system users can be uniquely traced to those users so they can be held accountable for their actions;
- (7) Establish and maintain baseline configurations and inventories of organizational systems (including hardware, software, firmware, and documentation) throughout the respective system development life cycles;
- (8) Restrict, disable, or prevent the use of nonessential programs, functions, ports, protocols, and services;
- (9) Enforce a minimum password complexity and change of characters when new passwords are created;
- (10) Perform maintenance on organizational systems;
- (11) Provide controls on the tools, techniques, mechanisms, and personnel used to conduct system maintenance;
- (12) Ensure equipment removed for off-site maintenance is sanitized of any Student Data or Teacher Data in accordance with NIST SP 800-88 Revision 1;
- (13) Protect (i.e., physically control and securely store) system media containing Student Data or Teacher Data, both paper and digital;
- (14) Sanitize or destroy system media containing Student Data or Teacher Data in accordance with NIST SP 800-88 Revision 1 before disposal or release for reuse;
- (15) Control access to media containing Student Data or Teacher Data and maintain accountability for media during transport outside of

controlled areas;

- (16) Periodically assess the security controls in organizational systems to determine if the controls are effective in their application and develop and implement plans of action designed to correct deficiencies and reduce or eliminate vulnerabilities in organizational systems;
- (17) Monitor, control, and protect communications (i.e., information transmitted or received by organizational systems) at the external boundaries and key internal boundaries of organizational systems;
- (18) Deny network communications traffic by default and allow network communications traffic by exception (i.e., deny all, permit by exception);
- (19) Protect the confidentiality of Student Data and Teacher Data at rest;
- (20) Identify, report, and correct system flaws in a timely manner;
- (21) Provide protection from malicious code (i.e. Antivirus and Antimalware) at designated locations within organizational systems;
- (22) Monitor system security alerts and advisories and take action in response; and
- (23) Update malicious code protection mechanisms when new releases are available.

Alternatively, the Provider agrees to comply with one of the following standards: (1) NIST SP 800-171 rev 2, Basic and Derived Requirements; (2) NIST SP 800-53 rev 4 or newer, Low Impact Baseline or higher; (3) FedRAMP (Federal Risk and Authorization Management Program); (4) ISO/IEC 27001:2013; (5) Center for Internet Security (CIS) Controls, v. 7.1, Implementation Group 1 or higher; (6) AICPA System and Organization Controls (SOC) 2, Type 2; and (7) Payment Card Industry Data Security Standard (PCI DSS), v3.2.1. The Provider will provide to the LEA on an annual basis and upon written request demonstration of successful certification of these alternative standards in the form of a national or international Certification document; an Authorization to Operate (ATO) issued by a state or federal agency, or by a recognized security standards body; or a Preliminary Authorization to Operate (PATO) issued by the FedRAMP Joint Authorization Board (JAB).

8. In the case of a data breach, as a part of the security breach notification outlined in Article V, Section 4(1), the Provider agrees to provide the following additional information:
 - i. The estimated number of students and teachers affected by the breach, if any.
9. The parties agree to add the following categories into the definition of Student Data: the name of the student's parents or other family members, place of birth, social media address, unique pupil identifier, and credit card account number, insurance account number, and financial services account number.
10. Notwithstanding anything to the contrary in this DPA or this Exhibit G, Provider may provide customized content, advertising and commercial messages to LEA, teachers, school administrators or other non-student users, provided that such advertisements shall not be based on Student Data.
11. In Article V, Section 1 Data Storage: New Hampshire does not require data to be stored within

the United States.

EXHIBIT "I" – TEACHER DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	x
	Other application technology meta data-Please specify:	x
Application Use Statistics	Meta data on user interaction with application	x
Communications	Online communications that are captured (emails, blog entries)	
Demographics	Date of Birth	
	Place of Birth	
	Social Security Number	
	Ethnicity or race	
	Other demographic information-Please specify:	
Personal Contact Information	Personal Address	
	Personal Email	
	Personal Phone	
Performance evaluations	Performance Evaluation Information	
Schedule	Teacher scheduled courses	x
	Teacher calendar	
Special Information	Medical alerts	
	Teacher disability information	
	Other indicator information-Please specify:	
Teacher Identifiers	Local (School district) ID number	x
	State ID number	x
	Vendor/App assigned student ID number	x
	Teacher app username	x
	Teacher app passwords	x
Teacher In App Performance	Program/application performance	x
Teacher Survey Responses	Teacher responses to surveys or questionnaires	
Teacher work	Teacher generated content; writing, pictures etc.	x
	Other teacher work data -Please specify:	
Education	Course grades from schooling	
	Other transcript data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

