

## SOPPA ADDENDUM

THIS SOPPA ADDENDUM ("Addendum"), effective simultaneously with the attached EmbraceEP® Contract or EmbraceDS® Contract (the "Agreement") by and between Brecht's Database Solutions, Inc. d/b/a/ Embrace®, a corporation organized and existing under the laws of Illinois (the "Company") and Elmwood Park Community Unit School District 401 (the "LEA"), is incorporated in the attached Agreement and modifies and overrides the relevant terms of the Agreement (and all supplemental terms and conditions and policies applicable to the Agreement) as follows:

- Purpose of Addendum and Compliance with Applicable Privacy Laws.** The Company and the LEA agree that the purpose of this Addendum is to describe the services or product that the Company shall provide to the LEA and ensure compliance with applicable privacy laws, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), the Children's Online Privacy Protection Act ("COPPA"), the Illinois School Student Records Act ("ISSRA"), the Illinois Student Online Personal Protection Act ("SOPPA"), the Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"), and the Personal Information Protection Act ("PIPA").
- Use of Confidential Student Records.** The Company shall cause each officer, director, employee, consultant, subcontractor, agent, and other representative who shall have access to any personally identifiable information or material or information that is linked to personally identifiable information or material in any media or format of the LEA's students that is not publicly available (hereinafter "Confidential Student Records") during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all Confidential Student Records. The Company shall take all reasonable steps to ensure that no Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for the LEA under the Agreement and have agreed to be bound by the terms of this Agreement; (ii) are authorized representatives of the LEA, or (iii) are entitled to such Confidential Student Records from the Company pursuant to federal and/or Illinois law. The Company shall use Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement. The identity of Authorized Representatives having access to the Confidential Student Records will be documented and access will be logged.
- Use of Confidential Student Records as School Official.** Pursuant to FERPA, the Company is acting as a school official with a legitimate educational interest, is performing an institutional service or function for which the LEA would otherwise use employees, is under the direct control of the LEA with respect to the use and maintenance of Confidential Student Records, and is using the Confidential Student Records only for an authorized purpose. The Company shall not re disclose Confidential Student Records to Authorized Representatives (except as performing functions for the LEA) or any third-party without express written permission from the LEA or pursuant to court order, unless such disclosure is otherwise permitted under FERPA, ISSRA, SOPPA and MHDDCA.

In the event a third party, including law enforcement or a government entity, contacts the Company with a request or subpoena for Confidential Student Records in the possession of the Company, the Company shall redirect the third party to seek the data directly from the LEA. In the event the Company is compelled to produce Confidential Student Records to a Third Party in compliance with a court order, the Company shall, if possible, notify the LEA at least five (5) school days in advance of the court ordered production and, upon request, provide the LEA with a copy of the court order requiring such production.

4. **Security Standards.** The Company and LEA each shall implement and maintain commercially reasonable security procedures and practices, and physical and technical safeguards, no less rigorous than accepted industry practices (updated as such practices evolve), to protect the Confidential Student Records from unauthorized access, destruction, use, modification, disclosure, or acquisition of computerized data that compromises the security, confidentiality, or integrity of the Confidential Student Records (a "Security Breach"). For purposes of the Agreement and this Addendum, "Security Breach" does not include the good faith acquisition of Confidential Student Records by an employee or agent of the LEA or Company, so long as the Confidential Student Records are used solely for purposes permitted by SOPPA and other applicable law, and so long as the Confidential Student Records are restricted from further unauthorized disclosure.

5. **Security Breach Requirements.**

A. **Assistance with LEA Investigations and Notice:** In the event of a Security Breach involving Confidential Student Records, the Company shall promptly:

1. Provide the LEA with the name and contact information for an employee of the Company who shall serve as the LEA's primary security contact and shall be available to assist the LEA twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach; and
2. Notify the LEA of the Security Breach as soon as practicable, but no later than twenty four (24) hours after the Company becomes aware of it. Notice to the LEA of any Security Breaches shall be made by telephone at (708) 452-7292, and by e-mail to Dr. Kari Smith smithk@epcusd401.org, with a read receipt. Any Security Breach notification provided by the Company to the LEA shall include a list of the students whose Confidential Student Records were compromised or are reasonably believed to have been compromised in the breach, if known.

Immediately following the Company's notification to the LEA of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Company agrees to fully cooperate with the LEA in the handling of the matter, including, without limitation:

- i. Assisting with any investigation;
- ii. Facilitating interviews with the Company's employees and other involved in the matter; and
- iii. Making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, or as otherwise reasonably required by the LEA.

B. **Assistance with Company Investigations:**

In the event the L.E.A. identifies access to the Company's platform by a third-party unauthorized user, LEA shall promptly notify the Company of the attempted or actual access within seventy-two (72) hours after the LEA becomes aware of the same. If the access identified by the LEA results in the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of covered information maintained by the Company, the LEA and Company will cooperate with one another in assessing the effectiveness of their own applicable security procedures and practices. LEA will provide the Company with records, logs, files, data reporting and other materials that identify the attempted or actual access identified by the L.E.A. to the extent such information facilitates a root-cause analysis by the Company of its security procedures and practices.

If a Security Breach is solely attributable to the LEA and for which the LEA would not be immune from liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or other applicable immunities or defenses, the LEA shall reimburse the Company for reasonable legal fees, audit costs, and any other fees or damages imposed against the Company as a result of the Security Breach.

