

Massachusetts Student Privacy Alliance

STUDENT DATA PRIVACY SPECIAL TERMS AND CONDITIONS

This Student Data Privacy Special Terms and Conditions dated October 3, 2016 (hereinafter “Agreement”) is by and between **Wayland Public Schools (“WPS”)** and **Follett School Solutions, Inc. (“Contractor”)**, a contractor performing institutional services and functions that will require student data to perform those services and functions. These Conditions are incorporated by reference into and made a part of the Articles of Agreement between the Wayland Public Schools and Follett Schools Solutions, Inc., dated October 3, 2016.

1. Contractor and **WPS** have contracted for the Contractor to provide library and/or resource management services through its proprietary Destiny platform (“the Services”), which are institutional services and functions, to **WPS**. In the course of performing the Services, Contractor may obtain confidential student records and/or confidential student record information that contain personally identifiable student records, data and/or personally identifiable information and other non-public information, including but not limited to student data, meta data and user content (“Data Files”). **WPS** and Contractor acknowledge and agree that these Conditions are for the purpose of sharing Data Files between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 (“FERPA”) and Massachusetts student record regulations, 603 C.M.R. 23.00 (“State Regulations”). The Data Files will be used by the Contractor and its employees to populate student data only for the purpose of delivering these Services. Contractor further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to Data Files or any portion thereof from any source, are subject to the provisions of these conditions in the same manner as the original Data Files. The ability to access or maintain Data Files and/or any portion thereof under these Conditions shall not under any circumstance transfer from Contractor to any other party, other than previously authorized subcontractors or third party vendors that provide hosting services to Contractor. Contractor shall require said subcontractors or third party vendors to be bound to the provisions of these Conditions.
2. Contractor acknowledges and agrees that it is providing institutional services or functions for **WPS** and that it is under direct control of **WPS** with respect to the use and maintenance of Data Files in connection with these Services. Contractor additionally acknowledges and agrees that at no point in time is the Contractor the owner of the Data Files. Ownership rights are maintained by **WPS** and **WPS** reserves the right to request the prompt return of any portion of the Data Files and/or all Data Files at any time for any reason whatsoever. Contractor further acknowledges and agrees that it shall adhere to the requirements set forth in both federal and state law regarding the use and re-disclosure of the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained within the Data Files. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained in the Data Files, without the express written consent or authorization of **WPS**. Additionally, Contractor agrees that only authorized employees or agents of the Contractor directly involved in delivering the Services shall have access to the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable

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information contained in the Data Files and that it and its employees and agents shall protect the confidentiality of the Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information contained in the Data Files in such a way that parties other than officials of **WPS** and their authorized agents cannot identify any students.

3. Contractor also acknowledges and agrees to:
- (i) use Data Files shared under these conditions for no purpose other than in connection with and through the provision of the Services provided under these Conditions with **WPS**.
 - (ii) use reasonable methods, including but not limited to, appropriate technical, physical and administrative safeguards, that reflects technology best practices consistent with industry standards, to protect the Data Files and/or any portion thereof from re-disclosure that is created, sent, received, stored, processed or transmitted in connection with the Services under these Conditions while the Data Files and/or any portion thereof contained therein is both at rest and in transit. Contractor further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.
 - (iii) not share the Data Files and/or any portion thereof received under these Conditions with any other entity without prior written approval from **WPS**.
 - (iv) not copy, reproduce or transmit the Data Files and/or any portion thereof ,except as necessary to fulfill the Services.
 - (v) not re-disclose, transfer or sell the Data Files and/or any portion thereof.
 - (vi) not to use the Data Files and/or any portion thereof to market or otherwise advertise directly to students and/or their parents/guardians, except as **WPS** may otherwise agree.
 - (vii) not to use the Data Files and/or any portion thereof to inform, influence or guide marketing or advertising efforts or to develop a profile of a student or group of students for any commercial or other purposes.
 - (viii) not to use the Data Files and/or any portion thereof contained therein for the development of commercial products or services; provided that the Data Files may be used on an aggregated, anonymized basis to enhance the underlying platform used to provide the Services hereunder.
 - (ix) not to mine the Data Files and/or any portion thereof for any purposes other than those agreed to by the parties. Contactor further acknowledges that data mining or scanning of user content for the purpose of advertising or marketing to students or their parents/guardians is expressly prohibited.
 - (x) notify the Director of Technology for **WPS** in writing within three (3) days of its determination that it has experienced a data breach, breach of security, privacy incident or unauthorized acquisition or use of any Data Files and/or any portion thereof contained therein. Contractor agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used, released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that Contractor plans to take or has taken in response to said breach. Additionally, Contractor agrees to adhere to all requirements in the Massachusetts Data Breach law and in federal law with respect to a data breach related to the Data Files, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. Contractor further acknowledges and