Exhibit “G”

New York

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to several state laws in New York. Specifically, those laws are New York Education Law § 2-d; and the Regulations of the Commissioner of Education at 8 NYCRR Part 121; and

WHEREAS, the Parties wish to enter into these additional terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for New York;

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

1. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
2. Student Data will be used by Provider exclusively to provide the Services identified in Exhibit A to the DPA.
3. Provider agrees to maintain the confidentiality and security of Student Data in accordance with LEA's Data Security and Privacy Policy. The LEA's Data Security Policy is attached hereto as Exhibit J. Each Subscribing LEA will provide its Data Security Policy to the Provider upon execution of Exhibit "E". Provider shall use industry standard security measures including encryption protocols that comply with New York law and regulations to preserve and protect Student Data and APPR Data. Provider must Encrypt Student Data and APPR Data at rest and in transit in accordance with applicable New York laws and regulations.
4. Provider represents that their Data Privacy and Security Plan can be found at the URL link listed in Exhibit K and is incorporated into this DPA. Provider warrants that its Data Security and Privacy Plan, at a minimum: (a) implements all applicable state, federal and local data privacy and security requirements; (b) has operational technical safeguards and controls in place to protect PII that it will receive under the service agreement; (c) complies with the LEA's parents bill of rights for data privacy and security; (d) requires training of all providers' employees, assignees and subprocessors who have Access to student data or APPR data; (e) ensures subprocessors are required to protect PII received under this service agreement; (f) specifies how data security and privacy incidents that implicate PII will be managed and ensuring prompt notification to the LEA, and (g) addresses Student Data return, deletion and destruction.
5. In addition to the requirements described in Paragraph 3 above, the Provider's Data Security and Privacy Plan shall be deemed to incorporate the LEA's Parents Bill of Rights for Data Security and Privacy, as found at the URL link identified in Exhibit J. The Subscribing LEA will provide its Parents Bill of Rights for Data Security and Privacy to the Provider upon execution of Exhibit "E".

6. All references in the DPA to “Student Data” shall be amended to include and state, “Student Data and APPR Data.”
7. To amend Article II, Section 5 to add: Provider shall ensure that its subprocessors agree that they do not have any property, licensing or ownership rights or claims to Student Data or APPR data and that they will comply with privacy and security obligations no less stringent than those in the LEA’s Data Privacy and Security Policy. Provider shall examine the data privacy and security measures of its Subprocessors. If at any point a Subprocessor fails to materially comply with the requirements of this DPA in such a way that impacts or could impact LEA’s Student Data or APPR Data, upon discovery Provider shall within a reasonable time from the discovery of the concern: (i) notify LEA, and (ii) as applicable, remove such Subprocessor’s Access to Student Data and APPR Data; (iii) as applicable, retrieve all Student Data and APPR Data received or stored by such Subprocessor and/or ensure that Student Data and APPR Data has been securely deleted or securely destroyed in accordance with this DPA; or (iv) as applicable, notify the LEA what it is doing to correct the failure to comply and secure and protect the Student Data and APPR Data. In the event there is an incident in which Student Data and APPR Data held, possessed, or stored by the Subprocessor is compromised, or unlawfully Accessed or disclosed, Provider shall follow the Data Breach reporting requirements set forth in the DPA.
8. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
9. To amend Article IV, Section 3 to add: Provider shall ensure that all its employees and subprocessors who have Access to or will receive Student Data and APPR Data will be trained on the federal and state laws governing confidentiality of such Student Data and APPR Data prior to receipt. Access to or Disclosure of Student Data and APPR Data shall only be provided to Provider’s employees and subprocessors who need to know the Student Data and APPR Data to provide the services and such Access and/or Disclosure of Student Data and APPR Data shall be limited to the extent necessary to provide such services.
10. To replace Article IV, Section 6 (Disposition of Data) with the following: Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within ninety (90) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Provider is prohibited from retaining disclosed Student Data or continuing to Access Student Data beyond the term of the Service Agreement unless such retention is expressly authorized for a prescribed period by the Service Agreement, necessary for purposes of facilitating the transfer of disclosed Student Data to the LEA, or expressly required by law. The confidentiality and data security obligations of Provider under this DPA shall survive any termination of this contract to which this DPA is attached but shall terminate upon Provider’s certifying that it and its subprocessors, as applicable: (a) no longer have the ability to Access any Student Data provided to Provider pursuant to the Service Agreement and/or (b) have destroyed all Student Data and APPR Data provided to Provider pursuant to this DPA. The Provider