**C. Reimbursement of Expenses:** In the event of a Security Breach solely attributed to the Company, the Company shall reimburse 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:

- i. Providing notification to the parents of those students whose Confidential Student Information was compromised and to regulatory agencies or other entities as required by law or contract;
- ii. Providing credit monitoring to those students whose Confidential Student Information was exposed in a manner during the Security Breach that a reasonable person would believe that it could impact his or her credit or financial security;
- iii. Reasonable legal fees, reasonable audit costs, fines, and any other fees or damages imposed against the LEA as a result of the Security Breach; and
- iv. Providing any other notifications or fulfilling any other requirements adopted by the Illinois State Board of Education or of any other State or federal laws.

**D.** The parties agree to indemnify and hold each other harmless against any and all liabilities, claims, causes of action, damages, costs, expenses, and fees, including reasonable attorneys' fees, that either party incurs arising out of or occurring in connection with the other party's negligent, reckless or intentional misconduct or breach of the terms of this Agreement.

**6. Transfer, Deletion or Correction of Confidential Student Records.** The Company will delete or transfer to the LEA any unnecessary Confidential Student Records, as directed by the LEA within thirty (30) days of the LEA requesting deletion or transfer of Confidential Student Records. Upon termination or expiration of the Agreement, the LEA will have print-only access to all Confidential Student Records contained in the Embrace system for a period of one year. LEA may arrange for transfer of such Confidential Student Records with LEA. Unless previously deleted or transferred at the request of the LEA, Company shall delete Confidential Student records one year after the termination or expiration of the Agreement. Company is not responsible for any Student Data deleted one year after termination or expiration of the Agreement.

In the event that a parent requests corrections of factual inaccuracies in the covered information collected by the Company, the LEA shall correct the same, and the Company shall assist LEA as requested by LEA in writing.

The LEA shall have access to all Confidential Student Records in the possession of the Provider for the purposes of affording a parent an opportunity to inspect and/or copy the Confidential Student Records and/or request deletion of the same. 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 Confidential Student Records. If a parent contacts the Provider directly to inspect, copy or request correction of Confidential Student Records, the Provider shall refer the parent to the LEA, which shall follow its published procedures governing Student Records. Company shall assist the LEA, as necessary, to access or alter Confidential Student Records as directed by the LEA in writing. Company shall have no liability for alteration of Confidential Student Records at the LEA's written direction.

7. **Third-Party Disclosures.** The Company shall not sell, rent, lease, trade or otherwise disclose to a third party any Confidential Student Records received from the LEA or its students except as permitted by state or federal law. The Company shall in all respects comply with the applicable provisions of FERPA, COPPA, ISSRA, SOPPA, MHDDCA and PIPA, as amended from time to time. Company shall have no liability for LEA's disclosure of Confidential Student Records in Company's system to any Third-Party.

8. **Geographic Transmission and Storage Limitation.** The Company shall not transmit to or store any data received from LEA on a server or other data storage medium located outside the United States of America.

9. **Company Privacy Policy Changes.** Any changes the Company may implement with respect to its privacy policies shall be ineffective and inapplicable with respect to the LEA unless the LEA affirmatively consents in writing to be bound by such changes. Student record access granted to parents/guardians of the LEA's students must not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in the Agreement or this Addendum.

10. **Public Access of Contract Documents.** Pursuant to SOPPA, the LEA must publish on its website the Agreement between the Company and the LEA, including this Addendum.

11. **Survival Clause.** The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in the Confidential Student Records shall survive termination of the Agreement.

12. **Notice.** Any Notice delivered pursuant to the Agreement and/or this SOPPA Addendum shall be deemed effective upon receipt by the authorized agent of the other party as indicated in the transmission material if by e-mail; or ten (10) days after mailing via registered United States Postal Service or such other trackable mailing service (e.g. UPS, FedEx).

13. **Additional SOPPA Required Information.**

The information under this Section 12 must be updated and provided to the LEA, at a minimum, by the beginning of each fiscal year (July 1) and at the beginning of each calendar year (January 1).

A. **Description of Services.** The Company shall provide the LEA with the following product or service (check one):

See attached Agreement describing the product or service (in lieu of describing product or service); OR

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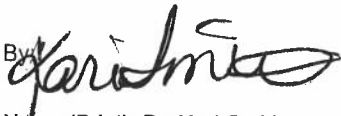
B. **Confidential Student Records.** The LEA is providing the following Confidential Student Records to Company strictly in accordance with the Parties' Agreement, including this Addendum, and applicable state and federal law: See attached Schedule of Data.

C. **Company's Disclosure of Confidential Student Records.** The Company has in the past, currently is, and/or will in the future disclose Confidential Student Records to the following third-parties, affiliates, subcontractors, or agents: None.

D. **Parental and Student Rights.** Parents and students who wish to: (a) inspect and review the student's Confidential Student Records, (b) request a paper or electronic copy of the student's Confidential Student Records, and/or (c) request corrections of factual inaccuracies in the student's Confidential Student Records may submit a written request to the LEA directly. Written requests may be directed to Dr. Kari Smith smithk@epcusd401.org. Company shall assist LEA as set forth above.

14. **Extension of Privacy Terms.** The Company agrees that the privacy terms of the Agreement and this document will extend to all authorized users utilizing the EmbraceEP® or Embrace DS® database under the Agreement.

ELMOOD PARK CUSD 401  
INC.

By: 

Name (Print): Dr. Kari Smith  
Title: Assistant Superintendent for Student Services  
Date:

BRECHT'S DATABASE SOLUTIONS,

D/B/A EMBRACE®

*August Brecht*

By:

Name: August R. Brecht  
Title: President  
Date: 2021-12-06

KLF