WASHINGTON STUDENT DATA PRIVACY AGREEMENT

Version 1.0

South Kitsap School District

AGENCY

and

AssistiveWare B.V

2. **Nature of Services Provided**. The Provider has agreed to provide the following digital educational products and Services described below and as may be further outlined in Exhibit "A" attached hereto:

    AAC solutions for iOS, iPadOS and macOS

3. **Student Data to Be Provided**. In order to perform the Services described in the Service Agreement, LEA shall provide the categories of data described below or as indicated in the Schedule of Data, attached hereto as Exhibit "B":

    Application Technology Meta Data, Application Use Statistics, Student work

4. **DPA Definitions**. The definition of terms used in this DPA is found in Exhibit "C" attached hereto. In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA**. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer student-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access**. LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the student's records, 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 timely manner (and no later than 45 days from the date of the request) 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 as part of the Services described in Exhibit "A", Provider shall, at the request of the LEA, transfer said Student Generated Content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to Student Generated Content that is severable from the Services.

4. <u>**No Disclosure**</u>. De-identified information may be used by the Provider for the purposes of development, research, and improvement of educational sites, Services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and 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 LEA, which has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. <u>**Disposal of Data**</u>. Upon request, Provider shall dispose of or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposal shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable and/or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposal. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as <u>Exhibit "D"</u>). Upon receipt of a request from the LEA, the Provider will provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.

   a. **Partial Disposal During Term of Service Agreement.** Throughout the term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA's request to transfer data to a Student Generated Content account pursuant to Article II, section 3, above. The LEA may also request that specific Student Data be returned to the LEA.

   b. **Complete Disposal Upon Termination of Service Agreement.** Upon termination of the Service Agreement Provider shall dispose of or delete all Student Data obtained under the Service Agreement. Prior to disposal of the data, Provider shall notify LEA of its option to transfer data to a Student Generated Content account pursuant to Article II, section 3, above, or to other accounts as may be designated by the LEA. In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.

   c. **Pre-termination Data Disposal Meeting.** In addition to the foregoing requirements, the LEA may request in writing that Provider participate in a meeting to discuss disposal of the Student Data prior to termination of the Service Agreement.

6. <u>**Advertising Prohibition**</u>. Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing,

("BYOD") policy for its own employees, which requires them to use physical and technical safeguards against third party access to the device, and a copy of that BYOD policy shall be provided to LEA as part of Exhibit F to this DPA. Provider shall ensure that all contractors and/or Subprocessors implement BYOD policies, which provide for substantially the same level of security for mobile devices as are provided by Provider's BYOD policy.

f. **Security Technology.** When the Student Data is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.

g. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.

h. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically (no less than semi-annually) conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

I. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. In the event that the term of the Service Agreement is anticipated to be longer than two (2) years, Provider shall provide written confirmation to the LEA that a third party has conducted a risk assessment analysis of Provider's computer systems at some point during the term of the Service Agreement.

j. **Compliance Audit.** LEA shall have the right but shall be under no obligation to conduct audit(s), from time to time, of Provider's records concerning its compliance obligations as set forth in this Article V. Provider shall make such records and other documents available to LEA upon request.

2. **Data Breach**. In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA immediately following discovery of the incident. Provider shall follow the following process:

a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI – INDEMNITY

1. Indemnity. Provider shall defend, indemnify and hold harmless the LEA, its officers, directors, employees, agents and assigns (the "Indemnitees") from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance carrier, arising out of or resulting from any third-party claim against the Indemnitees arising out of or resulting from Provider's failure to comply with any of its obligations under this DPA. Provider's duty to defend and indemnify the LEA includes any and all claims and causes of action whether based in tort, contract, statute, or equity. Provider agrees that it shall be obligated to accept any tender of defense by the LEA pursuant to this DPA and provide a full defense to the LEA so long as any potential exists for Provider to have an obligation to indemnify the LEA for any part of any potential judgment against the LEA.

Provider's defense and indemnity obligations herein are intended to provide for the broadest indemnity rights available under Washington law and shall survive the termination of this DPA. To the extent Provider's defense and indemnity obligations as set forth in this DPA conflict with the terms of the Service Agreement, the defense and indemnity provisions set forth herein shall control.

ARTICLE VII- GENERAL OFFER OF PRIVACY 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 this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VIII: MISCELLANEOUS

1. **Term**. The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider agrees to be bound by the terms and obligations of this DPA for a period of three (3) years, or so long as the Provider performs services under this Agreement, whichever shall be longer.

2. **Termination**. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach by Provider, its employees, or agents of the terms of this DPA.

3. **Effect of Termination Survival**. If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.

4. **Priority of Agreements**. This DPA shall govern the treatment of Student Data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. No indemnification provisions granted by

The designated representative for the notice of acceptance of the General Offer of Privacy Terms is:

Name: Martijn Leopold

Title: CTO/CFO

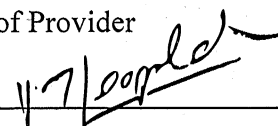Contact Information:

legal@assistiveware.com

+31206127473

6. **Entire Agreement**. This DPA constitutes 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.

7. **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.

8. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON, 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 IN WHICH THE LEA IS LOCATED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
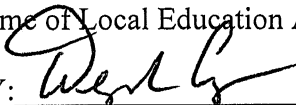
9. **Authority**. Provider represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Washington Student Data Privacy Agreement as of the last day noted below.

Name of Provider   AssistiveWare B.V

BY: _____   Date: 2/13/2020 _____

           M.B. Leopold   CTO/CFO

Printed Name: _____   Title/Position: _____

Address for Notice Purposes:

Name of Local Education Agency   South Kitsap School District

BY: _____   Date: April 29 2020 _____

Printed Name: DERM R. LYONS   Title/Position: DIRECTOR, Information Tech Services

Address for Notice Purposes:
2689 Hoover Ave SE
Port Orchard, WA 98366

Note: Electronic signature not permitted.

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	Meta data on user interaction with application	√
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	

Category of Data	Elements	Check if used by your system
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	

Category of Data	Elements	Check if used by your system
	specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time _____.
*Provider shall immediately notify LEA if this designation is no longer applicable.

aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

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

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, and Student Personal Information, all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School Official: For the purposes of this Agreement 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 education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing 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, food purchases, political affiliations, religious information text messages, documents, student identities, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of federal 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 Generated Content: The term "Student Generated Content" means materials or content created by a student during and for the purpose of education 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.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information

EXHIBIT "D"

DIRECTIVE FOR DISPOSAL OF DATA

(hereinafter referred to as "LEA") directs [AssistiveWare B.V
(hereinafter referred to as "Provider") to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. Unless modified by separate agreement pursuant to a pre-termination data disposal meeting as described in Article IV Section 5(c), the terms of the Disposal are set forth below:

Extent of Disposal	Disposal shall be:	____ Partial. The categories of data to be disposed of are set forth in an attachment to this Directive. ____ Complete. Disposal extends to all categories of data.
Nature of Disposal	Disposal shall be by:	____ Destruction or deletion of data. ____ Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
Timing of Disposal	Data shall be disposed of by the following date:	____ As soon as commercially practicable ____ By (Insert Date) _____ Insert or attach special instructions

_____   _____
Authorized Representative of LEA   Date

_____   _____
Verification of Disposal of Data   Date
by Authorized Representative of Provider

EXHIBIT "F"

DATA SECURITY REQUIREMENTS

Insert additional data security requirements