

Standard Student Data Privacy Agreement for Heartland School Solutions

IL-NDPA v1.0a

Effingham CUSD 40 or LEA

and

Heartland Payment Systems, LLC

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: **Effingham CUSD 40**, located at 2803 S. Banker Street, Effingham, IL (the “Local Education Agency” or “LEA”) and Heartland Payment Systems, LLC, located at 765 Jefferson Rd #400, Rochester, NY 14623 (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), including but not limited to the Illinois School Student Records Act (“ISSRA”), 105 ILCS 10/, Mental Health and Developmental Disabilities Confidentiality Act (“MHDDCA”), 740 ILCS 110/, Student Online Personal Protection Act (“SOPPA”), 105 ILCS 85/, Identity Protection Act (“IPA”), 5 ILCS 179/, and Personal Information Protection Act (“PIPA”), 815 ILCS 530/, and Local Records Act (“LRA”), 50 ILCS 205/, 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 this Agreement.

2. **Special Provisions. Check if Required**

If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms

3. This DPA shall be effective upon the date of signature by Provider and LEA, and shall remain in effect as between Provider and LEA for so long as the Services are being provided to the LEA or as long as Provider has any Student Data.

4. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "Services").

5. **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 LEA for this DPA is:

Name: Mark Doan

Title: Superintendent

Address: 2803 South Banker St. Effingham, FL 62401

Phone: 217-540-1500

Email: doanm@unit40.org

The designated representative for the Provider for this DPA is:

Name: Jennifer Webb

Title: Senior Corporate Counsel

Address: 765 Jefferson Rd #400, Rochester, NY 14623

Phone: 913.310.1204

Email: jennifer.webb@globalpay.com

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

LEA:

By: [Signature]

Date: 8/30/21

Printed Name: MARK E DOAN

Title/Position: SUPT.

Provider:

By: [Signature]

Date: 6/8/21

Printed Name: Jeremy Loch

Title/Position: SVP & General Manager, School Solutions

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, as described in FERPA. 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 by the LEA 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 by the LEA, 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 provided by the LEA under 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 to Provider's systems. 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, this DPA, or applicable law. 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 without consent.

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.

6. **Disposition of Data**. 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 sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data in the usual course of business. 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"**. If the LEA and Provider employ Exhibit "D," 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."

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 countries where Student Data is stored.

2. **Audits**. No more than once a year, upon receipt of a written request from the LEA and subject to a separate nondisclosure agreement, the Provider will provide the LEA with a copy of its most current SSAE 16/18 report regarding the third party audit of 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 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 where and to the extent required by applicable law.

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 has implemented NIST Cybersecurity Framework Version 1.1. 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, or as required by applicable law, 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.
 - vi. A list of the students whose Student Data was involved in or is reasonably believed to have been involved in the breach, if known; and
 - vii. The name and contact information for an employee of the Provider whom parents may contact to inquire about the breach.
- (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 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, unless Provider is legally required to do so by applicable law.

(5) In the event of a breach originating from LEA's use of the Service, Provider shall reasonably cooperate with LEA to the extent necessary to expeditiously secure Student Data.

5. Reimbursement of Expenses Associated with Security Breach. In the event of a Security Breach that is solely attributable to the Provider, the Provider shall reimburse and indemnify the LEA for any and all reasonable costs and expenses that the LEA incurs in investigating and remediating the Security Breach, including but not limited to costs and expenses associated with:

a. Providing notification to the parents of those students whose Student Data was compromised and regulatory agencies or other entities as required by law or contract;

b. Providing credit monitoring to those students whose Student Data was exposed in a manner during the Security Breach that a reasonable person would believe may impact the student's credit or financial security;

c. Legal fees, audit costs, fines, and any other fees or damages imposed against the LEA as a result of the security breach; and

d. Providing any other notifications or fulfilling any other requirements adopted by the Illinois State Board of Education or under other State or federal laws.

ARTICLE VI: ILLINOIS PROVISIONS

1. Compliance with Illinois Privacy Laws. In performing its obligations under the Agreement, the Provider shall comply with all Illinois laws and regulations pertaining to student data privacy, confidentiality, and maintenance, including but not limited to the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/, Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"), 740 ILCS 110/, Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/, Identity Protection Act ("IPA"), 5 ILCS 179/, and Personal Information Protection Act ("PIPA"), 815 ILCS 530/, and Local Records Act ("LRA"), 50 ILCS 205/.

2. School Official Designation. Pursuant to Article I, Paragraph 1 of the DPA Standard Clauses, and in accordance with FERPA, ISSRA and SOPPA, in performing its obligations under the DPA, the Provider is acting as a school official with legitimate educational interest; is performing an institutional service or function for which the LEA would otherwise use its own employees; is under the direct control of the LEA with respect to the use and maintenance of Student Data; and is using Student Data only for an authorized purpose and in furtherance of such legitimate educational interest.