agrees that the timelines for disposition of data will be modified by any Assurance of Discontinuation mutually agreed in writing, which will control in the case of a conflict. Upon termination of this DPA, if no written request from the LEA is received, Provider shall destroy Student Data after a period of at least one year of inactivity, in accordance with Provider's standard data retention policies and procedures.

The duty to dispose of student data shall not extend to Student Data that had been de-identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "**Directive for Disposition of Data**" form, a copy of which is attached hereto as **Exhibit "D"**, or, with reasonable notice to the Provider, other form of its choosing. No further written request or notice is required on the part of either party prior to the disposition of Student Data described in "**Exhibit D**".

11. To amend Article IV, Section 7 to add: 'Notwithstanding the foregoing, Provider is prohibited from using Student Data or APPR data for any Commercial or Marketing Purpose as defined herein. And add after (iii) account holder, "which term shall not include students."

Notwithstanding anything to the contrary in this DPA or this Exhibit G, Provider may provide customized content, advertising and commercial messages to LEA, teachers, school administrators or other non-student users, provided that such advertisements shall not be based on Student Data.

12. To replace Article V, Section 1 (Data Storage) to state: Student Data and APPR Data shall be stored within the United States and Canada only. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
13. To replace Article V, Section 2 (Audits) to state: No more than once a year or following an unauthorized Access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA. The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable Access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA.

To amend the third sentence of Article V. Section 3 (Data Security) to read: The Provider shall implement security practices that are in alignment with the NIST Cybersecurity Framework v1.1 or any update to this Framework that is adopted by the New York State Department of Education.

14. To replace Article V. Section 4 (Data Breach) to state: In the event of a Breach as defined in 8 NYCRR Part

121.1 Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of an unauthorized release, disclosure, or acquisition of the LEA's Student Data or APPR Data, 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:

(1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:

- 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 as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
- v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided; and
- vi. The number of records affected, if known; and
- vii. A description of the investigation undertaken so far; and
- viii. The name of a point of contact for Provider.

(2) Provider agrees to adhere to all federal and state requirements 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.

(3) 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.

(4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians. Where a Breach of Student Data and/or APPR Data occurs, to the extent that such breach is attributable to Provider and/or its Subprocessors, Provider shall pay for or promptly reimburse LEA for the full cost of notification to Parents, Eligible Students, teachers, and/or principals.

(5) 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.

(6) Provider and its subprocessors will cooperate with the LEA, the NYSED Chief Privacy Officer and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Provider will be the sole responsibility of the Provider to the extent such Breach is attributable to Provider or its subprocessors.

For clarity and without limitation, Provider will not be responsible for costs associated with voluntary notification that is not legally required. With respect to any breach that is not due to acts or omissions of Provider, its subcontractors or assignees, Provider will reasonably cooperate in performing the activities described above, at LEA's reasonable request and expense.

15. To amend the definitions in Exhibit "C" as follows:

- "Subprocessor" is equivalent to subcontractor. It is a third party who the provider uses for data collection, analytics, storage, or other service to allow Provider to operate and/or improve its service, and who has access to Student Data.
- "Provider" is also known as third party contractor. It any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student and/or teacher or principal data from a school district to carry out its responsibilities and is not an educational agency and a not-for-profit corporation or other non-profit organization, other than an educational agency.