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agrees to adopt a written incident response plan that reflects best practices 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 Data Files or any portion thereof, including personally identifiable information and agrees to provide WPS, upon request, with a copy of said written incident response plan following adoption.

- (xi) not provide any Data Files or any portion thereof to any party ineligible to receive student records and/or student record data and information protected by FERPA and State Regulations or prohibited from receiving the Data Files or any portion thereof and/or any personally identifiable information from any entity under 34 CFR 99.31(a)(6)(iii).
- (xii) maintain backup copies, backed up periodically, of Data Files in case of Contractor system failure or any other unforeseen event resulting in loss of Data Files or any portion thereof.
- (xiii) upon receipt of a request from WPS, immediately provide WPS with any specified portion of the Data Files within five (5) business days of receipt of said request.
- (xiv) upon receipt of a request from WPS, promptly begin the process of returning all Data Files over to WPS and subsequently erasing and/or otherwise destroying any Data Files, be it digital, archival or physical form, including without limitation any copies of the Data Files or any portions thereof that may reside in system backups, temporary files or other storage media and or are otherwise still in Contractor's possession and/or in the possession of any subcontractors, or agents to which the Contractor may have transferred Data Files or any portion thereof, in a manner consistent with technology best practices consistent with industry standards for secure data disposal methods such that Contractor and/or any of its subcontractors or agents are no longer in possession of any student work belonging to WPS and to ensure that the Data Files cannot be recovered and are securely destroyed and to provide WPS with any and all Data Files in Contractor's possession, custody or control within thirty (30) calendar days of receipt of said request. Contractor also will provide WPS with written certification, including an inventory of its Data Files destruction, and with written certification, including an inventory of all Data Files returned to WPS, within thirty (30) days of its receipt of WPS request for destruction of Data Files.
- (xv) in the event of the Contractor's cessation of operations, promptly return all Data Files to WPS in an organized, manageable manner and subsequently erasing and/or otherwise destroying any Data Files, be it digital, archival or physical form. Data files that may be stored in the Contractor's archival, backup or disaster recovery system may remain up to 30 days until such files age out of the backup system. Contractor also will provide WPS with written certification, including an inventory of its Data Files destruction, and with written certification, including an inventory of all Data Files returned to WPS, within thirty (30) days of Contractor's cessation of operations.
- (xvi) not use, disclose, compile, transfer, sell the Data Files and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data Files and/or any portion thereof, except as directed by WPS.
- (xvii) in the event of the Contractor and/or any of its subcontractors or agents to which the Contractor may have transferred Data Files or any portion thereof has technology or storage media that has failed and needs to be replaced or serviced, to ensure that all Data Files or any portions thereof that are contained therein are sanitized, erased and/or otherwise destroyed.