3. Limitations on Re-Disclosure. The Provider shall not re-disclose Student Data to any other party or affiliate without the express written permission of the LEA, the data holder, or pursuant to court order, unless such disclosure is otherwise permitted under SOPPA, ISSRA, FERPA, and MHDDCA. Provider will not sell or rent Student Data. In the event another party, including law enforcement or a government entity, contacts the Provider with a request or subpoena for Student Data in the possession of the Provider, the Provider shall, unless prohibited by law, redirect the other party to seek the data directly from the LEA. In the event the Provider is compelled to produce Student Data to another party in compliance with a court order, Provider shall, unless prohibited by law, notify the LEA at least five (5) school days in advance of the court ordered disclosure and, upon request, provide the LEA with a copy of the court order requiring such disclosure.

4. Notices. Any notice delivered pursuant to the DPA shall be deemed effective, as applicable, upon receipt as evidenced by the date of transmission indicated on the transmission material, if by e-mail; or four (4) days after mailing, if by first-class mail, postage prepaid.

5. Parent Right to Access and Challenge Student Data. The LEA shall establish reasonable procedures pursuant to which a parent, as that term is defined in 105 ILCS 10/2(g), may inspect and/or copy Student Data and/or challenge the accuracy, relevance or propriety of Student Data, pursuant to Sections 5 and 7 of ISSRA (105 ILCS 10/5; 105 ILCS 10/7) and Section 33 of SOPPA (105 ILCS 85/33). The Provider shall respond to any request by the LEA for Student Data in the possession of the Provider when Provider cooperation is required to afford a parent an opportunity to inspect and/or copy the Student Data, within a reasonable time from the date of the request. In the event that a parent contacts the Provider directly to inspect and/or copy Student Data, the Provider shall refer the parent to the LEA, which shall follow the necessary and proper procedures regarding the requested Student Data.

7. Corrections to Factual Inaccuracies. In the event that the LEA determines that the Provider is maintaining Student Data that contains a factual inaccuracy, and Provider cooperation is required in order to make a correction, the LEA shall notify the Provider of the factual inaccuracy and the correction to be made. No later than 90 calendar days after receiving the notice of the factual inaccuracy, the Provider shall correct the factual inaccuracy and shall provide written confirmation of the correction to the LEA.

8. Security Standards. The Provider shall implement and maintain commercially reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect Student Data from unauthorized access, destruction, use, modification, or disclosure, including but not limited to the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of the Student Data (a "Security Breach"). For purposes of this DPA, "Security Breach" does not include the good faith acquisition of Student Data by an employee or agent of the Provider or LEA for a legitimate educational or administrative purpose of the Provider or LEA, so long as the Student Data is used solely for purposes permitted by SOPPA and other applicable law, and so long as the Student Data is restricted from further unauthorized disclosure.

9. Transfer or Deletion of Student Data. The Provider shall review, on an annual basis, whether the Student Data it has received pursuant to the DPA continues to be needed for the purpose(s) of the Service Agreement and this DPA. If any of the Student Data is no longer needed for purposes of the Service Agreement and this DPA, the Provider will delete such Student Data. Upon termination of the Service Agreement between the Provider and LEA, Provider shall conduct a final review of Student Data within 60 calendar days. If the LEA receives a request from a parent, as that term is defined in 105 ILCS 10/2(g), that Student Data being held by the Provider be deleted, the LEA shall determine whether the requested deletion would violate State and/or federal records laws. In the event such deletion would not violate State or federal records laws, the LEA shall forward the request for deletion to the Provider. The Provider shall comply with the request and delete the Student Data within a reasonable time period after receiving the request. Any provision of Student Data to the LEA from the Provider shall be transmitted in a format readable by the LEA.

10. Public Posting of DPA. Pursuant to SOPPA, the LEA shall publish on its website a copy of the DPA between the Provider and the LEA, including all Exhibits.

11. Privacy Policy. The Provider must publicly disclose material information about its collection, use, and disclosure of Student Data, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Provider's terms of user and privacy policy can be found at myschoolbucks.com

12. **Minimum Data Necessary Shared.** The Provider attests that the Student Data request by the Provider from the LEA in order for the LEA to access the Provider's products and/or services is limited to the Student Data that is adequate, relevant, and limited to what is necessary in relation to the K-12 school purposes for which it is processed.

13. **Exhibits A and B.** The Services described in Exhibit A and the Schedule of Data in Exhibit B to the DPA satisfy the requirements in SOPPA to include a statement of the product or service being provided to the school by the Provider and a listing of the categories or types of covered information to be provided to the Provider, respectively.

ARTICLE VII: 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 VIII: MISCELLANEOUS

1. **Termination.** In the event either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or been terminated. One party may terminate this DPA upon a material breach of this DPA by the other party. Upon termination of the DPA, the Service Agreement shall terminate.

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, any other bid/RFP, or writing, the terms of this DPA shall apply and take precedence. 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 ILLINOIS, 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

Heartland provides software solutions that support school functions such as meal ordering, online payment and ordering, point of sale transactions, transportation, activities, spirit wear, and other items as configured by LEA. Heartland also provides nutrition services operations and accountability software solutions, including applying for subsidized meals.