16. To add to Exhibit "C" the following definitions:

- **Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
- **APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d
- **Commercial or Marketing Purpose:** In accordance with § 121.1(c) of the regulations of the New York Commissioner of Education, the Disclosure, sale, or use of Student or APPR Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data or APPR Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
- **Disclose or Disclosure:** The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
- **Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
- **Release:** Shall have the same meaning as Disclose
- **LEA:** As used in this DPA and all Exhibits, the term LEA shall mean the educational agency, as defined in Education Law Section 2-d, that has executed the DPA; if the LEA is a board of cooperative educational services, then the term LEA shall also include Participating School Districts for purposes of the following provisions of the DPA: Article I, Section 2;

Article II, Sections 1 and 3; and Sections 1, 2, and 3 of Article III.

- **Participating School District:** As used in Exhibit G and other Exhibits to the DPA, the term Participating School District shall mean a New York State educational agency, as that term is defined in Education Law Section 2-d, that obtains access to the Services through a CoSer agreement with LEA, and shall include LEA if it uses the Services in its own educational or operational programs.

Exhibit “J”
LEA Documents

New York LEAs will provide links to their Data Security and Privacy Policy, Parents Bill of Rights for Data Security and Privacy, and supplemental information for this service agreement in their Exhibit Es.

Exhibit “K”

Provider Security Policy

Provider’s Data Security and Privacy Plan can be accessed at:

<https://amplify.com/privacy-security/>

New York Data Privacy and Security Addendum

The purpose of this Addendum is to facilitate educational agency compliance with New York State Education Law section 2-d and regulations promulgated thereunder (“NY Education Privacy Laws”), including the requirement under section 121.2 of the regulations that each educational agency shall ensure that it has provisions in its contracts with third party contractors or in separate data sharing and confidentiality agreements that require the confidentiality of shared student data or teacher or principal data be maintained in accordance with federal and state law and the educational agency’s data security and privacy policy.

This Addendum supplements Amplify’s Terms and Conditions for use of Amplify products licensed by the educational agency available at <https://amplify.com/customer-terms> (the “Agreement”).

For the purposes of this Agreement, “breach,” “commercial or marketing purpose,” “disclose or disclosure,” “education records,” “encryption,” “personally identifiable information,” “release,” “student data,” “teacher or principal data,” “unauthorized disclosure or unauthorized release” will be as defined by NY Education Privacy Laws.

Bill of Rights for Data Privacy and Security. In accordance with section 121.3 of the regulations, Amplify hereby agrees to comply with the parents bill of rights for data privacy and security (“bill of rights”) as promulgated by the educational agency. In accordance with section 121.3(c) of the regulations, see Attachment A for supplemental information to the bill of rights.

Data Security and Privacy Plan. In accordance with Section 121.6 of the regulations, see Attachment B for Amplify’s data security and privacy plan.

Third Party Contractor Compliance. In accordance with Section 121.9 of the regulations, Amplify as a third-party contractor that will receive student data or teacher or principal data, represents and covenants that Amplify will:

- (1) adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework;
- (2) comply with the data security and privacy policy of the educational agency with whom it contracts; Education Law § 2-d; and this Part 121;
- (3) limit internal access to personally identifiable information to only those employees or sub-contractors that need access to provide the contracted services;
- (4) not use the personally identifiable information for any purpose not explicitly authorized in its contract;
- (5) not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student: (i) except for authorized representatives of the third-party contractor such as a subcontractor or assignee to the extent they are carrying out the contract and in compliance

- with state and federal law, regulations and its contract with the educational agency; or (ii) unless required by statute or court order and the third-party contractor provides a notice of disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order.
- o (6) maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody;
 - o (7) use encryption to protect personally identifiable information in its custody while in motion or at rest; and
 - o (8) not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so;
 - o Where Amplify engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on Amplify by state and federal law and this Agreement shall apply to the subcontractor.

Reports and Notifications of Breach and Unauthorized Release. In accordance with section

121.10 of the regulations, Amplify will:

- promptly notify the educational agency of any breach or unauthorized release of personally identifiable information in the most expedient way possible and without unreasonable delay but no more than seven calendar days after the discovery of such breach;
- cooperate with educational agencies and law enforcement to protect the integrity of investigations into the breach or unauthorized release of personally identifiable information.
- o where a breach or unauthorized release is attributed to Amplify, Amplify shall pay for or promptly reimburse the educational agency for the full cost of such notification. In compliance with this section, notifications shall be clear, concise, use language that is plain and easy to understand, and to the extent available, include: a brief description of the breach or unauthorized release, the dates of the incident and the date of discovery, if known; a description of the types of personally identifiable information affected; an estimate of the number of records affected; a brief description of the educational agency's investigation or plan to investigate; and contact information for representatives who can assist parents or eligible students that have additional questions.

