

Montana Data Privacy Agreement

For use with vendors providing student record management services and online applications utilized to deliver services to students.

This is a sample agreement to assist Montana public school districts in complying with the Montana Pupil Online Personal Information Protection Act. The sample agreement, if executed, will constitute a legally binding contract between the district and the vendor. As with any legal contract, school districts should consult with legal counsel prior to execution to ensure the provisions of the draft agreement reflect the terms the district has agreed upon with the contract and that the specific sections of the agreement protect the school district's interests. If the vendor or the school district have requested changes to this sample agreement, those amendments should be reviewed by legal counsel. Legal assistance is available from the Montana School Boards Association at 406 442-2180

I. PARTIES:

The parties to this Agreement, which incorporates the terms and conditions located at <https://amplify.com/customer-terms> (the "Service Agreement"), are the West Valley School District (hereinafter "District") and Amplify Education, Inc. (hereinafter "Contractor" or "Amplify").

II. PURPOSE:

District retains Contractor to provide the following services on behalf of the District: Provide educational products and services, including, but not limited to: technology services, including cloud-based services, for the digital storage, management, and retrieval of pupil records; provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the provisions of this Agreement. Contractor shall be free from control and direction over the performance of the services, both under this Agreement and in fact. Except as limited herein, Contractor shall have and exercise full professional discretion as to the details of performance.

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

EXCLUSIVITY: This Agreement shall begin on the date of signature and shall run for 5 years and shall expire on June 30, 2029, unless _____ terminated earlier by mutual agreement of the parties. This Agreement shall not be construed as any guarantee of work or assignments to Contractor. Contractor shall be contacted on an "as-needed" basis by District, with no obligation by District to use Contractor for any specified number of projects. Contractor shall have no expectation of renewal of this Agreement and shall not be entitled to continue to contract with or perform services for the District beyond the expiration of this Agreement. This Agreement is non-exclusive, meaning that both Contractor and District may contract with any other party for the procurement or provision of investigative services without interference.

IV. DEFINITIONS:

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

Protected information means personally identifiable information or materials, in any media or format, that describes or otherwise identifies a pupil and that is: (i) created or provided by a pupil, or the pupil's parent or legal guardian, to an operator in the course of the pupil's, parent's, or legal guardian's use of the operator's K-12 online application; (ii) created or provided by an employee or agent of a school district to an operator in the course of the employee's or agent's use of the operator's K-12 online application; or (iii) gathered by an operator through the operator's K-12 online application. The term "protected information" includes but is not limited to:

- (i) information in the pupil's educational record or e-mail messages;
- (ii) first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact;
- (iii) discipline records, test results, special education data, juvenile dependency records, grades, or evaluations;
- (iv) criminal, medical, or health records;
- (v) social security number;
- (vi) biometric information;
- (vii) disability;
- (viii) socioeconomic information;
- (ix) food purchases;
- (x) political affiliation;
- (xi) religious information; or
- (xii) text messages, documents, pupil identifiers, search activity, photos, voice recordings, or geolocation information.

“Confidential Information” means information, not generally known, and proprietary to the Contractor or the School District or to a third party for whom the Contractor or the School District is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the Contractor or the School District. Confidential Information includes all information which Contractor or the School District acquires or becomes acquainted with during the period of this Agreement, whether developed by Contractor, the School District or others, which Contractor or the School District has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual student and information within the definition of “Education Record” as defined herein. The parties agree that the following will be treated as “Confidential Information”: (i) all non-public database information (“Data”) provided by or on behalf of the School District to Contractor; (ii) all non-public information provided by Contractor to the School District pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as “Confidential,” “Proprietary” or words of similar meaning by either party; or (iv) information of a party which a reasonable person would understand under the circumstances to be confidential.

V. WORK PRODUCT – OWNERSHIP:

The parties acknowledge that no work product will be created under this Agreement. All products and services provided by Contractor are subject to Contractor’s license terms as stated in the Service Agreement.

Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the School District; or 2) create any partnership, joint venture, or other association between the School District and Contractor. Any direction or instruction by the School District or any of its authorized representatives in respect of the work shall relate to the results the School District desires to obtain from the work, and shall in no way affect Contractor's independent status.

Contractor shall not use the image or likeness of the School District's buildings or the School District's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of the School District, without the School District's prior written consent. Contractor shall not have any

authority to advertise or claim that the School District endorses Contractor's services, without the School District's prior written consent. Notwithstanding the foregoing, Contractor may advertise generally the existence of School District's engagement of Contractor, only to the extent such engagement is a matter of public knowledge and without claim of the School District's endorsement.

