

Addendum to Agreement with Brecht's Database Solutions, Inc.

The provisions of this Addendum amend the Embrace[®] MTSS Contract (the "Agreement") between the Board of Education of Evanston Township High School District No. 202, Cook County, Illinois ("School District") and Brecht's Database Solutions, Inc. d/b/a Embrace[®] ("Company"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the term(s) of the Agreement that conflict(s) with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

1. Covered Data

As used in this Addendum, "School District data" means any data or information collected, maintained, generated, or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.3, and the Illinois School Student Records Act, 105 ILCS 10/2 and other non-public information, including student data, metadata, and user content.

2. Compliance with State and Federal Law

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and the Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 *et seq.* & 23 IAC 375.

The Company acknowledges for the purposes of this Addendum that it will be designated as a "school official" with "legitimate educational interests" in the School District data, as those terms have been defined under FERPA and ISSRA and their implementing regulations.

To the extent that the Company's collection, use or disclosure of personal information from students is governed by the Children's Online Privacy Protection Act ("COPPA"), the Company agrees that the Company's use of the School District data will be solely for the benefit of the School District's students and for the school system, and that the operator will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

With respect to the Company's collection, disclosure, or use of School District data as governed by the Protection of Pupil Rights Amendment ("PPRA"), the Company agrees that such collection, disclosure, or use, and any use of any School District data, shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions.

With respect to any "Covered Information" as defined by the Illinois Student Online Personal Protection Act, the Company agrees to comply with the terms of that Act and refrain from using the Covered Information in any way prohibited by the Act.

With respect to any "Personal Information" as defined by the Illinois Children's Privacy Protection and Parental Empowerment Act, the Company agrees to comply with the terms of that Act.

3. Company Obligations:

3.1 *Uses and Disclosures as Provided in the Agreement.* The Company may use and disclose the School District data provided by the School District only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. Only the individuals or classes of individuals will have access to the data that need access to the School District data to do the work described in the Agreement. The Company shall ensure that any subcontractors who may have access to School District data are contractually bound to follow the provisions of the Agreement.

3.2 *Nondisclosure Except as Provided in the Agreement.* The Company shall not use or further disclose the School District data except as stated in and explicitly allowed by the Agreement, this Addendum, and state and federal law. The Company does not have permission to re-disclose School District data to a third party except as provided for in this Addendum, as required by law, or as authorized in writing by the School District.

3.3 *Safeguards.*

(A) The Company agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data. The Company shall ensure that School District data are secured, encrypted, and maintained under security procedures and practices that meet or exceed industry standards during use, storage and/or transmission. The Company agrees to store and process the School District data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District data will be stored on equipment or systems located within the United States. The Company shall maintain complete and accurate records of these security measures and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to perform reasonable audits of the Company's storage of School District data at the School District's expenses to ensure compliance with the terms of the Agreement and this Addendum.

(B) The School District agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data.

3.4 *Reasonable Methods.* The Company and School District agree to use "reasonable methods" to ensure to the greatest extent practicable that they and any subcontractors with access to School District data are compliant with state and federal law.

3.5 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement or to any School District data stored by the Company shall 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 this Addendum.

- 3.6 *Return/Destruction of School District Data.* Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon School District's request, Company covenants and agrees that it shall maintain School District's database information for one (1) year from the date of termination of the Agreement or subsequent failure to renew. At the end of the one year read only time- frame, or sooner at School District's request, Embrace® shall delete all live School District data.

Embrace® maintains long-term, off-site, encrypted backups of data in off-site backups, which are preserved for legal/audit purposes for up to 7 years. Encryption keys used for off-site backups are stored on a separate network from the backup file itself. Embrace® acknowledges and agrees that any off site, encrypted backup data remains subject to the student record maintenance and access rules set forth in state and federal law, and shall continue to preserve and protect the privacy of that information consistent with those laws, the Agreement and this Addendum until such time as the data is destroyed. Embrace® shall have no liability for the deletion or destruction of any data stored in long-term backup.

- 3.7 *Minimum Necessary.* The Company attests that the data requested by the Company from the School District is minimum data necessary for the School District to properly utilize the Company's products or services.
- 3.8 *Authorizations.* The Company agrees to secure School District's prior permission to maintain or use the School District data in any manner inconsistent with the Agreement or Addendum.
- 3.9 *Data Ownership.* The School District is the data owner. The Company agrees not to claim or assert any right, title, or interest in any of the data furnished by the School District.
- 3.10 *Misuse or Unauthorized Release.* Both Parties shall, consistent with law enforcement direction, advise the other within three business days of discovering the misuse, unauthorized access or unauthorized release of School District Data; provided that the District's obligation to notify shall be within three business days of the District's Chief Technology Officer being made aware of the incident requiring notification.

3.11 *Data Breach.*

(A) In the event of a data breach attributed to the Company, which means an unauthorized disclosure, access, alteration, or use of School District data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, the Company shall promptly institute the following: (1) notify the School District by telephone and email as soon as practicable, but no later than twenty-four hours after the Company becomes aware of the data breach; (2) provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with Company employees and review of all relevant records; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District. The Company shall reimburse and indemnify the School District for any costs imposed on

the School District or reasonably undertaken by the School District at its discretion associated with a data breach, including reimbursement of fees paid by the School District related to providing credit monitoring to affected individuals and payment of legal fees, audit costs, fines, and other fees undertaken by the School District because of the security breach; provided that Company's payment requirements under this Section shall not exceed its insurance limits. Company is not responsible for any damages related to a data breach due to or caused by School District's software, equipment, or personnel.