General.

The laws of the State of New York shall govern the rights and duties of Amplify and the educational agency.

If any provision of the contract or the application of the contract is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the contract which can be given effect without the invalid provision or application.

This Agreement controls over any inconsistent terms or conditions contained within any other agreement entered into by the parties concerning student, teacher and principal data.

ATTACHMENT A

SUPPLEMENTAL INFORMATION FOR THE BILL OF RIGHTS

The exclusive purposes for which the student data or teacher or principal data will be used by the third-party contractor, as defined in the contract:

The purposes for which Amplify will use student, teacher, or principal data are described in Amplify's Customer Privacy Policy, available at <https://amplify.com/customer-privacy/>.

How the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or principal data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., FERPA; Education Law §2-d):

Amplify requires all subcontractors or other authorized persons with access to student, teacher, or principal data to agree in writing to abide by all applicable state and federal laws and regulations. Additionally, as between Amplify and the educational agency, Amplify takes full responsibility for the actions of any such parties.

The duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the educational agency, and/or whether, when and how the data will be destroyed):

The Agreement will last for the time period described in the applicable purchasing document, unless earlier terminated in accordance with the Agreement. Student, teacher, or principal data will be returned or destroyed in accordance with whichever is the sooner of 1) the period necessary to fulfill the purposes outlined in Amplify's Privacy Policy and the Agreement, 2) applicable state and federal laws and regulations, or 3) the educational agency's option and direction.

If and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected:

A parent, student, eligible student, teacher or principal may contact the education agency directly to discuss the correction of any such erroneous information. If Amplify receives a request to review student data in Amplify's possession directly from such a party, Amplify agrees to refer that individual to the educational agency and to notify the educational agency within a reasonable time of receiving such a request. Amplify agrees to work cooperatively with the education agency to permit a parent, student, eligible student, teacher or principal to review student, teacher, or principal data that has been shared with Amplify and correct any erroneous information therein.

Where the student data or teacher or principal data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated:

Amplify leverages Amazon Web Services (AWS) as its cloud hosting provider. Further information regarding Amplify's security program can be found on Amplify's Information Security page at <https://amplify.com/security>.

Address how the data will be protected using encryption while in motion and at rest:

In transit: Amplify encrypts all student personal information in transit over public connections, using Transport Layer Security (TLS), commonly known as SSL, using industry-standard ciphers, algorithms, and key sizes.

At rest: Amplify encrypts student personal information at rest using the industry-standard AES-256 encryption algorithm.

ATTACHMENT B

DATA SECURITY AND PRIVACY PLAN

In accordance with Section 121.6 of the regulations, the following is Amplify's data security and privacy plan:

Outline how the third-party contractor will implement all state, federal, and local data security and privacy contract requirements over the life of the contract, consistent with the educational agency's data security and privacy policy:

Amplify's privacy policy, available at amplify.com/customer-privacy/, outlines how Amplify's practices enable its customers to control use, access, sharing and retention of personal information in compliance with FERPA and other applicable privacy laws and regulations. Upon request, Amplify will also certify compliance with the educational agency's data security and privacy policy.

Specify the administrative, operational and technical safeguards and practices it has in place to protect personally identifiable information that it will receive under the contract:

Administrative, operational and technical safeguards and practices to protect PII under the Agreement are described in Amplify's Information Security page at <https://amplify.com/security>.

Demonstrate that it complies with the requirements of Section 121.3(c) of this Part 121:

The supplemental information required by Section 121.3(c) of this Part 121 are attached to this Addendum as Attachment A.

Specify how officers or employees of the third-party contractor and its assignees who have access to student data, or teacher or principal data receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access:

Amplify has a comprehensive information security training program that all employees and individuals with access to Amplify systems undergo upon initial hire or engagement, with an annual refresher training. We also provide information security training for specific departments based on role.