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.	√
	Other application technology meta data-Please specify:	
Application Use Statistics Assessment	Meta data on user interaction with application	√
	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data – attendance at a meal is captured	√
	Student class attendance data	
Communications	Online communications captured (emails, blog entries)	√
Conduct	Conduct or behavioral data	
Demographics (School can configure which data points to use)	Date of Birth	√
	Place of Birth	
	Gender	√
	Ethnicity or race (for nutritional services)	√
	Language Information (native, or primary language spoken by student)	√
	Other demographic information-Please specify: School can configure registration or forms and collect additional demographic info, but the services do not automatically collect this information	

Enrollment	Student school enrollment	√
	Student grade level	√
	Homeroom	√
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	√
	Other enrollment information-Please specify: class schedule	√
Parent/Guardian Contact Information (for MSB, parent provides directly via separate terms of service)	Address	√
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last – for nutrition services	√
Schedule	Student scheduled courses	
Schedule Special Indicator	Teacher names	
	English language learner information	
Special Indicator Student Contact Information	Low income status	√
	Medical alerts/ health data	√
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care) (to the extent included in the nutritional services application)	√
	Other indicator information-Please specify:	
	Address – collected for nutrition services	√

Student Contact Information Student Identifiers (School can configure which data points to use)	Email	√
	Phone	√
	Local (School district) ID number	√
Student Identifiers Student Name (MSB allows a parent to establish a student account after consent to terms and conditions)	State ID number	
	Provider/App assigned student ID number	√
	Student app username	
	Student app passwords	
	First and/or Last	√
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
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.	
Student work	Other student work data -Please specify: District can configure forms to collect additional information	√
Transcript	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: District can choose to create a form to collect this information	√
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, enabling parents to make school-related payments, place lunch orders, or for provide nutritional software. 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, RFP, or Purchase Order.

Student Data: Student Data includes any data provided by LEA 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 any information so defined under applicable Illinois law and regulations, including but not limited to (a) "covered information," as defined in Section 5 of SOPPA (105 ILCS 85/5), (b) "school student records" as that term is defined in Section 2 of ISSRA (105 ILCS 10/2(d)) (c) "records" as that term is defined under Section 110/2 of the MHDDCA (740 ILCS 110/2), and (d) "personal information" as defined in Section 530/5 of PIPA. 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. Student Data does not include data that Provider receives directly from a parent, guardian, or eligible student through the MSB website or application.

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

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:

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:

3. Schedule of Disposition

Data shall be disposed of by the following date:

As soon as commercially practicable.

By

4. Signature

_____ Authorized Representative of LEA

_____ Date

5. Verification of Disposition of Data

_____ Authorized Representative of Company

6/8/21 _____ Date

EXHIBIT "E"
GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and ("Originating LEA") which is dated , to any other LEA ("Subscribing LEA") who accepts this General Offer of Privacy Terms ("General Offer") through its signature below. This General Offer shall extend only to privacy protections, and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provided by Subscribing 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 statutes; (2) a material change in the services and products listed in the originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Subscribing LEAs should send the signed **Exhibit "E"** to Provider at the following email address:

_____.

PROVIDER: Heartland Payment Systems, LLC, dba Heartland School Solutions

BY: 

Date: 6/8/21

Printed Name: Jeremy Loch

Title/Position: SVP & General Manager, School Solutions

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA for a term of _____.

****PRIOR TO ITS EFFECTIVENESS, SUBSCRIBING LEA MUST DELIVER NOTICE OF ACCEPTANCE TO PROVIDER PURSUANT TO ARTICLE VII, SECTION 5. ****

Subscribing LEA:

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

SCHOOL DISTRICT NAME: _____

DESIGNATED REPRESENTATIVE OF LEA:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Email: _____

Heartland School Solutions Master Software Services Agreement

This Master Software Services Agreement (the "Agreement"), together with all software-specific attachments, is made and entered into this day 14th of July, 2021 ("Effective Date"), by and between by and between Heartland Payment Systems, LLC (d/b/a Heartland School Solutions) a Delaware limited liability company, with an office at 765 Jefferson Rd #400, Rochester, NY 14623 ("Heartland"), and Effingham CUSD 40, having its principal place of business located at 2803 S. Banker St., Effingham, IL ("Customer"). Heartland and Customer may individually be referred to herein as "Party" or collectively as "Parties".

