

ADMINISTRATION

William J. Hecht
Chief Operating Officer

Deborah McBride Heppes
Assistant Superintendent for Finance

Theresa A. Reynolds
Assistant Superintendent for Instruction

Sharleen Depew
Clerk of the Board



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ADDENDUM TO AGREEMENT

Regarding

Data Privacy and Security

In Accordance with Section 2-d of the New York Education Law

This is an addendum (the "Addendum") to an agreement dated 2020-2021_ ("Original Agreement"), entered into by between EducAide Software (Problem-Attic) with its principal place of business located 400 Santa Clara St. Suite 110, Vallejo, CA 94590 ("Contractor"), and **Orange Ulster Board of Cooperative Educational Services**, with its principal place of business located at 53 Gibson Road, Goshen, NY 10924 ("OU BOCES"). Upon being executed by Contractor's and OU BOCES's authorized representatives, this Addendum shall be deemed to have been in full force and effect as of the effective date of the Agreement it amends.

WHEREAS, OU BOCES is an educational agency within the meaning of New York State Education Law Section 2-d ("Section 2-d"), and Contractor is a third party contractor within the meaning of Section 2-d; and

WHEREAS, Contractor and its authorized officers, employees, students and agents shall have access to "student personally identifiable information (PII)," "student data" and/or "teacher or principal data" regulated by Section 2-d; and

WHEREAS, the provisions of this Addendum are intended to comply with Section 2-d in all respects. To the extent that any term of the Agreement conflicts with the terms of this Addendum, the terms of this Addendum shall apply and be given effect.

NOW, THEREFORE, it is mutually agreed that the Agreement is hereby amended in accordance with this Addendum, as follows:

1. Confidential Information

1.1 Contractor agrees that in performing the Original Agreement with the OU BOCES, Contractor may have access to confidential information in the possession of OU BOCES, including student directory information; student personally identifiable information ("PII"); personnel information and records; information regarding sensitive, confidential or internal School District matters and other protected information. For the purposes of this Addendum and the Original Agreement, it is agreed that the definition of Confidential Information includes all documentary, electronic or oral information made known to Contractor or developed or maintained by Contractor through any activity related to the Original Agreement. This Confidential information includes student data (as the term is defined under Section 2-d, staff data, metadata, user content, course content, materials, and any and all data and information OU BOCES (or authorized end user(s)) uploads or enters through the use of the Contractor's services.

1.2 Contractor agrees to comply with changes in Section 2-d and its regulations and relevant OU BOCES policy that may change during the term of the Original Agreement.

1.3 Upon expiration of the Agreement to which this Addendum applies, without a successor agreement in place, Contractor shall assist OU BOCES in exporting all student data and teacher or principal data previously received by Contractor from OU BOCES or developed on behalf of

OU BOCES, and Contractor shall, at the request of OU BOCES, either securely delete any student data and teacher or principal data remaining in Contractor's possession or return the student/staff data to the OU BOCES. If student data or teacher or principal data is to be maintained by Contractor for any lawful purpose, such data shall remain in an encrypted format and shall be stored on systems maintained by Contractor in a secure data facility located within the United States.

1.4 The parties further agree that the terms and conditions set forth in this Confidential Information section and all of its subparts shall survive the expiration and/or termination of the Original Agreement.

2. Challenges to Data

In the event that a student's parent or an eligible student wishes to challenge the accuracy of student data (pertaining to the particular student) that may include records maintained, stored, transmitted, and/or generated by Contractor pursuant to the Agreement, the challenge will be processed in accordance with the procedures of OU BOCES.

A teacher or principal who wishes to challenge the accuracy of data pertaining to the teacher or principal personally, which is disclosed to Contractor pursuant to the Agreement, shall do so in accordance with the procedures for challenging APPR data, as established by OU BOCES.

3. Training

Contractor represents and warrants that any of its officers, employees, and/or assignees who will have access to student data or teacher or principal data pursuant to the Original Agreement will receive training on the federal and state laws governing confidentiality of such student data and teacher or principal data, prior to obtaining access or any further access to such data.

4. Use/Disclosure of Data

4.1 Contractor shall not sell or use for any commercial purpose student data or teacher or principal data that is received by Contractor pursuant to the Agreement or developed by Contractor to fulfill its responsibilities pursuant to the Agreement.