Specify if the third-party contractor will utilize sub-contractors and how it will manage those relationships and contracts to ensure personally identifiable information is protected:

Amplify may use independent contractors engaged by Amplify in the ordinary course of business or for purposes that are incidental or ancillary to the provision of services under the Agreement. Amplify requires all subcontractors with access to student, teacher, or principal data to agree in writing to abide by all applicable state and federal laws and regulations. Additionally, as between Amplify and the educational agency, Amplify takes full responsibility for the actions of any such parties.

Specify how the third-party contractor will manage data security and privacy incidents that implicate personally identifiable information including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify the educational agency:

If there has been an unauthorized release, disclosure or acquisition of the educational agency's

student, teacher, or principal data, Amplify will notify the educational agency in accordance with applicable laws and regulations. Such notification will include the following steps: Amplify will notify the educational agency after Amplify determines that the educational agency's student, teacher, or principal data were released, disclosed, or acquired without authorization, (a "Security Incident"), without unreasonable delay, subject to applicable law and authorization of law enforcement personnel, if applicable. To the extent known, Amplify will identify in such a notification the following: (i) the nature of the Security Incident, (ii) the steps Amplify has executed to investigate the Security Incident, (iii) the type(s) of personally identifiable information that was subject to the unauthorized disclosure, release, or acquisition, (iv) the cause of the Security Incident, if known, (v) the actions Amplify has done or will do to remediate any deleterious effect of the Security Incident, and (vi) the corrective action Amplify has taken or will take to prevent a future Security Incident.

Describe whether, how and when data will be returned to the educational agency, transitioned to a successor contractor, at the educational agency's option and direction, deleted or destroyed by the third-party contractor when the contract is terminated or expires.

Upon the termination or expiration of the Agreement and upon the educational agency's request, student, teacher, or principal data will be returned, transitioned, and/or destroyed in accordance with 1) Amplify's Privacy Policy and the Agreement, 2) applicable state and federal laws and regulations, and 3) in accordance with the educational agency's direction.

Amplify_ManchesterNH_8State_VendorSigned

Final Audit Report

2024-08-23

Created:	2024-08-15
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-  Document created by Ramah Hawley (rhawley@tec-coop.org)
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EXHIBIT “G”
New Hampshire

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to several state laws in New Hampshire. Specifically, those laws are RSA 189:1-e and 189:65-68-a; RSA 186; NH Admin. Code Ed. 300 and NH Admin. Code Ed. 1100; and

WHEREAS, the Parties wish to enter into these supplemental terms to the DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties;

WHEREAS, the Parties wish these terms to be hereby incorporated by reference into the DPA in their entirety for New Hampshire;

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

1. All references in the DPA to “Student Data” shall be amended to state “Student Data and Teacher Data.” “Teacher Data” is defined as at least the following:

Social security number.
Date of birth.
Personal street address.
Personal email address.
Personal telephone number
Performance evaluations.

Other information that, alone or in combination, is linked or linkable to a specific teacher, paraprofessional, principal, or administrator that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify any with reasonable certainty.

Information requested by a person who the department reasonably believes or knows the identity of the teacher, paraprofessional, principal, or administrator to whom the education record relates.

“Teacher” means teachers, paraprofessionals, principals, school employees, contractors, and other administrators.

Teacher 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, or information collected or received by Provider outside the provision of Provider services under the Service Agreement.

2. In order to perform the Services described in the DPA, the LEA shall provide the categories of Teacher Data described in the Schedule of Data, attached hereto as **Exhibit “I”**.
3. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
4. In Article IV, Section 7 amend each reference to “students,” to state: “students, teachers,…”
5. All employees of the Provider who will have direct contact with students shall pass criminal background checks.
6. Provider is prohibited from leasing, renting, or trading Student Data or Teacher Data to (a) market or advertise to students, teachers, or families/guardians; (b) inform, influence, or enable

controlled areas;

- (16) Periodically assess the security controls in organizational systems to determine if the controls are effective in their application and develop and implement plans of action designed to correct deficiencies and reduce or eliminate vulnerabilities in organizational systems;
- (17) Monitor, control, and protect communications (i.e. information transmitted or received by organizational systems) at the external boundaries and key internal boundaries of organizational systems;
- (18) Deny network communications traffic by default and allow network communications traffic by exception (i.e., deny all, permit by exception);
- (19) Protect the confidentiality of Student Data and Teacher Data at rest; (20) Identify, report, and correct system flaws in a timely manner;
- (21) Provide protection from malicious code (i.e. Antivirus and Antimalware) at designated locations within organizational systems;
- (22) Monitor system security alerts and advisories and take action in response; and
- (23) Update malicious code protection mechanisms when new releases are available.