1. Definitions

- 1.1 Affiliate** means a business entity that controls or is controlled by another business entity or is associated with other business entities under common ownership or control of a business entity, such as a subsidiary or parent company.
- 1.2 Error** means a reproducible failure of the Software to perform in substantial conformity with the Documentation. An Error does not include a nonconformity resulting from customer's improper use, alteration of or damage to the Software, or Customer's combining or merging the Software with any Equipment or Software not approved by Heartland.
- 1.3 Customer Data** means all information, files, content, figures, images, text, files or other data, including data concerning school lunch purchases, as well as student Personal Identifiable Information, provided by the Customer to Heartland in connection with the Services.
- 1.4 Documentation** means all manuals, instructions, writings electronic or other media provided by Heartland relating to the Software.
- 1.5 End User(s)** means the Customer's employees and agents using the Software on Customer's behalf.
- 1.6 Feedback** means suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or End Users relating to Heartland's products or services.
- 1.7 Heartland Data** means all Heartland-created information, files, content, figures, images, text, files or other data provided by Heartland to Customer in connection with Customer's or its End Users' use of the Services.
- 1.8 Major Enhancement** means any major functional revision to the Subscription released by Heartland during the Term.
- 1.9 Minor Enhancement** means any minor release, update, modification or "bug fix" that does not necessarily provide materially new functionality, as determined by Heartland in its reasonable discretion, and made generally available to Customer.
- 1.10 Personally Identifiable Information** means information provided to Heartland by Customer that consists of (a) student names; (b) students' parent and family members' names; (c) students and students' families' address; (d) personal identifiers, such as social security numbers, student number, or biometric record; (e) indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; or (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, as defined by the regulations governing the Family Educational Rights and Privacy Act ("FERPA"), 34 CFR § 99.3.

- 1.11 **Proposal** means the Heartland proposal identifying the Software and Subscriptions that Customer is purchasing.
- 1.12 **Services** mean the Software, Support Services, websites, mobile applications, or online services owned or operated by Heartland and its Affiliates, and provided to Customer.
- 1.13 **Software** means the specific Heartland software program(s) that Customer is using as shown on the Proposal.
- 1.14 **Subscription** means the continued provision of Software after the Initial Term.
- 1.15 **Support Services** means the services that Heartland provides Customer in connection with the Software.
- 1.16 **Support Incident** is defined as one specific Error or other technical issue that begins when Customer calls Heartland Technical Support and ends when either the single specific Error or other technical issue is resolved or deemed non-resolvable. Each Support Incident generates a "ticket", which will be opened, tracked and closed separately.
- 1.17 **Support Times** means Monday through Friday, 7:00 a.m. through 7:00 p.m. EST, excluding the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. Hours may be limited on other bank holidays.
- 1.18 **Updates** means modifications, enhancements, changes and alterations to the Software provided by Heartland during the Subscription, including all Major Enhancements and Minor Enhancements.

2. Grant of License

- 2.1 **Limited License.** Subject to the terms and conditions in this Agreement, and any applicable software-specific attachments, Heartland grants Customer a non-exclusive, non-transferable right to access and use the Software.
- 2.2 **Prohibited Uses.** Customer will not, and will not permit any third party to, (a) download, copy, sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Service to a third party except as may be expressly set forth in this MSA and its attachments; (b) intentionally access or use any portion of the Software delivered by Heartland but not expressly licensed and paid for by Customer (c) use any Service to provide, or incorporate any Service into, any general purpose data warehousing service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or Heartland APIs to any Service, (d) disclose or publish performance benchmark results for the Software (as delivered or subsequently modified) without Heartland's prior written consent; (e) transfer the Software to a different database platform or operating system, except as may be specifically allowed by Heartland in writing; (f) export or use the Software or Documentation in violation of United States, Canadian, or other applicable laws or regulations; (g) remove or obscure any proprietary or other notices contained in any Service; or (h) use any Service in violation of the terms and conditions of this Agreement or applicable law.
- 2.3 **Heartland Technology.** Customer agrees that Heartland retains all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, all Documentation and Software, and any and all related and underlying technology; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, "**Heartland Technology**"). Except for the express limited rights set forth in this Agreement, no right, title or interest in any Heartland Technology is granted to Customer. Further, Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for any Service.

- 2.4 **Delivery.** Delivery shall be deemed complete when Heartland provides notification to Customer that Customer has the ability to access the Software.
- 2.5 **Commercial Computer Software.** The Software was developed at private expense, is commercial, and is published and copyrighted. The Software may be transferred to the U.S. government only with the prior written consent of Heartland and solely with "Restricted Rights" as that term is defined in 48 CFR § 52.227-19. In no event will the Software be licensed to Customer with rights greater than those set forth in 48 CFR § 52.227-19.

3. Privacy and Data Security

- 3.1 Heartland has in place robust data security protections, including data systems monitoring, data encryption, incident response plans, limitations on access to PII, safeguards to ensure PII is not accessed by unauthorized persons, and destruction of PII when no longer needed or required to be maintained.
- 3.2 Heartland complies with all FERPA requirements, and uses PII only to provide the Services.
- 3.3 Heartland takes the following specific steps to ensure information security:
 - 3.3.1. limits internal access to education records to employees or agents that have legitimate educational interests and have agreed to keep such information confidential;
 - 3.3.2. does not use education records for any other purposes than those explicitly authorized in this Agreement;
 - 3.3.3. does not disclose any PII to any third party: (i) without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order, after providing notice to Customer, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
 - 3.3.4. maintains reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody;
 - 3.3.5. uses encryption technology to protect data while in motion or in its custody from unauthorized disclosure.
- 3.4 **Data Breach.** Heartland will notify Customer of any breach of Heartland's security resulting in an unauthorized release of or access to Customer Data that is in violation of applicable state or federal law or this Agreement, in the most expedient way possible and without unreasonable delay.