4.2 Contractor shall use the student and/or staff data, records, or information solely for the exclusive purpose of and limited to that necessary for the Contractor to perform the duties and services required under the Original Agreement. Such services include, but are not limited to Clinical Affiliation in the health professions. Contractor shall not collect or use educational records of OU BOCES or any student and/or staff data of the OU BOCES for any purpose other than those explicitly authorized in this Addendum or the Original Agreement.

4.3 Contractor shall ensure, to the extent that it comes into possession of student data and/or teacher or principal data pursuant to the Agreement, that it will not share Confidential Information with any additional parties, including an authorized subcontractor or non-employee agent, without prior written consent of the OU BOCES.

5. Contractor's Additional Obligations under Section 2-d and this Addendum

Contractor acknowledges that it has the following obligations with respect to any student data and/or teacher or principal data received through its relationship with OU BOCES pursuant to the Agreement, and any failure to fulfill these obligations shall be a breach of the Agreement. Contractor shall:

- execute, comply with and incorporate as Exhibits "A" and "B" to this Addendum, as required Section 2-d, the Parents' Bill of Rights for Data Privacy and Security developed by the OU BOCES; store all data transferred to Contractor pursuant to the Agreement by OU BOCES, in an electronic format on systems maintained by Contractor in a secure data facility located within the United States or hard copies under lock and key;

- limit internal access to student data and teacher or principal data to Contractor's officers, employees and agents who are determined to need such access to such records or data to perform the services set forth in the Original Agreement;
- not disclose student data or teacher or principal data to any other party who is not an authorized representative of Contractor using the information to carry out Contractor's obligations under the Agreement, unless: (I) the other party has the prior written consent of the applicable student's parent or of the eligible student; or (II) the other party has the prior written consent of the applicable teacher or principal; or (III) the disclosure is required by statute or court order, and notice of the disclosure is provided to OU BOCES no later than five business days before such information is required or disclosed (unless such notice is expressly prohibited by the statute or court order);
- use reasonable administrative, technical and physical safeguards that align with the NIST Cybersecurity Framework and are otherwise consistent with industry standards and best practices, including but not limited to encryption, firewalls and password protection as specified by the Secretary of the United States Department of HHS in any guidance issued under P.L. 111-5, Section 13402(H)(2), to protect the security, confidentiality and integrity of student and/or staff data of the OU BOCES while in motion or in custody of Contractor from unauthorized disclosure;
- not mine Confidential Information for any purposes other than those agreed to in writing by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited; notify OU BOCES, in the most expedient way possible and without unreasonable delay, of any breach of security resulting in an unauthorized release of any PII. In addition, Contractor shall take immediate steps to limit and mitigate the damage of such security breach or unauthorized release to the greatest extent practicable, and promptly reimburse the OU BOCES for the full cost of any notifications OU BOCES makes as a result of the security breach or unauthorized release. Contractor further acknowledges and understands that Contractor may be subject to civil and criminal penalties in accordance with Section 2-d for violations of Section 2-d and/or this Agreement.
- understand that any breach of the privacy or confidentiality obligations set forth in this Addendum may, at the sole discretion of the OU BOCES, result in the OU BOCES immediately terminating this Agreement; and
- to the maximum extent permissible by law, defend, indemnify and hold harmless the OU BOCES and its officers, agents, subcontractors and employees from any and all claims, losses, lawsuits or administrative proceedings, judgments, penalties or liability including reasonable attorneys' fees for damages or costs resulting from the acts or omissions of the Vendor, or its officers, agents, subcontractors or employees while performing the Original Agreement; and
- familiarize its applicable officers, employees and agents with this Addendum and with the "Parents' Bill of Rights for Data Privacy and Security."

6. Except as specifically amended herein, all of the terms contained in the Original Agreement are hereby ratified and confirmed in all respects, and shall continue to apply with full force and effect.

7. It is understood that further revisions to this Addendum may be necessary to ensure compliance with Section 2-d, after certain regulations have been promulgated and model policies have been prepared by the New York State Education Department. Contractor and OU BOCES agree to take such additional steps as may be necessary at that time to facilitate compliance with Section 2-d.

IN WITNESS WHEREOF, Contractor and OU BOCES execute this Addendum to the Agreement as follows:

EducAide Software

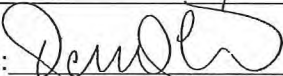
OU BOCES

By: Daniel Levin

By: Deborah Heppes

Title: President

Title: Assistant Superintendent

Signature: 

Signature: 

Date: 8/6/2020

Date: 8-10-20