Alternatively, the Provider agrees to comply with one of the following standards: (1) NIST SP 800-171 rev 2, Basic and Derived Requirements; (2) NIST SP 800-53 rev 4 or newer, Low Impact Baseline or higher; (3) FedRAMP (Federal Risk and Authorization Management Program); (4) ISO/IEC 27001:2013; (5) Center for Internet Security (CIS) Controls, v. 7.1, Implementation Group 1 or higher; (6) AICPA System and Organization Controls (SOC) 2, Type 2; and (7) Payment Card Industry Data Security Standard (PCI DSS), v3.2.1. The Provider will provide to the LEA on an annual basis and upon written request demonstration of successful certification of these alternative standards in the form of a national or international Certification document; an Authorization to Operate (ATO) issued by a state or federal agency, or by a recognized security standards body; or a Preliminary Authorization to Operate (PATO) issued by the FedRAMP Joint Authorization Board (JAB).


8. In the case of a data breach, as a part of the security breach notification outlined in Article V, Section 4(1), the Provider agrees to provide the following additional information:
 - i. The estimated number of students and teachers affected by the breach, if any.
9. The parties agree to add the following categories into the definition of Student Data: the name of the student's parents or other family members, place of birth, social media address, unique pupil identifier, and credit card account number, insurance account number, and financial services account number.
10. Notwithstanding anything to the contrary in this DPA or this Exhibit G, Provider may provide customized content, advertising and commercial messages to LEA, teachers, school administrators or other non-student users, provided that such advertisements shall not be based on Student Data.
11. In Article V, Section 1 Data Storage: New Hampshire does not require data to be stored within

6. All references in the DPA to “Student Data” shall be amended to include and state, “Student Data and APPR Data.”
7. To amend Article II, Section 5 to add: Provider shall ensure that its subprocessors agree that they do not have any property, licensing or ownership rights or claims to Student Data or APPR data and that they will comply with **privacy and security obligations no less stringent than those in the LEA’s Data Privacy and Security Policy.** Provider shall examine the data privacy and security measures of its Subprocessors. If at any point a Subprocessor fails to materially comply with the requirements of this **DPA in such a way that impacts or could impact LEA’s Student Data or APPR Data, upon discovery Provider shall within a reasonable time from the discovery of the concern:** (i) notify LEA, and (ii) as applicable, remove such Subprocessor’s Access to **Student Data and APPR Data;** (iii) as applicable, retrieve all Student Data and APPR Data received or stored by such Subprocessor and/or ensure that Student Data and APPR Data has been securely deleted or securely destroyed in accordance with this **DPA;** or (iv) as applicable, **notify the LEA what it is doing to correct the failure to comply and secure and protect the Student Data and APPR Data.** In the event there is an incident in which Student Data and APPR Data held, possessed, or stored by the Subprocessor is compromised, or unlawfully Accessed or disclosed, Provider shall follow the Data Breach reporting requirements set forth in the DPA.
8. In Article IV, Section 2, replace “otherwise authorized,” with “otherwise required” and delete “or stated in the Service Agreement.”
9. To amend Article IV, Section 3 to add: Provider shall ensure that all its employees and subprocessors who have Access to or will receive Student Data and APPR Data will be trained on the federal and state laws governing confidentiality of such Student Data and APPR Data prior to receipt. Access to or Disclosure of Student Data and APPR Data shall only be provided to Provider’s employees and subprocessors who need to know the Student Data and APPR Data to provide the services and such Access and/or Disclosure of Student Data and APPR Data shall be limited to the extent necessary to provide such services.
10. To replace Article IV, Section 6 (Disposition of Data) with the following: Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within ninety (90) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Provider is prohibited from retaining disclosed Student Data or continuing to Access Student Data beyond the term of the Service Agreement unless such retention is expressly authorized for a prescribed period by the Service Agreement, necessary for purposes of facilitating the transfer of disclosed Student Data to the LEA, or expressly required by law. The confidentiality and data security obligations of Provider under this DPA shall survive any termination of this contract to which this DPA is attached but shall terminate upon Provider’s certifying that it and its subprocessors, as applicable: (a) no longer have the ability to Access any Student Data provided to Provider pursuant to the Service Agreement and/or (b) have destroyed all Student Data and APPR Data provided to Provider pursuant to this DPA. The Provider

agrees that the timelines for disposition of data will be modified by any Assurance of Discontinuation mutually agreed in writing, which will control in the case of a conflict.