4. Software Support

- 4.1 **Software Support Services.** During the Initial Support Term and any Renewal Support Term, Heartland shall provide Support Services to Customer subject to: Customer's payment of the Support Fees set forth in Exhibit A, attached hereto, and (ii) Customer's compliance with its obligations set forth in this Agreement.
 - 4.1.1. **Help Desk.** Heartland will provide Customer with reasonable Help Desk assistance during the Support Times regarding the Installation and implementation of the Subscription, and the identification, diagnosis and correction of Errors. Heartland will attempt to resolve any support questions posed by Customer. If Heartland reasonably determines that it would be appropriate to do so, Heartland may defer resolution of a support question until a later time. At its discretion, Heartland may provide Customer with Help Desk support during times other than the Support Time and/or beyond the maximum number of monthly and/or annual Support Incident limits (if applicable) at Heartland's then standard rates. Customer shall be responsible for paying charges for such additional Help Desk support.

- 4.1.2. **Web Site.** Heartland will provide Customer with access to technical information via its web site(s) on the Internet.
 - 4.1.3. **Enhancements.** Heartland will provide Customer with copies of all Minor Enhancements at no additional cost. Major Enhancements are not included unless specifically agreed herein. Heartland may, but is not obligated to, offer Major Enhancements to Customer at a reduced fee.
 - 4.1.4. **Excluded Services.** Support Services do not include training, installation, consultant services, or on-site support. However, these services are available at an additional charge to the customer.
- 4.2 Procedures for Submitting Support Incidents or Subscription Enhancements.**
- 4.2.1. **Notification.** Customer must notify Heartland immediately of any suspected Error, and must provide reasonable detail of the nature of and circumstances surrounding the Error. "Reasonable detail" includes complete Subscription, hardware and network configuration Information as requested by Heartland. **Notification means (listed in order of preference and efficiency):**
 - a) Logging a case directly into customer portal website;
 - b) Sending a detailed email to the support center; or
 - c) Calling into Heartland's technical Help Desk via Heartland's toll-free number.
 - 4.2.2. **Remote Diagnostics.** Heartland may perform any Error diagnostic or correction work via remote communication. If such remote support is unable to resolve the Error, Heartland may require Customer to provide data files on removable media via overnight courier (or other shipping method that provides end-to-end tracking) or other mutually agreed upon electronic medium at Customer's expense.
 - 4.2.3. **Error Correction.** Heartland will make reasonable efforts to resolve reported; reproducible Errors. Customer will promptly provide Heartland with all information requested by Heartland to reproduce and resolve Errors. For each Error, Heartland will use reasonable efforts to provide Customer with (a) a work-around, (b) a Software patch or, (c) if Heartland cannot provide Customer with either (a) or (b), a specific action plan, including a good faith timing estimate, for resolving the Error.
- 4.3 Error Priorities and Response Times.** Heartland will use reasonable efforts to communicate with Customer, by telephone, e-mail, or Heartland's website as described below, regarding Errors that are reported during the Support Times. For purposes of this Agreement, a "response" means Heartland's acknowledgment of an Error, and does not indicate that a resolution will be reached.
- 4.3.1. **Level One Response:** Where a major fault occurs such that a business critical function is not operational, and major user inconvenience is being caused then, during Support Times, Heartland shall endeavor to respond within two hours.
 - 4.3.2. **Level Two Response:** Where a fault occurs such that a function is not operational, and while a workaround is available, the fault is causing significant user inconvenience then, during Support Times, Heartland shall respond within four hours.
 - 4.3.3. **Level Three Response:** Where a fault occurs such that a non-critical function is not operational, which is causing an inconvenient problem but is not causing significant user inconvenience then, during Support Times, Heartland shall respond within one business day; or
 - 4.3.4. **Level Four Response:** Where a fault occurs such that a cosmetic, non-urgent problem is being caused, e.g. a field is in the wrong position, then, during Support Times, Heartland shall respond within three business days.

- 4.4 Limitations on Support Services.** Notwithstanding anything to the contrary elsewhere in this Agreement, Heartland will have no obligation to provide any support services to Customer if:
- 4.4.1.** Such support relates to or involves any products, data, features, devices or equipment not provided or specified as compatible by Heartland;
 - 4.4.2.** Customer or a third party has altered or modified any portion of the Software in any manner without the prior written consent of Heartland;
 - 4.4.3.** Customer has not installed or used the Software in accordance with Instructions provided by Heartland, including failure to follow Implementation procedures;
 - 4.4.4.** Customer has failed to replace or update previous versions of the Software with Enhancements Heartland made available;
 - 4.4.5.** A party other than Heartland has serviced the Software and the Software no longer conforms to its specifications; or
 - 4.4.6.** Customer is not in full compliance with the other terms of this Agreement, or any other agreement between Heartland and Customer.
- 4.5 Hardware.** Support Services do not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not provided by Heartland.
- 4.6 Additional Services.** At Customer's request, Heartland may provide resources to perform additional services such as software development and testing for customization, modifications, additional training, custom reports and other custom developed services related to the Software (collectively "Professional Services"). Before providing Professional Services, the parties will mutually agree in writing on the scope and cost for Professional Services.