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- (xviii) delete WPS Data Files that it collects or receives under these Conditions once the Services referenced in these Conditions lapse.
 - (xix) upon receipt of a litigation hold request from WPS, promptly implement a litigation hold and preserve all documents and data relevant identified by WPS and suspend deletion, overwriting, or any other possible destruction of documentation and data identified in, related to, arising out of and/or relevant to the litigation hold.
 - (xx) upon receipt of a reasonable request from WPS no more than once in any calendar year period, allow WPS to audit the security and privacy measures that are in place to ensure protection of the Data Files or any portion thereof during normal business hours without undue inconvenience to Contractor.
 - (xxi) reasonably cooperate with WPS and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Contractor and/or delivery of Services to students and/or WPS, and shall provide required access to Contractor's facilities, staff, agents and WPS Data Files and all records pertaining to the Contractor, WPS Data Files and delivery of Services to WPS. Failure to reasonably cooperate shall be deemed a material breach of the Contract.
 - (xxii) not assign, subcontract or in any way transfer any interest in these Conditions without the prior written consent of WPS.
 - (xxiii) seek prior written consent from WPS before using any de-identified WPS Data Files for internal product development and improvement and/or research. Contractor acknowledges and agrees that de-identified WPS Data Files is defined as data files that have all direct and indirect personal identifiers removed, including any data that could be analyzed and linked to other data to identify the student or the student's family members, including without limitation parents/guardians. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location data, and federal, state and/or local school identification numbers. Contractor also acknowledges and agrees not to attempt to re-identify de-identified WPS Data Files and not to transfer de-identified WPS Data Files to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to WPS who has provided prior written consent for such transfer.
4. Contractor warrants that it complies with all applicable federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance or access to personal information, including without limitation, all applicable standards for the protection of personal information of residents of the Commonwealth and maintaining safeguards for personal information. Contractor hereby further has agrees to adopt a written comprehensive information security program that is in compliance with the provisions of 201 C.M.R. 17.00 et seq. Further, the Contractor hereby warrants that it shall fully comply with the applicable provisions of the federal Family Educational Rights Privacy Act, 20 U.S.C. §1232g and regulations promulgated thereunder and Massachusetts student records law and regulations, including without limitation, 603 C.M.R. 23.00 et seq., and to fully protect the confidentiality of any student data, meta data, user content or other non-public information and/or personally identifiable information provided to it or its representatives. Contractor further represents and warrants that it has reviewed and complied with all information security programs, plans, guidelines, standards and policies that apply to the work it will be performing, that it will communicate these provisions to and enforce them against its subcontractors and will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information and/or student record information from

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unauthorized access, destruction, use, modification, disclosure or loss. Contractor also represents and warrants that it does not store Data Files or any portion thereof, including without limitation, any student data, meta data, user content or other non-public information and/or personally identifiable information, on laptops or other mobile electronic devices.

5. All rights, including intellectual property rights, shall remain the exclusive property of WPS and/or the student, as applicable, and Contractor as a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in these Conditions. These Conditions do not give the Contractor any rights, implied or otherwise, to Data Files or any portion thereof, content or intellectual property, except as expressly stated in these Conditions. This includes, without limitation, the right to sell or trade the Data Files or any portion thereof. Any provisions to the contrary in the Contractor's privacy policy, terms of service, terms and conditions of use and/or license agreement are hereby deleted in their entirety.
6. The Contractor shall be liable for any and all damages, costs and reasonable attorneys' fees which the Town of Wayland and WPS may incur as a result of any claims, suits and judgments against the Town of Wayland and WPS which arise out of the acts or omissions of the Contractor, its employees, servants, representatives or agents during the term of these Conditions.
7. No delay or omission of WPS to exercise any right hereunder shall be construed as a waiver of any such right and WPS reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
8. Contractor represents that it is authorized to bind to the terms of these Conditions, including confidentiality and destruction of Data Files and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data Files and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Data Files and portion thereof stored, maintained or used in any way.
9. The terms and conditions of these Conditions may not be modified unless by such modifications are agreed to in a written document that is signed by both parties.

FOLLETT SCHOOL SOLUTIONS, INC.

WAYLAND PUBLIC SCHOOLS

DocuSigned by:

George Gatsis



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Name

Paul Stein

SVP

Superintendent of Schools

Title

10/12/2016

October 3, 2016

Date

Date