

Massachusetts Student Privacy Alliance

STUDENT DATA PRIVACY SPECIAL TERMS AND CONDITIONS

This Student Data Privacy Special Terms and Conditions dated April 13, 2017 (hereinafter “Agreement”) is by and between **Wayland Public Schools (“WPS”)** and TenMarks Education, LLC (“Contractor”), a contractor performing institutional services and functions that will require student data to perform those services and functions.

1. Contractor and **WPS** have contracted for the Contractor to provide TenMarks (“the Services”), which are institutional services and functions, to **WPS**. In the course of performing the Services, Contractor will 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 this Agreement is 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 this Agreement in the same manner as the original Data Files. The ability to access or maintain Data Files and/or any portion thereof under this Agreement shall not under any circumstance transfer from Contractor to any other party.
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 of **WPS**. Additionally, Contractor agrees that only authorized employees 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 information contained in the Data Files and that it and its employees 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

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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 this Agreement for no purpose other than in connection with and through the provision of the Services provided under this Agreement with **WPS**.
- (ii) use reasonable methods, including but not limited to, appropriate technical, physical and administrative safeguards, that reflects technology best practices and is 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 this Agreement 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 this Agreement with any other entity without prior written approval from **WPS** and the prior written approval of the parent/guardian of the student or eligible student.
- (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.
- (vii) 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.
- (viii) 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 agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Data Files or any portion thereof, including personally identifiable information.
- (ix) 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).

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- (x) maintain backup copies, backed up at least daily, of Data Files in case of Contractor system failure or any other unforeseen event resulting in loss of Data Files or any portion thereof.
 - (xi) upon receipt of a request from WPS, immediately provide WPS with any specified portion of the Data Files within seven (7) calendar days of receipt of said request.
 - (xii) 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 and 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.
 - (xiii) 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.
 - (xiv) delete WPS Data Files that it collects or receives under this Agreement once the Services referenced in this Agreement lapses.
 - (xv) upon receipt of a litigation hold request from WPS, immediately 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.
 - (xvi) not assign, subcontract or in any way transfer any interest in this Agreement without the prior written consent of WPS.
4. Contractor represents, warrants and agrees that its terms of service/terms and conditions of use, license agreement and/or privacy policies dated April 13, 2107 shall be amended as it relates to the Services as follows:
- (i) Any provision contained in the Contractor's terms of service, terms and conditions of use, license agreement and/or privacy policies regarding the Town and/or WPS, as a user, to indemnify the Contractor are hereby deleted in their entirety.
 - (ii) Any provision in the Contractor's terms of service, terms and conditions of use, license agreement and/or privacy policies that require that the Town and/or WPS, as a user, to carry insurance coverage are hereby deleted in their entirety.
 - (iii) Any changes that the Contractor may make, from time to time, to its terms of service, terms and conditions of use, license agreement and/or privacy policies, shall not apply to the terms of these Services unless the Contractor and Town and/or WPS agree to such changes in writing.
 - (iv) The laws of the Commonwealth of Massachusetts shall govern this Agreement and the parties agree to be bound by the laws of the Commonwealth of Massachusetts in the resolution of any dispute concerning any of the terms and conditions of this Agreement and consent to the jurisdiction of the United States Court for the District of Massachusetts and/or the trial courts of Massachusetts for any actions arising out of or related to this Agreement and any governing law and or choice of law provisions in the Contractor's terms of service, terms and conditions of use, and license agreement and/or privacy policies which are to the contrary are hereby deleted in their entirety.

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- (v) 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 this Agreement. This Agreement does 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 this Agreement. 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.

5. The designated representative for the Contractor for this Agreement is:

and

The designated representative for **WPS** for this Agreement is:

Leisha Simon, Director of Technology

- 6. 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.
- 7. The terms and conditions of this Agreement may not be modified unless by such modifications are agreed to in a written document that is signed by both parties.
- 8. IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, and intending to be legally bound, each party has caused this Agreement to be duly executed as a Massachusetts instrument under seal as of the day and year first written above.

CONTRACTOR NAME

WAYLAND PUBLIC SCHOOLS



Name

Paul Stein

Title

Superintendent of Schools

Date

April 13, 2017

Date