5. Customer Obligations

- 5.1 Customer Responsibility.** Customer accepts sole responsibility for (i) Customer's system configuration, design and requirements, (ii) the selection of the Software to achieve Customer's intended results, and (iii) modifications, changes or alterations to the Software by anyone other than Heartland or its agents that is not an Update. Customer acknowledges that it has had an opportunity to review the Documentation, it understands the functionality of the Software and its ability to work with Customer's systems and to support Customer's operations, and that it has made its own evaluation in deciding to license the Software. Customer shall follow Heartland's procedures and recommendations in resolving Errors or submitting Support Incidents.
- 5.2 Self Help.** Before contacting Heartland for Support Services, Customer should review the following (i) Heartland's FAQ's, which provide answers to many commonly asked questions, and are continually updated, (ii) Online Video Tutorials, (iii) the help documentation related to each Software module.
- 5.3 Access.** During the Initial Support Term or any Renewal Support Term, Customer will provide Heartland with reasonable access (via remote or on-site access) to Customer's copies of the Software to the extent necessary, in Heartland's discretion, to enable Heartland to provide the Support Services.
- 5.4 Communications Link.** During the Term, Customer will, at its sole expense, provide internet access to Heartland, which Heartland may use to provide Support Services. Heartland will have no liability to Customer if Heartland's ability to provide Support Services is impaired by Customer's inability to provide the functionality required for remote support.
- 5.5 Support Contact.** Customer shall designate one employee and one alternate as its Support Contacts to be generally available during the Support Times to confer with Heartland regarding Errors, Enhancements, and other support-related issues. Customer is responsible for ensuring

that the above Support Contacts have sufficient training to attain and maintain competence in using the Software. Customer shall notify Heartland promptly of any changes in the Support Contacts. Heartland will provide technical support only to Customer's Support Contacts. Upon Customer request, Heartland may provide additional Support Services to any of Customer's employees, representatives, or consultants, which will be treated as Professional Services and subject to a written mutual agreement.

5.6 Verification and Audit. Within thirty (30) days after a written request by Heartland, submitted no more than once annually, Customer shall furnish to Heartland a certification signed by an appropriate officer of Customer certifying that Customer is using the Software in accordance with the terms of this Agreement. No more often than once annually, Heartland may conduct an audit of Customer's use of the Software to ensure compliance with this Agreement.

6. Term and Termination

6.1 Term. This Agreement will commence on the Effective Date and will continue for a term of five (5) years. Thereafter, the Agreement will automatically renew for additional one (1) year periods unless either Party terminates the Agreement by giving ninety (90) days written notice prior to the end of any term. The terms and conditions in this Agreement will remain in effect for as long as Heartland provides Services to Customer.

6.2 Software Subscription Terms. Unless otherwise agreed, Heartland will provide and bill for Services on an August 1 through July 31 basis. Customer's Initial Term is from the Effective Date through July 31st of the following calendar year. Customer's Renewal Term is the successive one (1) year periods from August 1 through July 31.

6.3 Termination for Cause. Either Party may terminate this Agreement if the other Party commits a material breach of the terms of this Agreement, and such noncompliance remains uncured for more than thirty (30) days after written notice thereof.

6.4 Effect of Termination. Upon termination, to the extent Customer has no legal or regulatory requirement to retain it, Customer shall immediately cease using and destroy or return to Heartland all copies of Heartland's Confidential Information, including, without limitation, all Software and Documentation in any form, including partial copies and modified versions, and shall certify in writing to Heartland that all such copies have been destroyed or returned.

6.5 Remedies. Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon termination, all amounts owed under this Agreement and all Attachments shall immediately become due and payable.

7. Fees and Payment Terms

7.1 License Fees. The applicable software fees, including for the initial Software license, Subscription, and Support ("Software Fee") are set forth in the Proposal. Heartland reserves the right to increase the annual Subscription fees by not more than ten percent (10%) per year over the applicable amount for the immediately preceding year.

7.2 Payment Procedures. On or before the Effective Date, and on an annual basis 60 days prior to any Renewal Term, Heartland will invoice Customer for all Subscription Fees incurred by Customer pursuant to this Agreement. Customer shall pay all invoiced amounts in U.S. dollars within thirty (30) days of the date of invoice. All Software fees are non-refundable and non-cancelable.