VI. MONTANA PUPIL ONLINE PERSONAL INFORMATION PROTECTION ACT

In accordance with the Montana Pupil Online Personal Information Protection Act, pupil records, as defined under such Act, continue to be the property of and under the control of the school district. Contractor is prohibited from using any information in pupil records for any purpose other than those required or specifically permitted by this Agreement. Contractor is specifically prohibited from using personally identifiable information in pupil records to engage in targeted advertising.

By executing this Agreement, Contractor certifies that pupil records will not be retained or available upon completion of the terms of the Agreement. Upon request of the District, Contractor will provide written certification to the School District pupil records are no longer held, possessed or otherwise available to Contractor or its employees, agents, or subcontractors. This requirement does not apply to de-identified information or to pupil-generated content if a pupil chooses to establish or maintain an account with the third party for the purpose of storing that content.

Parents, guardians and eligible pupils have the right to inspect the personal information held by the Contractor. Parents, guardians, or pupils should submit to the school principal written request identifying the information they wish to inspect. The principal will make arrangements for access and notify the requesting party of the time and place the information may be inspected. Contractor will cooperate with the School District to accommodate any reasonable inspection request to the extent practicable. The rights contained in this section are denied to any person against whom an order of protection has been entered concerning a student.

Parents/guardians or eligible pupils may ask the School District to amend a personal information held by the Contractor they believe is inaccurate, misleading, irrelevant, or improper. They should write the school principal clearly identifying the part of the record they want changed and specify the reason. Contractor will cooperate with the School District to accommodate any reasonable amendment request to the extent practicable.

If the District decides not to amend the record as requested by the parent(s)/guardian(s) or eligible student, the District will notify the parent(s)/guardian(s) or eligible pupil of the decision and advise him or her of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent(s)/guardian(s) or eligible student when notified of the right to a hearing.

Parents/guardians or eligible pupils may ask the School District to transfer possession of personal information held by the Contractor to the pupil. Parents, guardians, or pupils should submit to the school principal written request identifying the information they wish to transfer. Contractor will cooperate with the School District to accommodate any reasonable transfer request to the extent practicable, including providing options by which a pupil may transfer pupil-generated content to a pupil's personal account.

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

Contractor will immediately provide written notification to the School District of any unauthorized disclosure of pupil information.

Contract will coordinate with the School District to notify the parent, legal guardian, or pupil affected by an unauthorized disclosure of the pupil's records.

VII. CONFIDENTIALITY SAFEGUARDS:

Contractor will collect and use the School District's Data only for the purpose of fulfilling its duties and providing services under this Agreement, for improving services under this Agreement, or as otherwise agreed between the parties.

If Contractor will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the Contractor acknowledges that for the purpose of this Agreement it will be designated as a 'school official' with 'legitimate educational interests' and will use the data only for the purpose of fulfilling its duties under this Agreement or as otherwise permitted herein. Contractor agrees to indemnify and hold harmless the Board of Trustees of the School District for any damages or

costs, including reasonable attorney's fees, to the extent arising out of the gross negligence or willful misconduct by Contractor, its agents and employees concerning its FERPA obligations under this section.

In performing services under this Agreement, Contractor and the School District may be exposed to and will be required to use certain "Confidential Information", as defined above. Contractor and the School District along with their employees, agents or representatives will not use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.

Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to Contractor, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement.

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

Contractor may use De-identified Data as permitted under applicable law, including for product development, research, or other internal purposes. De-identified Data means Data that cannot be used to reasonably identify an individual person and will have all direct and indirect personal identifiers removed or obscured. Such identifiers may include, but are not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify De-identified Data.

Contractor is prohibited from mining the School District's Data for any purposes other than those agreed to by the parties. Data mining or scanning

of user content for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement, directed towards children, parents, guardians, or District Employees will be strictly prohibited unless allowed with express written consent of the District. Contractor shall not use information to amass a profile about a pupil, except in furtherance of K-12 school purposes. Operators shall not sell a pupil's information to unauthorized third parties. Notwithstanding the foregoing, Contractor may, from time to time and only to the extent permitted under applicable law, provide customized content, advertising, and commercial messages to its authorized users, provided that such advertisements shall not be based on pupil Data or directed to K-12 students. Contractor may use De-identified Data to recommend educational products or services to School Customers (local education agencies purchasing Amplify Products and Services) and their authorized users (subject to exceptions permitted under applicable law), or to notify such users about new educational product updates, features, or services.

Contractor will not materially change how School District Data are collected, used, or shared under the terms of this Agreement in any way without notice to the School District. This Agreement is the entire agreement between the School District (including all District end users) and the Contractor pertaining to the subject matter contemplated herein. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.