(B) In the event of a data breach attributed to the School District, which means an unauthorized disclosure, access, alteration, or use of School District data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, the School District shall promptly: (1) notify Embrace[®] by telephone and email as soon as practicable, but no later than twenty-four hours after the School District becomes aware of the data breach; (2) provide the Company with the name and contact information for an employee of the School who shall serve as the School District's primary security contact; (3) assist the Company with any investigation, including interviews with School employees and review of all relevant records.

3.12 *Access to Data.* Consistent with the terms of the Agreement and this Addendum, School District data in the possession or under the control of the Company shall be made available in a reasonable time to the School District. This includes requests under the Illinois Freedom of Information Act ("FOIA"), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request. The School District shall advise Company of any statutory or Court Order deadlines within one business day after the School District has been notified of the same.

3.13 *Service Levels.* The Company's products or services are provided 24 hours per day, 7 days per week. The Company shall ensure 99.9% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"). Where Up-time percentage averages less than 99.9% in a calendar month, the School District shall have the right to terminate the Agreement immediately upon written notice to the Company and obtain a pro-rata reimbursement for its past payments to the Company. The annual fee divided by the number of calendar days in the current contract equals the daily cost; daily cost multiplied by the number of days remaining in the Agreement upon termination shall be the pro-rata reimbursable amount.

3.14 *Limited Warranty.* For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's products or services to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect within five business days. Should the Company be unable to cure the Defect within five business days, the School District shall be entitled to terminate this Agreement and Addendum, and obtain a pro-rata reimbursement for its past payments to the Company. The annual fee divided by the number of calendar days in the current contract equals the daily cost; daily cost multiplied by the number of days remaining in the Agreement upon termination shall be the pro-rata reimbursable amount.

3.15 *Harmful Code.* Using a recent version of a reputable virus- checking product (to the extent commercially available), Company will check the Software, as well as any

systems used by Company to deliver the Software, for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

4. Prohibited Uses

- 4.1 The Company shall not sell School District data; use or share School District data for purposes of targeted advertising; or use School District data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.
- 4.2 Notwithstanding the previous paragraph, the Company may use School District data to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on the Company's website, online service, or application; or investigate a matter related to public safety. The Company shall notify the School District as soon as possible of any use described in this paragraph.

5. Miscellaneous

5.1 Indemnification and Insurance.

(A) Consistent with 5.3 below, the Company agrees to indemnify, defend and hold harmless School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing their obligations under the Agreement or this Addendum. The Company shall maintain liability insurance evidencing that the Company has workers compensation insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. Upon request the Company shall provide the School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance shall be deemed a breach of the Agreement and the School District may immediately terminate the Agreement.

(B) To the extent permissible by law, the School District agrees to indemnify, defend and hold harmless Company and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the grossly negligent or willful actions or omissions of School District's employees, contractors, or subcontractors in performing their obligations under the Agreement or this Addendum.

5.2 *Infringement.* The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or services the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that the Company product or services infringe any U.S. patent, copyright, trademark, trade

secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute other equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company products or services free of the restrictions caused by the infringement; or (iv) take back such Company products or services and refund to the School District the license fee previously paid for the Company products depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product.

5.3 *Limitation of Liability.* Any provision in the Agreement, except for Section 5.4 of this Addendum, that limits the Company's liability for its actions shall be limited to the Company's insurance limits set forth in Section 5.1(A) of this Addendum.

5.4 *Mutual Limitation of Liability.* Either Party may recover reimbursement from the other Party for actual expenses incurred in the notification and investigation of any data breach attributable to the other Party. Neither Party will be liable for breach-of-contract damages that the breaching Party could not reasonably have foreseen on entry into the Agreement or Addendum. Under no circumstances shall either Party be liable to the other for punitive or exemplary damages.

5.5 *Taxes.* The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.

5.6 *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

5.7 *Force Majeure.* Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the delayed party), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

5.8 *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (the "FOIA"), and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

5.9 *Governing Law.* The Agreement and this Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located

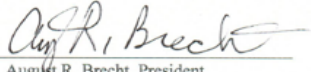
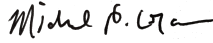
in Cook County, Illinois, or the federal district court for the Northern District of Illinois. Any references to required notices of claims, arbitration, or mediation in the Agreement are not applicable to the Parties.

5.10 *Renewal of Agreement.* The parties may renew the Agreement and this Addendum in writing. Any provision in the Agreement that provides for an automatic renewal of the Agreement is deleted.

5.11 *Termination.* Either Party may immediately terminate the Agreement if they make a reasonable determination that the other Party has breached a material term the Agreement and/or this Addendum which cannot be cured within five (5) business days.

5.12 *Amendment.* No amendment or modification to the Agreement or this Addendum shall be effective unless and until the amendment or modification is in writing and signed by all parties to the Agreement.

5.13 *Effective Date.* The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

| Brecht's Database Solutions, Inc. d/b/a EMBRACE®: | Date | Board of Education of Evanston Township High School District No. 202, Cook County, Illinois | Date |
|--|---------|--|---------|
| BY:  August R. Brecht, President | 7/14/20 |  _____ | 7/16/20 |