7.3 Late Fees. Late payments of fees are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by applicable law.

- 7.4 Taxes.** Customer is solely and exclusively responsible for the payment of any required federal, state and local taxes arising from or relating to the Services, except for taxes related to the net income of Heartland and any taxes or obligations imposed upon Heartland under federal, state and local wage laws. Customer shall fully reimburse and indemnify Heartland for any amounts actually paid by Heartland or withheld by Customer for any such taxes or levies within thirty (30) calendar days after the date on which Heartland gives notice thereof to Customer.
- 7.5 Nonpayment.** In addition to all rights exercisable by Heartland, if Customer fails to pay for more than 60 days, Heartland reserves the right to suspend Services under this Agreement, and take any other action to which it is entitled under law.
- 7.6 Purchase Orders.** If Customer requires a purchase order, Customer will inform Heartland of the purchase order number and dollar amount. Customer agrees that the absence of a purchase order, or other document may not be raised as a defense to avoid Customer's payment obligations hereunder. Terms and conditions contained in a Customer purchase order will not be binding on Heartland, and will have no effect on Heartland's provision of Services under this Agreement.
- 7.7 Title.** Title to any tangible objects, including Hardware vests in Customer upon Heartland's shipment to Customer.

8. Indemnification

- 8.1 Intellectual Property Indemnification.** Subject to Section 8.4 below, Heartland will indemnify, defend and hold Customer harmless from and against all claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, brought against the indemnified party by a third party (collectively, "Losses"), incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above Indemnification obligations are claims to the extent arising from (i) use of the Services in violation of this Agreement or applicable law, (ii) use of the Services after Heartland notifies Customer to discontinue use because of an infringement claim, (iii) any claim relating to any third party content or Customer Data or (iv) modifications to the Services made other than by Heartland. If the Services are held to infringe, Heartland will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Services with non-infringing Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Service Order Form and refund any prepaid unused fees Customer paid Heartland for the infringing Services. The rights and remedies granted Customer under this Section 5.1 state Heartland's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.
- 8.2 Data Breach Indemnification.** Heartland agrees to comply with the requirements of all applicable laws that require the notification of individuals in the event of unauthorized release of PII, or other security event requiring notification, to the extent such laws expressly apply to Heartland. In the event of a breach of any of Heartland's security obligations or other event requiring notification under applicable law, Heartland agrees to notify Customer promptly and in accordance with applicable law, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law, and to indemnify, hold harmless and defend Customer and its employees from and against any and all claims, damages, or causes of action directly related to the unauthorized release.

8.3 Customer Indemnification. To the extent permitted by applicable law, and subject to Section 8.4 below, Customer shall indemnify, defend, and hold Heartland harmless from and against any and all Losses relating to Customer's production or distribution of any materials resulting from use of the Services: (i) are factually inaccurate, misleading or deceptive; (ii) infringe or misappropriate any Intellectual property rights any third party; (iii) are libelous, defamatory, obscene or pornographic, (iv) comprise unsolicited commercial e-mail or spam, or (v) violate civil or criminal laws or regulations, including those regulating the use and distribution of content on the internet and protection of personal privacy, provided that such Losses are not solely attributable to (y) a nonconformity of the Software to perform substantially in accordance with the Documentation or (z) the Services violating any applicable civil or criminal laws or regulations.

8.4 Indemnification Procedure. The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which Indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

9. Warranty/Limitation of Liability

9.1 Heartland's Limited Warranty. Heartland warrants that the Services will be performed by In a timely and professional manner. Heartland further warrants that the Services will be performed in all material respects in compliance with the functions described in the Documentation. If Customer notifies Heartland within fifteen (15) days of Customer's discovery the performance of the Services that the Services are not functioning as intended, Heartland will use good faith efforts to make the Services function as intended at no additional cost to Customer. Heartland does not warrant that it will be able to correct all defects in the Services reported by Customer. Heartland makes no warranty regarding features or services provided by third parties. The remedies set out in this subsection shall only apply if the applicable Services have been utilized by Customer in accordance with the terms of this Agreement and applicable law.

9.2 NO OTHER WARRANTY. HEARTLAND DOES NOT REPRESENT THAT THE SERVICES OR THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR WILL MEET CUSTOMER'S OR ANY USER'S REQUIREMENTS. HEARTLAND DOES NOT REPRESENT THAT THE OVERALL SYSTEM THAT MAKES THE SERVICES AVAILABLE (INCLUDING, BUT NOT LIMITED TO, THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 6.1 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES OFFERED BY HEARTLAND. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES AND SOFTWARE ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

9.3 Consequential Damage Waiver. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS AND COSTS, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER

THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

9.4 Limitation of Liability. THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ("LOSS") ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO HEARTLAND FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS. THE PROVISIONS OF THIS SECTION ALLOCATE RISKS BETWEEN THE PARTIES AND THE PRICING OFFERED TO CUSTOMER FOR THE SERVICES REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

10. Confidentiality.

10.1 Confidential Information. "Confidential Information" means all information provided to a Party (the "Receiving Party") by the other Party (the "Disclosing Party") that is designated in writing as proprietary or confidential or which a reasonable person familiar with the Disclosing Party's business and the industry in which it operates ought to know is of a confidential or proprietary nature. Confidential Information includes, but is not limited to, the terms and pricing of this Agreement, any internal processes, and all personal information of any Users, including, but not limited to, names, addresses, telephone numbers, email addresses, account numbers, personal data, and demographic, financial, and transaction information.