Contractor will not share School District data, with or disclose it to any third party, except to affiliated subcontractors, agents, or third-party service providers of the Contractor, without prior specific and informed written consent of the School District, except as required by law. Contractor will not post School District Data or pupil records to any searchable or publicly viewable website. Contractor shall not disclose protected information unless the disclosure is made in accordance with School District policy as stated herein, state or federal law, or with parent consent. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the protected information and safeguard that information from unauthorized access, destruction, use, modification, or disclosure in accordance with School District policy and this Agreement.

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

All goods, products, materials, documents, reports, writings, video images,

photographs, papers and intellectual property of any nature including software or computer images of the School District will not be disclosed to any other person or entity, except as otherwise permitted herein, and remains the property of the school system. All student-produced work remains the property of the school system or that eligible student. The Contractor has a limited, nonexclusive license to the District's Data described herein solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to the District's Data, content, or intellectual property, except as expressly stated in the Agreement, including any right to sell or trade Data.

Except as otherwise expressly prohibited by law, the Contractor will immediately notify the School District of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the Contractor seeking School District Data. If the School District receives a similar request, the Contractor will promptly supply the School District with copies of records or information required by the School District to respond.

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

VIII. DATA BREACHES:

Contractor's obligations in the event of data breach are governed by Exhibit B, attached hereto.

IX. LEGAL COMPLIANCE AND NON-DISCRIMINATION:

All services provided by Contractor under this Agreement will be completed in accordance with state and federal law and School District Policy. Copies of School District Policies are available upon request. The parties specifically agree to collaborate in the enforcement and compliance with the Family Educational Rights and Privacy Act.

All employees hired by Contractor to perform services under this Agreement shall be hired by Contractor on the basis of merit and qualifications to perform

the duties necessitated by the requirements of this Agreement. Such qualifications are those abilities of an applicant for employment genuinely related to competent and satisfactory performance of Contractor's obligations under this Agreement. Contractor agrees and warrants that Contractor's hiring practices related to employees performing services under this Agreement, as well as Contractor's practices related to promotion, retention, compensation, and other terms, conditions or privileges of employment, shall be nondiscriminatory, and such hiring, promotion, retention, and general employment practices shall not be based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

X. EMPLOYEE REQUIREMENTS:

All employees of Contractor performing labor under this Agreement that have direct unsupervised access to students, including Contractor in the event that Contractor personally performs labor under this Agreement, shall be subjected to a name-based and fingerprint criminal background investigation conducted by an appropriate law enforcement agency. Contractor shall certify to the District to conducting the checks described above or request consultants assigned to providing services under the Service Agreement who will have direct unsupervised access to students to submit to background checks to be conducted by the District prior to any such employee performing any services under this Agreement. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any such employee to perform services under this Agreement on the basis of information set forth in the results of a criminal background investigation.

XI. EMPLOYEE MISCONDUCT:

All employees of Contractor (including Contractor) shall perform services under this Agreement in a professional manner, and shall, at all times while present on District property, behave in a manner appropriate to a school setting. Contractor shall discipline or terminate the employment of any of Contractor's employees performing services under this Agreement for engaging in any conduct inappropriate to a school setting, including, but not limited to, being under the influence or in possession of alcohol or any controlled substance while on District property; use of foul language; bullying or harassment of District students or staff; or such other conduct deemed inappropriate by the District. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any employee to perform services under this Agreement based upon one or more instances of employee misconduct as described herein.

XII. TERMINATION PRIOR TO EXPIRATION OF CONTRACT TERM:

This Agreement may be terminated at any time prior to expiration of the contract term by mutual agreement of the parties in writing. This Agreement may be terminated unilaterally by either party for cause or noncompliance with the terms, conditions, and requirements set forth herein, provided, however, that the noncompliant party shall first be entitled to a written demand for compliance and a reasonable opportunity to cure any noncompliance therein identified. Failure to cure any identified noncompliance within 30 days of receipt of written demand shall constitute a material breach of this Agreement, and shall entitle the non-breaching party to immediately terminate this Agreement. All parties subject to a contract voided under this subdivision shall return or destroy all pupil records in their possession to the school district

XIII. ENTIRE AGREEMENT, MODIFICATION, AND WAIVER:

This Agreement embodies the complete agreement of the parties hereto, superseding all oral and written previous and contemporary agreements between the parties. No alteration or modification of this Agreement shall be valid unless evidenced by a writing signed by the parties to this Agreement. A waiver of any term or condition of this Agreement or breach of this agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of this Agreement. Any waiver must be in writing each time a waiver occurs.

