

Massachusetts Student Privacy Alliance

STUDENT DATA/DATA BREACH SPECIAL TERMS AND CONDITIONS

This Student Data/Data Breach Special Terms and Conditions dated _____ (hereinafter “Agreement”) is by and between YOUR SCHOOL NAME (“**ABRV**”) and _____ (“Contractor”), a contractor performing institutional services and functions that will require student data to perform those services and functions.

1. Contractor and **ABRV** have contracted for the Contractor to provide

_____ (“the Services”), which are institutional services and functions, to **ABRV**. 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 information (“Data Files”). **ABRV** 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’s employees to populate student data 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 from any source that contains personally identifiable information regarding individual students, 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 personally identifiable student data contained therein under this Agreement shall not under any circumstances transfer from Contractor to any other party.

2. Contractor acknowledges and agrees that it is providing institutional services or functions for **ABRV** and that it is under direct control of **ABRV** 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 **ABRV** and **ABRV** 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, including without limitation, any student data 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, including without limitation, any student data and/or personally identifiable information contained in the Data Files, without the express written consent of **ABRV**. Additionally, Contractor agrees that only authorized employees of the Contractor directly involved in delivering the Services shall have access to the Data Files and that it and its employees shall protect the confidentiality of the Data Files in such a way that parties other than officials of **ABRV** and their authorized agents cannot identify any students.

3. Contractor also acknowledges and agrees to:
 - (i) use personally identifiable student data shared under this Agreement for no purpose other than in connection with and through the provision of the Services.
 - (ii) use reasonable methods, consistent with industry standards, to protect the Data Files and/or any personally identifiable student data contained therein from re-disclosure, and to not share the Data Files and/or any personally identifiable

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student data received under this Agreement with any other entity without prior written approval from **ABRV**.

- (iii) not copy, reproduce or transmit the Data Files and/or any personally identifiable student data contained therein ,except as necessary to fulfill the Services.
- (iv) notify the Chief Information Officer for **ABRV** in writing within three (3) days of its determination that it has experienced a data breach, breach of security or unauthorized acquisition or use of any Data Files and/or personally identifiable student data 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.
- (v) not provide any Data Files or any personally identifiable data contained therein 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 personally identifiable from any entity under 34 CFR 99.31(a)(6)(iii).
- (vi) to 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.
- (vii) to, upon receipt of a request from **ABRV**, immediately provide **ABRV** with any specified portion of the Data Files within three (3) days of receipt of said request
- (viii) to, upon receipt of a request from **ABRV**, immediately begin the process of returning all Data Files over to **ABRV** and subsequently erasing and/or otherwise destroying any Data Files, be it digital or physical form, still in Contractor's possession such that Contractor is no longer in possession of any student work belonging to **ABRV** and to provide **ABRV** with any and all Data Files in Contractor's possession, custody or control within seven (7) days of receipt of said request.
- (ix) to, in the event of the Contractor's cessation of operations, promptly return all Data Files to **ABRV** in an organized, manageable manner and subsequently erasing and/or otherwise destroying any Data Files, be it digital or physical form, still in Contractor's possession such that Contractor is no longer in possession of any student work belonging to **ABRV**.
- (x) to delete **ABRV** Data Files that it collects or receives under this Agreement once the Services referenced in this Agreement lapses.
- (xi) to, upon receipt of a litigation hold request from **ABRV**, immediately implement a litigation hold and preserve all documents and data relevant identified by **ABRV** 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.

4. Contractor certifies under the penalties of perjury that it complies with all federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance or access to

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personal information, including without limitation, all standards for the protection of personal information of residents of the Commonwealth and maintaining safeguards for personal information. Contractor hereby further certifies under penalties of perjury that it has 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 certifies under the penalties of perjury that it shall fully comply with the 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 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 unauthorized access, destruction, use, modification, disclosure or loss. Contractor also represents and warrants that if personal information and/or student record information is to be stored on a laptop or other mobile electronic device, that such electronic devices are encrypted and that all such devices will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no personal information and/or student record information is stored on such electronic devices. Furthermore, Contractor represents and warrants that it has in place a service that will allow it to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have purchased locks for all laptops and mobile electronic devices and have a protocol in place to ensure use by employees.

5. Contractor represents, warrants and agrees that its terms of service/terms and conditions of use and/or privacy policies dated _____ shall be amended as it relates to the Services as follows:

- a. Any indemnification provision contained in the Contractor's terms of service, terms and conditions of use and/or privacy policies are hereby deleted in their entirety.
- b. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies that require that the City and/or **ABRV**, as a user, to carry insurance coverage are hereby deleted in their entirety.
- c. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies which specifically disclaim all implied warranties or merchantability, non-infringement and fitness for a particular purpose, the implied conditions of satisfactory quality and acceptance as well as any local jurisdictional analogues to the above and other implied or statutory warranties are hereby deleted in its entirety.
- d. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies by which the City and/or **ABRV** is specifically releasing the Contractor from liability are hereby deleted in their entirety.
- e. Any changes that the Contractor may make, from time to time, to its terms of service, terms and conditions of use and/or privacy policies, shall not apply to the terms of these Services unless the Contractor and City and/or **ABRV** agree to such changes in writing.
- f. The laws of the Commonwealth of Massachusetts shall govern this Agreement and the Governing Law provision of the Contractor's terms of service, terms and conditions of use and license agreement and/or privacy policies are hereby deleted in their entirety.

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6. Contractor represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Data Files and any personally identifiable student data contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data Files and/or any personally identifiable student data contained therein, or may own, lease or control equipment or facilities of any kind where the Data Files and any personally identifiable student data contained therein is stored, maintained or used in any way.

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.

INSERT NAME OF CONTRACTOR

YOUR SCHOOL NAME

Name

Superintendent of Schools

Title