10.2 Non-Disclosure of Confidential Information. During the term of this Agreement and following termination or expiration of this Agreement, and except as otherwise set forth in Sections 10.3 and 10.4, the Receiving Party shall only use the Disclosing Party's Confidential Information for the purpose for which it was disclosed and shall not disclose such Confidential Information to any third party, except as required to perform under this Agreement or Service Order Form. The Receiving Party shall protect the Disclosing Party's Confidential Information in the same manner it protects its own confidential information, but in no event shall it protect the Disclosing Party's Confidential Information with less than commercially reasonable care. The Receiving Party shall only provide Confidential Information of the Disclosing Party to those of the Disclosing Party's employees, agents or business partners who have a need to know such Confidential Information in the course of the performance of their job duties and who are bound by a contractual duty of confidentiality no less protective than the Receiving Party's duties of confidentiality hereunder.

10.3 Exclusions. Notwithstanding the foregoing, Confidential Information will not include information that (i) was previously known free of any obligation to keep it confidential as evidenced by competent proof thereof; (ii) is or becomes publicly available, by other than unauthorized disclosure; (iii) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (iv) is approved for release by prior written approval of the Disclosing Party; or (v) is otherwise required by law, legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice to permit the Disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

10.4 Return and Retention of Confidential Information. Upon termination of this Agreement, Customer shall promptly return or destroy all Confidential Information of Heartland in its possession. Upon termination of this Agreement, Heartland shall retain all Customer Data and other documents relative to this Agreement subject to the protections herein for as long as legally required to meet its legal, regulatory, and PCI compliance obligations.

10.5 No Adequate Remedy at Law. The Parties acknowledge and agree that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of the obligations of confidentiality in this Section 10. The Parties further acknowledge that any such breach may result in irreparable harm, and therefore, that upon any such breach or any threat thereof, a Party shall be entitled to seek appropriate equitable relief, including but not limited to injunction, in addition to whatever remedies it may have at law. In the event a Party should seek an Injunction or other equitable relief, the other Party hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security.

11. Miscellaneous

11.1 Entire Agreement. This Agreement, together with any exhibits, constitutes the entire agreement between Customer and Heartland and supersedes any other prior agreements or understandings, whether oral or written, regarding the Services to be provided by Heartland. If a provision of this agreement is deemed null and void, invalid or without effect, the remainder of this agreement shall remain in effect. No amendment to or modification of this Agreement will be binding unless in writing and signed by both parties.

11.2 Force Majeure. With the exception of Customer's obligations to pay Heartland monies due under this Agreement, neither party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from an event of force majeure, including (without limitation) acts of God or of the public enemy, fire, storm, flood, explosion, earthquake, hurricane, riots, wars, hostilities, civil commotion, strikes or labor disputes, interruption of supply, law or regulation, governmental action, or any other cause beyond the control of that party.

11.3 Governing Law, Venue and Jurisdiction. This Agreement shall be construed and governed by the laws of the state in which the public entity is resident without regard to legal principles related to conflict of laws. Any action arising out of or relating to this Agreement shall be brought only in the courts of the state in which the public entity is resident or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all actions, and further waive any claim that such Action is brought in an improper or inconvenient forum. In any action, the parties waive trial by jury.

11.4 Notices. Unless otherwise specified in this Agreement, all notices shall be in writing and shall be mailed (via registered or certified mail, return receipt requested), telecopied, telegraphed, delivered by a nationally recognized express courier service, or personally delivered to the other party at the address set forth below (or at such other address as either party may designate in writing to the other party). All notices will be effective upon receipt.

For Heartland: President, Heartland School Solutions
765 Jefferson Rd #400
Rochester, NY 14623

with a copy to: General Counsel
Global Payments Inc.
3550 Lenox Rd. NE, Suite 3000
Atlanta, GA 30342

For Customer: _____

- 11.5 **Severability.** If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.
- 11.6 **Headings.** Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.
- 11.7 **Amendments.** This Agreement shall not be modified except by written amendment signed by each of the Parties.
- 11.8 **Assignment.** This Agreement shall be binding upon and for the benefit of Heartland, Customer and their permitted successors and assigns. Heartland may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Any attempted assignment or delegation in violation of this section will be void.
- 11.9 **Relationship of the Parties.** Heartland and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

HEARTLAND PAYMENT SYSTEMS, LLC

SIGNATURE: _____

BY: Jeremy Loch
 TITLE: SVP & General Manager,
 School Solutions
 DATE: 7/14/21

EFFINGHAM CUSD 40

SIGNATURE: _____

BY: SUPERINTENDENT MARK E O'NEAL
 TITLE: SUPERINTENDENT
 DATE: 8/30/21