Upon termination of this DPA, if no written request from the LEA is received, Provider shall destroy Student Data after a period of at least one year of inactivity, in accordance with Provider's standard data retention policies and procedures.

The duty to dispose of student data shall not extend to Student Data that had been de-identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "**Directive for Disposition of Data**" form, a copy of which is attached hereto as **Exhibit "D"**, or, with reasonable notice to the Provider, other form of its choosing. No further written request or notice is required on the part of either party prior to the disposition of Student Data described in "**Exhibit D**".

11. To amend Article IV, Section 7 to add: 'Notwithstanding the foregoing, Provider is prohibited from using Student Data or APPR data for any Commercial or Marketing Purpose as defined herein. And add after (iii) account holder, "which term shall not include students."' 

Notwithstanding anything to the contrary in this DPA or this Exhibit G, Provider may provide customized content, advertising and commercial messages to LEA, teachers, school administrators or other non-student users, provided that such advertisements shall not be based on Student Data.

12. To replace Article V, Section 1 (Data Storage) to state: Student Data and APPR Data shall be stored within the United States and Canada only. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.

13. To replace Article V, Section 2 (Audits) to state: No more than once a year or following an unauthorized Access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA. The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable Access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA.

To amend the third sentence of Article V. Section 3 (Data Security) to read: The Provider shall implement security practices that are in alignment with the NIST Cybersecurity Framework v1.1 or any update to this Framework that is adopted by the New York State Department of Education.

14. To replace Article V. Section 4 (Data Breach) to state: In the event of a Breach as defined in 8 NYCRR Part

121.1 Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of an unauthorized release, disclosure, or acquisition of the LEA's Student Data or APPR Data, 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:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - 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 as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided; and
 - vi. The number of records affected, if known; and
 - vii. A description of the investigation undertaken so far; and
 - viii. The name of a point of contact for Provider.

(2) Provider agrees to adhere to all federal and state requirements 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.

(3) 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.

(4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians. Where a Breach of Student Data and/or APPR Data occurs, to the extent that such breach is attributable to Provider and/or its Subprocessors, Provider shall pay for or promptly reimburse LEA for the full cost of notification to Parents, Eligible Students, teachers, and/or principals.

(5) 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.

(6) Provider and its subprocessors will cooperate with the LEA, the NYSED Chief Privacy Officer and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Provider will be the sole responsibility of the Provider to the extent such Breach is attributable to Provider or its subprocessors.

For clarity and without limitation, Provider will not be responsible for costs associated with voluntary notification that is not legally required. With respect to any breach that is not due to acts or omissions of Provider, its subcontractors or assignees, Provider will reasonably cooperate in performing the activities described above, at LEA's reasonable request and expense.

15. To amend the definitions in Exhibit "C" as follows:

- "Subprocessor" is equivalent to subcontractor. It is a third party who the provider uses for data collection, analytics, storage, or other service to allow Provider to operate and/or improve its service, and who has access to Student Data.
- "Provider" is also known as third party contractor. It any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student and/or teacher or principal data from a school district to carry out its responsibilities and is not an educational agency and a not-for-profit corporation or other non-profit organization, other than an educational agency.

16. To add to Exhibit "C" the following definitions:

- **Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
- **APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d
- **Commercial or Marketing Purpose:** In accordance with § 121.1(c) of the regulations of the New York Commissioner of Education, the Disclosure, sale, or use of Student or APPR Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data or APPR Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
- **Disclose or Disclosure:** The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
- **Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
- **Release:** Shall have the same meaning as Disclose
- **LEA:** As used in this DPA and all Exhibits, the term LEA shall mean the educational agency, as defined in Education Law Section 2-d, that has executed the DPA; if the LEA is a board of cooperative educational services, then the term LEA shall also include Participating School Districts for purposes of the following provisions of the DPA: Article I, Section 2;