XIV. SAVINGS CLAUSE:

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XV. NOTICES:

All notices, consents, request, instructions approvals or other communications provided for herein shall be in writing and delivered by both email and personal delivery or regular U.S. mail, return receipt requested, to the last known address of the party being provided such notice.

XVI. ENFORCEMENT AND INTERPRETATION:

This Agreement shall be enforced and interpreted pursuant to the laws of the

State of Montana. Jurisdiction over any claim or action for interpretation or enforcement of, or otherwise arising from the terms and conditions of this Agreement, shall be with the appropriate Montana District Court.

This agreement is subject to the laws of Montana and School District policy. Contractor is expressly notified that the agreement is subject to the Montana Pupil Online Personal Information Protection Act and violation of the act may be considered a crime a conviction of such may result in a fine not less than \$200 or more than \$500.

Any civil claim arising out of or related to the Agreement, or services provided under the Agreement, may be subject to mediation at the request of either party. School District and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to this Section. Any claim not resolved in mediation shall be subject to litigation in accordance with the laws of the State of Montana. Any litigation shall be conducted in Montana district court. Mandatory and exclusive venue for any disputes shall be in the county in which the School District is located.

Notwithstanding anything to the contrary in the Agreement or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder. The parties may mutually agree in writing to submit a dispute to arbitration but the default dispute resolution shall be litigation. Contractor stipulates that the School District is a political subdivision of the State of Montana, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Montana. By entering into this Agreement, the School District does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law. In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party. The parties acknowledge that, as a public entity in the State of Montana, the School District and entities contracting with the School District must comply with the open records laws of the State.

I have read this Agreement, understand its terms, and agree to be bound thereby. DATED this ___ day of _____, _____.

Year

Alexandra Walsh

Date: 08 / 16 / 2024

Alexandra Walsh, Contractor

Title/Position: Chief Product Officer

Company Name: Amplify Education, Inc.

Company Address: 55 Washington Street, Suite 800

Brooklyn, NY 11201

Company Phone Number: (800) 823-1969

Company Website: amplify.com

Marilyn Hedstrom Date: 9-9-24

Marilyn Hedstrom, Board Chair West Valley School District

ATTEST:

Maggie McKay Date: 9-9-24

Maggie McKay, District Clerk West Valley School District

Exhibit "B"

Security Incident

- 1. Data Security Incident.** If Amplify Education Inc. ("**Amplify**") has reason to believe that Pupil Records are disclosed to or acquired by an unauthorized individual(s) (a "**Security Incident**"), then Amplify will fully investigate the incident and to take reasonable steps to remediate systems and controls and to mitigate any potential harm to individuals which may result from the Security Incident and cooperate with District's investigation of the Security Incident.
- 2. Notification to District.** Amplify will notify District after Amplify determines that District's Pupil Records were affected by the Security Incident, 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 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.
- 3. Notification to Individuals.** To the extent District determines that the Security Incident triggers third party notice requirements under applicable laws, as the owner of the Student Records, the District shall be responsible for the timing and content of the notices to be sent. Except as otherwise required by law, Amplify will not provide notice of the Security Incident directly to individuals whose personal information was affected, to regulatory agencies, or to other entities, without first providing written notice to District. Amplify will be responsible for, and will bear, all notification related costs arising out of or in connection with the Security Incident, subject to any limitations of liability terms contained in the Agreement. For clarity and without limitation, Amplify will not be responsible for costs associated with voluntary notification that is not legally required. With respect to any Security Incident that is not due to acts or omissions of Amplify or its agents, Amplify will reasonably cooperate in performing the activities described above, at District's reasonable request and expense.

**OPTIONAL EXHIBIT "A" GENERAL
OFFER OF PRIVACY TERMS**

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

Provider's Name: Amplify Education, Inc.

BY: Alexandra Walsh Date: 08 / 16 / 2024

Printed Name:

Alexandra Walsh

Title/Position:

Chief Product Officer

2. Subscribing LEA (Local Education Agency)

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA's individual information is contained on the next page.

The Subscribing LEA and the Amplify Education, Inc. shall therefore be
Provider bound by the same
terms of this DPA.

BY: Scott McCulloch

Date: DEC 6 2024

Printed Name: Scott McCulloch

Title/Position: Board Chair

SCHOOL DISTRICT NAME: Billings Public Schools

DESIGNATED REPRESENTATIVE OF LEA:

Daniela C Walsh

Name Daniela Walsh

Title District Clerk

Address 415 N. 30th Billings, MT 59101

Telephone Number 406-281-5050

Email scott.mcculloch@billingschools.org

COUNTY OF LEA:

Yellowstone